

JOHN MUDZIMURI
and
CATHRINE NAKAI MUDZIMURI
versus
DZINGAI NEVHUNJERE
and
THE MINISTER OF LANDS & RURAL RESETTLEMENT

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 25 September & 13 November 2019

Civil Trial-Preliminary Point

W Chagwiza, for the plaintiff
P Ngarava, for the 1st defendant

TAGU J: The plaintiffs issued summons in the High Court claiming for an order that the first defendant and those claiming occupation through him be evicted from Lot 11 of Danbury Park Estate within 48 hours of service of the order upon him. Further, that the first defendant pays costs of suit. The plaintiffs are husband and wife.

The facts as per plaintiffs' declaration are that on the 7th of March 2002 the first plaintiff was offered Subdivision 11 of Danbury Park in Mazoe District of Mashonaland Central Province. He accepted the offer. He is therefore a holder of an offer letter. On the 22nd of April 2013 the plaintiffs entered into a lease agreement with Herbert Muchemwa Murerwa (in his capacity as Minister of Lands and Rural Settlement and on behalf of the Government) in which the latter leased Lot 11 of Danbury Park Estate for a period of 99 years. Sometime between August and September 2012 the first defendant without any prior warning or arrangement abruptly went and settled in a homestead which is within the land that the plaintiffs have rights to by virtue of the aforesaid lease agreement. The homestead is said to be worthy more than US\$10 000.00 hence this court has

jurisdiction to deal with the matter. Despite repeated requests and demands the first defendant and all those claiming occupation through him have refused to vacate the property.

Upon being served with the Summons the first defendant duly entered an appearance to defend. He claimed for further particulars to enable him to plead which were duly furnished. In his plea the first defendant basically claimed that the plaintiffs are not owners of Lot 11 of Danbury Park Estate hence have no locus standi in *judicio* to obtain an eviction order against anyone let alone the first defendant who categorically denies occupation of the alleged Lot 11 of Danbury Park Estate.

At the hearing of the trial the first defendant took a preliminary point that the plaintiffs are improperly before the High Court of Zimbabwe for they have not exhausted the domestic remedy. He submitted that though the High Court of Zimbabwe has inherent jurisdiction to entertain any matter, the plaintiffs should or are legally obliged to exhaust domestic remedies established by the Constitution of the Country a law which is superior to a mere lease document or lease agreement attached as Annexure ‘‘A’’.

In motivating his argument the first defendant submitted that the issue that this court has to determine is the Land dispute, boundary dispute and or homestead dispute which falls within the purview or jurisdiction of the Land Commission established by the Constitution of Zimbabwe as the Apex Institution to deal with all forms of disputes with regards to agricultural land for the plaintiff’s Plot 11 and the first defendant’s Plot 8 at Danbury Park Farm, Mazoe District which are all agricultural lands /plots allocated by the State in pursuance of the Land Reform Program. He therefore said this court has no jurisdiction because the land dispute/boundary dispute is within the purview or jurisdiction of the Land Commission of Zimbabwe by virtue of the Constitutional Provisions such as Section 296 and 297 of the Constitution of Zimbabwe Amendment (No. 20 Act 2013). Further, the first respondent submitted that the plaintiffs sued a wrong person (the second defendant in a wrong forum) who has no authority and power to deal with Land disputes such as disputes on overlapping boundaries or encroachment on a neighbour’s land plot or stand such as the present case.

The plaintiffs opposed the point in limine. Their opposition is anchored on the fact that they were offered subdivision 11 of Danbury Park in Mazoe District on or about the 7th of March 2002 whilst the defendant was offered Subdivision 8. They said their rights to Subdivision 11 were

later crystalized through a Lease Agreement that they signed on the 22nd April 2013 with the Government of Zimbabwe through the then Minister of Lands and Rural Resettlement, Herbert Musarurwa Murerwa. They produced both the offer letter and the Lease agreements. Their contention is that within Subdivision 11 is a certain dwelling structure which the first defendant is unlawfully occupying without the consent or authority of the plaintiffs. They said the first defendant took occupation sometime between August and September 2012. The plaintiffs therefore want to vindicate the property within their land and they seek an eviction order before this Honourable Court. They further submitted that the Zimbabwe Land Commission is a forum offering domestic remedies in the context of the determination of the dispute between the parties. They lastly submitted that even assuming that the Land Commission can offer domestic remedies to the disputes between the parties the existence of such domestic remedies does not itself oust the jurisdiction of the High Court since the Land Commission was set up with an intention to generally have an oversight role in the fair and transparent distribution and allocation of agricultural land and was never set up with an intention to make it a court or an adjudicating authority in eviction matters in respect of agricultural land.

It is trite that the High Court has inherent jurisdiction to deal with any civil or criminal matters. However, in my view this preliminary point raised by the first defendant that this court has no jurisdiction or that the plaintiffs failed to exhaust domestic remedies before approaching the High Court or should have approached the High Court by way of review against the decision of the Land Commission can be resolved by analyzing the provisions of section 297 of the Constitution of Zimbabwe. Section 297 of the Constitution of Zimbabwe provides as follows:

“297 FUNCTIONS OF ZIMBABWE LAND COMMISSION

- (1) The Zimbabwe Land Commission has the following functions-
 - (a) to ensure accountability, fairness and transparency in the administration of agricultural land that is vested in the State;
 - (b) to conduct periodical audits of agricultural land;
 - (c) to make recommendations to the Government regarding-
 - (i) the acquisition of private land for public purposes;
 - (ii) equitable access to and holding and occupation of agricultural land, in particular-
 - A. the elimination of all forms of unfair discrimination, particularly gender discrimination.
 - B. the enforcement of any law restricting the amount of agricultural land that may be held by any person or household;
 - (iii) land usage and the size of agricultural land holdings;
 - (iv) the simplification of the acquisition and transfer of rights in land;

- (v) systems of land tenure, and
- (vi) fair compensation payable under any law for agricultural land and improvements that have been compulsorily acquired;
- (vii) allocations and alienations of agricultural land;
- (d) to investigate and determine complaints and disputes regarding the supervision, administration and allocation of agricultural land.”

Of all the functions as listed under section 297 of the Constitution of Zimbabwe the closest that the Zimbabwe Land Commission is accorded some quasi-judicial powers is the function under section 297 (1) (d) which relates to complaints and disputes that may exist between beneficiaries and the relevant government officials that administer and allocate agricultural land because it speaks of complaints and disputes regarding supervision, administration and allocation of agricultural land. Applying the *ejusdem generis* rule and the contextual rule interpretation will show that supervision, administration and allocation are functions or duties of the Ministry of Lands, Agriculture and Rural Resettlement. It is that Ministry that supervises, administers and allocates agricultural land. As such section 297 (1)d) accords the Zimbabwe Land Commission power to investigate and determine complains and disputes regarding the Ministry of Lands, Agriculture and Rural Resettlement’s exercise of its functions of supervision, administration allocation of agricultural land. In light of the above the Zimbabwe Land Commission does not have power to preside over a dispute over evictions.

As properly submitted by the counsel for the plaintiffs there is nowhere in the first defendant’s plea that he avers that the house in issue is in his plot or that it was allocated to him. The dispute between plaintiffs and first defendant is therefore impossible to classify as a dispute on which the Land Commission may exercise its quasi-judicial jurisdiction. From the Summons and the declaration it is purely an issue of unlawful occupation of a dwelling structure from which he faces eviction by the plaintiffs and this is a matter squarely for the court to determine and not Zimbabwe Land Commission. One wonders where the first respondent got it that the issue for the court to determine is about land or boundary dispute. It’s a simple case of eviction from a homestead situated in the plaintiffs land under Lot 11 of Danbury Park Farm Mazoe District. The first defendant is creating his own dispute. The High Court therefore has jurisdiction to hear the matter of eviction.

As regards the second point in limine that the second defendant should not have been cited in these proceedings a close look at the Summons issued by the plaintiffs against the first defendant

on the 25th of March 2014 will show that the second defendant was not cited. It was presumably after the first defendant's plea he filed on the 23rd of July 2014 that the second defendant was cited.

A reading of para 2 of the first defendant's plea reads as follows-

“2. The Minister of Lands and Rural Resettlement has a direct and substantial interest in the Case or proceedings, hence should have been cited or joined either as a Plaintiff or Defendant. Defendant denies occupation of Plot 11, Government Property, allocated to First Plaintiff on 12th February 2002.”

If the second defendant was cited as the second defendant following the first defendant's plea that he be joined either as a Plaintiff or Defendant, then one wonders why his citation now becomes an issue.

Having considered the submissions by the counsels I found the points in limine to have no merit. This court has jurisdiction to hear this matter. I dismiss the preliminary points.

IT IS ORDERED THAT

1. The preliminary points are dismissed
2. Costs are costs in the cause.

Kwenda & Chagwiza, plaintiff's legal practitioners
Ngarava Moyo and Chikono, 1st respondent's legal practitioners.