

PARKS AND WILDLIFE MANAGEMENT AUTHORITY
versus
MUNICIPALITY OF KARIBA

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 4 March and 22 May 2019

Opposed Application

B Diza, for applicant
C W Gumiro, for respondent

TAGU J: The order being sought by the applicant is that the respondent be and is hereby interdicted from carrying out any construction or development at the Charara Safari area being the 368 650 square metres stretching from Kasese river with GPS coordinate 35KPM 97 867 383 on a map 1:5000 Kariba PM 9672 down to point PM 98 037 309 along Kasese River up to Charara river in the Eastern direction towards the Kariba airport and that respondent pays costs of suit.

My reading of the papers filed before me shows that the applicant before the year 1999 has always been in control of the location called Charara Safari area measuring 368 650 square metres from Kasese River GPS coordinate 35 KPM 97 867 383 on a map 1:5000 Kariba PM 9672 down to point PM 98 037 309 Kasese River up to Charara River as provided for in section 36 as read with Schedule 4, item 8 of the Parks And Wild Life Act [*Chapter 20.14*] for the purpose of inter alia, managing the entire wildlife population of Zimbabwe, whether on private or communal lands. On the other hand while the applicant was carrying such duties in that area, the applicant had no title to the land in question. The respondent has always been the title holder of the land under Deed of Grant 4006/2006 dated 12th September 2005. This fact is not in dispute. This is shown on survey diagram S.G. No. 19/2005 that the Municipality of Kariba had land coverage totaling 2161, 3682 hectares including the area being controlled by the applicant.

However, be that as it may, in the year 1999 the former President, His Excellence. The Honourable Robert Gabriel Mugabe. G.C.Z.M. President of Zimbabwe and Commander in –Chief

of the Defence Forces of Zimbabwe made proclamation 3 of 1999 published in Statutory Instrument 9F of 1999 abolishing the town of Kariba and the Kariba Town Council, and establishing a municipality in place of the said town of Kariba. As a result the respondent embarked on converting the area in dispute into residential stands a move being challenged by the applicant.

The sole issue to be decided in this matter is whether or not the applicant is entitled to an interdict to stop the respondent and its agents from continuing construction projects at the Charara Safari Area being 368 650 square metres stretching from Kasese river with GPS Coodinate 35kpm of 786783 on a map 1:5000 Kariba Pm 9672 down to point Pm 9803709 along Kasekese river in the Eastern direction towards the Kariba Airport.

In my view, while the applicant controlled the area in question for purposes of managing wild life, the owner of the land is the respondent. At law the owner of the land cannot be interdicted from utilizing his land in the manner he/she deem fit. In *casu*, the title deed for the respondent is extant and the applicant has no clear right over the land.

In the case of *Zavazawa & Anor v Tendere &Ors* 2015 (2) ZLR 394 (H) it was stated as follows:

“Counsel for the Applicant has drawn my attention to the remarks of HOLMES JA, which are apposite, in the case of *Oakland F Nominees (Pty) Ltd v Gelria Mining and Investment Co. Ltd* 1976 (1) SA 441 (A) at 452A where the learned judge of appeal made emphasis that our law jealously protects the right of ownership and the correlative right of the owner over his property. Counsel further stated:

‘The legal principle enunciated above is solidly noble because since time immemorial at every stage of human evolution, societies have suffered the inevitable unfortunate phenomenon of having in their midst, an array of thieves, fraudsters, robbers, cutthroats, the throwbacks in evolution etc with no qualms whatsoever in employing force or chicanery to dispossess fellow humans of ownership of their property. If the law did not jealously guard and protect the right of ownership and the correlative right of the ownership to his/her property, then ownership would be meaningless and the jungle law would prevail to the detriment of legality and good order.’”

At no stage before 1999 did the applicant institute litigation for the setting aside of the respondent’s title. Neither did the applicant produce any title deeds to the property other than that it had been in control. In the case of *Efrolou (Pvt) Ltd v Muringani* 2013 (1) ZLR 300 (H) it was stated that:

“Registration of title in the deeds office is a transfer of real rights in a property from one person to another. The transferee becomes the owner of those rights in the property and can enforce his rights

against the whole world. The registration of transfer is constructive notice to the whole world of the change of ownership, provided only that the transfer has been obtained in good faith. Conversely, every member of the public is subject to certain expectations- entitled to rely on the deeds register being correct.”

In the present case the applicant alleged that the diagram to the title deed cannot be located at the Deeds Registry and at the Surveyor General’s offices. The alleged government departments have not been cited nor made to supply affidavits in these proceedings. Neither did applicant made an application to compel the production of the said diagram from the relevant government departments. It is not the duty of the respondent to produce the said diagram as the Surveyor General’s office is the custodian of the diagram.

The requisites for an order for an interdict are now settled. See *Rowland Electro Engineering (Pvt) Ltd v Zimbabwe Banking Corporation Ltd* 2003 (1) ZLR 223 (H), where it was held that:

“when seeking a final order for an interdict, an applicant must show that he has a clear right of action, that there is no alternative remedy, that he will suffer irreparable harm, and that the balance of convenience lies with him.”

In the present case the applicant failed to establish the aforementioned requisites for an interdict. Accordingly the application is dismissed with costs.

IT IS ORDERED THAT

1. The application is dismissed with costs.

Mhishi Nkomo, applicant’s legal practitioners
Ngarava Moyo & Chikono, respondent’s legal practitioners