

EMMANUEL HANDIVHUNDUKI GONO
versus
VICTOR VAVARIRI MUNYIKWA
and
MINISTER OF LANDS AND RURAL SETTLEMENT

HIGH COURT OF ZIMBABWE
MUSHORE J
HARARE, 10 July 2018 & 17 October 2018

Opposed Motion

Advocate Zhuwarara, for the applicant
E. J Mataga, for the 1st respondent
K Chimiti, for the 2nd respondent

MUSHORE J: This is an application for dismissal for want of prosecution of several matters involving both parties over the same subject matter that being a land dispute.

Prior to enrolment of the matter on my opposed roll, I had noticed that the applicant had not furnished either the files or any the document pertaining to the other matters which he desired to be dismissed under the present case number. I found this omission to be counter-intuitive bearing in mind that he was praying for a dismissal of those very matters. As a result, at the hearing of the matter I caused the matter to be removed from my roll and I directed the applicant to ensure that the files in those other matters be sourced and despatched to me for my deliberations. I have now perused all of the files referred to by the applicant which he requires to be dismissed for want of prosecution. It is necessary that I summarise the contents of each file before I give my determination.

The dispute centres around a piece of land which the applicant alleges was allocated to him and. Applicant believes that the first respondent is in unlawful occupation of that piece of land and is at the end of the day desirous of the court resolving that issue of allocation. First respondent believes that he is in lawful occupation of the disputed piece of land.

Here is the summary.

Masvingo Magistrates Court- matter Int 118/17

First respondent applied to the Magistrates Court Masvingo for an interdict pertaining to the land in dispute. There is no clarity as to the various submissions made, but from what I could glean, the applicant raised the issue of the Magistrates lack of jurisdiction to determine a land matter. The magistrate dismissed the point *in limine*.

HC 3903/17

On 4 May 2017 applicant filed a chamber application through the chamber book for a review of the magistrate court's decision to dismiss the jurisdiction point which he had taken *in limine*. The application was opposed by the first respondent who averred in his notice of opposition in that matter that the decision of the magistrate concerned to dismiss the point *in limine* was a proper one, and that the appropriate course which the applicant should have taken was to appeal against the decision of the magistrate. First respondent also accused the applicant of filing an unnecessary review application. Unfortunately for the first respondent his notice of opposition was filed out of time and the first respondent was automatically barred. Applicant did not however bring this review application to finality as the record bears no record of a hearing on the review application having taken place as I did not come across an order for condonation of the matters.

HC 4718/17

First respondent filed this application through the chamber book for removal of the bar (Matter HC 3903/17). The application was opposed by applicant. However it too was not brought to finality from what I can see.

HC 5570/17

First respondent filed a separate application for condonation for the late filing of the application for the removal of the bar. It is beyond my comprehension as to why this application was filed separately but nevertheless that is what happened. That application was opposed by the applicant and again has not been brought to finality.

HC 7740/17

First respondent then made an application for directions for the consolidation of all the above matters filed by the parties in the High Court. I was not furnished with this particular record but I have deduced from the applicant's founding affidavit in this matter that these matters remain unconsolidated.

HC 10038/17

As I earlier indicated, the present matter is an application for dismissal of matters HC 4718/17, HC 5570/17 and HC 7740/17 in terms of Order 32 r 236 (3) (b). This is how the draft order reads:

“IT IS ORDERED THAT:

1. The application in terms of Order 32 r 236 (2) (b) of the High Court Rules, 1971 is granted.’
2. The applications filed by first respondent in HC 4718/17; 5570/17 and 7740/17 be and are hereby dismissed for want of prosecution.
3. The 1st respondent shall pay applicant’s costs of suit on a legal practitioner and client scale.”

It is mind-boggling that the applicant expects to be granted the above sought order under the current case number, and it is further puzzling that the applicant placed the present application before the court without presenting the relevant files to the court. I queried this at the hearing of the present matter and I had to direct that those files be placed before me through the Registrar.

The present application is defective and not in compliance with the rules. The applicant should have applied for the dismissal of those other matters separately and individually before a Judge sitting in chambers. Each case has its own merits and the default has to be specifically pleaded in each case. This is elementary. Such is the proper procedure as is envisaged in Order 32 r 226. The present application is completely unnecessary. Applicant is complaining about delays and yet applicant is contributing to the delays by filing useless process.

I am therefore not disposed to granting applicant the order sought for want of compliance with the rules. Accordingly I rule as follows:

“Application is dismissed with costs.”

Wintertons Legal Practitioners, applicant’s legal practitioners
Mutumbwa Mugabe & Partners, 1st respondent’s legal practitioners
Civil Division of the Attorney General’s Office, 2nd respondent’s legal practitioners