

DOROTHY M SHAMUYARIRA
versus
FRED MAKONESE

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 21 and 22 June 2018 & 27 June 2018

Civil Trial

E Mubaiwa, for the plaintiff
Ms H. M Makonese, for the defendant

ZHOU J: The plaintiff instituted the instant claim for the eviction of the defendant and any persons claiming occupation through the defendant from a piece of land known as Sub-division W/F of Mt Carmel of Railway, Chegutu in the Mashonaland West Province of Zimbabwe. Plaintiff also seeks costs of suit. The claim is contested by the defendant.

The basis of the plaintiff's claim as set out in her declaration is that she was offered the farm in question under the Government's Land Reform and Resettlement Programme through an offer letter dated 19 August 2016. She pleaded that the defendant has occupied the farm in terms of a "purported" Farm Management Contract which he misled her into signing without the knowledge or consent of the Minister of Lands and Rural Resettlement. The plaintiff avers that the Management Contract is null and void because it was entered into without the knowledge or consent of the Minister. That therefore is the basis upon which the plaintiff asserts that the defendant's occupation of the farm is illegal, and that he must be ejected.

The defendant's defence is that he is on the farm lawfully in terms of the Farm Management Contract signed between the parties.

The simple issue upon which this matter can be disposed of is whether the Farm Management Contract between the parties is illegal and, consequently, null and void as pleaded by the plaintiff. The plaintiff gave evidence herself and also through a witness Munhuwashe Ndanga. The defendant was the only witness in support of his case.

From the evidence led for the plaintiff, the farm in question was initially offered to her late husband by the Government. After the death by her husband the plaintiff entered into a Management Contract with the defendant. The full terms of the contract were reduced to writing. In August 2016 she received an offer letter for the farm in her own name. According to the plaintiff the defendant breached the contract and ran down the farm. Her evidence regarding the alleged breaching of the contract by the defendant was supported by that of Munhuwashe Ndanga who handles her financial matters.

Nothing turns on the alleged breaches of the Management Contract, as that is not the cause of action *in casu*. As pointed out earlier, the cause of action is the alleged invalidity of the Farm Management Contract and, ensuing therefrom, the alleged illegality of the defendant's presence on the farm. Plaintiff's claim is that the defendant's presence on the farm was not authorised by the Minister. In short, the plaintiff is pleading her breach of the contract in terms of which she was offered the farm as the cause of action. But the terms of the offer letter only establish personal rights as between the plaintiff and the Government as represented by the Minister. Breach of those terms does not on its own invalidate a contract with a third party. This is not to accept that the terms of the offer letter were breached. Clause 1 (a) (ii) of the Conditions explicitly authorised the holder of an offer letter to "appoint a manager who shall personally and permanently take up residence on the holding." The defendant was such a manager, and he was resident at the farm. Mr *Mubaiwa* for the plaintiff submitted that the defendant was not a "manager" within the contemplation of the clause referred to above, because he was not an employee of the plaintiff. The suggestion seems to be that for him to qualify as a manager he must be a salaried employee. That submission flies in the face of the wording of the terms of the offer letter, which makes no such prescription. The mandate of the defendant was to manage the farm. The fact that he was remunerated by way of a share of profits between him and the plaintiff does not affect his mandate as explicitly provided for in the Management Contract. There is no law that prevents a person from appointing a Manager to work as an independent contractor or consultant. After all, the offer letter uses the word

“appoint”, and makes no reference to the need for an employer/employee relationship to exist between the plaintiff and whosoever she elects to appoint to manage the farm.

From the evidence led, the Minister was made aware of the presence of the defendant on the farm by the plaintiff herself. A letter dated 19 August 2015 written to the Minister by the plaintiff describes the defendant as the “CEO and Chairman of the enterprise” who represents the Executive Management of the farm. The letter makes positive remarks about the experience and qualifications of the defendant in agribusiness management.

The plaintiff has therefore failed to prove the alleged illegality of the contract with the defendant. That contract is extant. The suggestion made equivocally by Mr *Mubaiwa* for the plaintiff that the Management Contract was terminated is not supported by evidence. The letter dated 20 July 2016 which is sought to be relied upon is merely notice of intention to terminate the contract. The last paragraph of that letter is an invitation by the plaintiff to the defendant to a meeting to discuss the proposed termination of the agreement.

In all the circumstances, the plaintiff’s claim cannot succeed.

In the result, IT IS ORDERED THAT:

1. The plaintiff’s claim be and is hereby dismissed.
2. The plaintiff shall pay the defendant’s costs.

Hussein Ranchhod & Company, plaintiff’s legal practitioners
Khupe & Chijara, defendant’s legal practitioners