

**MOSES MZILA NDLOVU**

**Versus**

**JOHANES ZIFUDZE N.O.**

**And**

**THE SECRETARY  
(Ministry of Lands, Agriculture, Water, Fisheries and Rural Development)**

**And**

**THE MINISTRY OF LANDS, AGRICULTURE, WATER, FISHERIES AND RURAL  
DEVELOPMENT**

**And**

**THE OFFICER IN CHARGE  
ZRP FIGTREE**

**And**

**THE OFFICER COMMANDING  
ZRP MATABELELAND SOUTH**

**And**

**THE SURVEYOR GENERAL**

**And**

**THE SHERIFF OF ZIMBABWE**

**IN THE HIGH COURT OF ZIMBABWE  
DUBE-BANDA J  
BULAWAYO 1 MARCH 2024 AND 25 APRIL 2024**

**Court application**

*T. Moyo* for the applicant  
*S. Jukwa* for the 1<sup>st</sup> – 5<sup>th</sup> respondents

**DUBE-BANDA J:**

### Introduction

[1] This is a spoliation application. The applicant seeks an order couched in the following *terms*:

- i. That it be and is hereby ordered that the beneficial occupation, use and control of an immovable property, being a piece of land known as Khami Magazine Site Farm, in the extent (*sic*) measuring 360 3163 (*sic*) hectares, and situated in Matobo District of Matabeleland South, be and is hereby forthwith, restored to the beneficial occupation, use and control of the applicant as to restore the *status quo ante*.
- ii. As a consequence of the order in paragraph (i) above, all persons claiming title or interest or occupation or use or control of Khami Magazine Site Farm aforesaid, through the 1<sup>st</sup> or 2<sup>nd</sup> or 3<sup>rd</sup> respondents, including their agents or employees or assignees, together with their goods and chattels, be and are hereby ordered evicted from Khami Magazine Farm, Matobo District, so as to return sole possession, occupation, use and control of the said land to the applicant.
- iii. 7<sup>th</sup> respondent be and is hereby ordered and directed, in the event that any such persons as may have been placed in occupation, use and control of Khami Magazine Site farm by either the 1<sup>st</sup> or 2<sup>nd</sup> or 3<sup>rd</sup> respondents, fail to comply with the order in (ii) above, to engage in the evacuation of all such persons, together with their goods and chattels through the due process of law, so as to actualise the order in (ii) above.
- iv. Any of the respondents who unsuccessfully oppose this application be ordered to pay costs on an attorney and client scale.

[4] The application is opposed by the first to the fifth respondents. The sixth and seventh respondents neither filed opposing papers nor participated in this hearing. I take it that they have chosen to abide by the decision of the court.

### Background facts

[5] The applicant contends that he is a beneficial occupier, user and controller of the farm since 2004. He contends further that since 2004 he has enjoyed the undisturbed possession of the farm, until August 2023 when the first respondent brought what he calls scores of people into the farm. The first respondent is said to have pegged and dished out stands to the said persons. These persons are said to have occupied 200 hectares of the 360, 3163 hectares far. It is contended further that the first respondent intends to allocate more land to persons he is

bringing to the farm. The respondents contend that the applicant remains in peaceful and undisturbed possession of the farm and that he has not proved a case for spoliation. He says he has been despoiled of part of the farm, and it is against this background that the applicant filed this application seeking the relief stated above.

[6] In the opposing papers and submission in court it was contended that the applicant must have joined the persons who he contends have been allocated stands at the farm, and that there are material disputes of fact in this matter which cannot be resolved in motion proceedings. Notwithstanding that I heard the merits of the matter, these issues must be considered *in limine*. I adopted a holistic approach in this matter. This entails that for the sake of making savings on the time of the court by avoiding piece-meal treatment of the matter, the preliminary points had to be argued together with the merits, but when the court retires to consider the matter it may dispose of the matter solely on preliminary points despite that they were argued together with the merits. If the court dismisses the preliminary points, it will proceed to deal with the merits. The main consideration here is to make savings on the court's most precious resource - time - by avoiding unnecessary proliferation when the matter should have been argued all at once.

[7] I now turn to the preliminary issues.

#### Non joinder of interested parties

[8] In his founding affidavit the applicant avers that sometime in June 2023, the first respondent drove to his homestead and informed him that he had decided to peg out pieces of land for the purposes of allocating them to new beneficiaries. Leaving him with his homestead and surrounding him with new beneficiaries. It is further averred that on 11 August 2023 the first respondent, and what the applicant calls scores of people, started pegging and allocating pieces of land to these beneficiaries. He says he has it on good authority that some of these beneficiaries are members of the Zimbabwe Republic Police stationed at Figtree. It is said on 14 and 15 August 2023, the new beneficiaries began to randomly cut trees and clearing for their occupation. He says they are clearing the land up to his perimeter fence.

[9] In his answering affidavit the applicant avers that the fourth respondent was allocated a stand right at his front gate. It is averred that one of the beneficiaries is Muzamba of ZRP Figtree. The applicant avers further that Figtree Police Station houses police officers who have

taken the law into their own hands. In her opposing affidavit the fourth respondent avers that if members of the police stationed at Figtree were allocated land, it was in their personal capacities and applicant should serve them with this application. In case number HCBC 1930/23 the applicant avers that one stand was allocated to the Officer in charge Matopo Police Station.

[10] The applicant by his own version knows the identities of at least three persons whom he says have been allocated stands in the farm subject to this application. These are Samukeliso Sibanda, Muzamba and the Officer in charge Matopo Police Station. It is also clear by his own version that the other beneficiaries are police officers stationed at Figtree Police Station. I am of the view that it would not be difficult, and in fact with very little effort the applicant should be able to know the identities of the other beneficiaries.

[11] The applicant seeks that these alleged beneficiaries, who have not been joined in these proceedings be evicted from the farm without having been given an opportunity to be heard. This is untenable.

[12] I take the view that the questions whether a spoliation had been committed and whether the applicant has made a case for the order he is seeking cannot be debated without the alleged beneficiaries of the stands being joined in this application. This court cannot countenance a situation where a person sits blissfully at home with his family not knowing that in court an argument is raging concerning his eviction from the stand. These persons have a direct and substantial interest in the matter turning on their eviction. They have a right to be heard.

[13] Rule 32(11) of the High Court Rules, 2021 gives the court a discretion to determine the issues or questions in dispute to the extent that they affect the rights and interests of the persons who are parties before it. In *casu*, I am unable to determine the merits of the dispute without the joinder or notice of this application having been brought to the attention of the beneficiaries of the stands at the farm. This court cannot allow this matter to proceed without joinder or notice of this application given to those persons.

[14] Under the common law and in terms of r 32(11) the court has the inherent power to order the joinder of further parties in a case which has already begun in order to ensure that persons interested in the subject matter of the dispute and whose rights may be affected by the judgment

are before the court. In *Matjhabeng Local Municipality v Eskom Holdings Ltd* 2018 (1) SA 1 (CC) the court stated at 33D–E:

“At common law courts have an inherent power to order joinder of parties where it is necessary to do so even when there is no substantive application for joinder. A court could, *mero motu*, raise a question of joinder to safeguard the interest of a necessary party and decline to hear a matter until joinder has been effected.”

[15] The guiding principles and rules with regard to joinder of a party to proceedings have been well established through our case law over the years. The test is whether or not a party has a 'direct and substantial interest' in the subject matter of the action, that is, a legal interest in the subject matter of the litigation which interest may be prejudicially affected by the judgment of the court. See *Henri Viljoen (Pty) Ltd v Awerbuch Bros* 1953 (2) SA 151 (O). In *Gordon v Department of Health, Kwazulu-Natal* 2008 (6) SA 522 (SCA) where the court held that the rule is that any person is a necessary party and should be joined if such person has a direct and substantial interest in any order the court might make, or if such an order cannot be sustained or carried into effect without prejudicing that party.

[16] The beneficiaries of the stands have a direct and substantial interest in the subject matter of the action, i.e., a legal interest in the subject matter of the litigation which interest may be prejudicially affected by the judgment of the court. It is their eviction that is sought from the stands. The matter must end here. I have no intention of considering the issue of the material disputes of fact that have been raised in argument. I have also no intention of even considering the merits of the application until such time that all the beneficiaries have been joined to this application. This is so because in essence it is their eviction that is sought.

[17] In my view the justice of the case requires that I stay these proceedings until such time that all the persons allocated stands at the farm are properly joined in this application. See *Anabas Services (Pvt) Ltd v The Ministry of Health* HB 21/03; *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A).

Costs

[15] There remains to be considered the question of wasted costs. No good grounds exist for a departure from the general rule that costs follow the event. The respondents are clearly entitled to their costs of these proceedings thus far.

Disposition

In the result, I order as follows:

- i. The preliminary objection on non-joinder of the beneficiaries to the farm is upheld.
- ii. This application is stayed until all the beneficiaries to the Khami Magazine Farm, Matobo District, are joined to this application.
- iii. The applicant to pay the wasted costs.

*Ncube Attorneys, applicant's legal practitioners*  
*Civil Division of the Attorney General's Office, legal practitioners for the 1<sup>st</sup> – 5<sup>th</sup> respondents*