

FREDA REBECCA GOLD MINE LIMITED
versus
ANTONY CHIBAMU

HIGH COURT OF ZIMBABWE
MUSITHU J
HARARE, 23 January 2025 and 2 May 2025

Opposed application-Eviction from company property on termination of employment

Ms *R Mabwe*, for the applicant
Ms *H Tsara*, for the respondent

MUSITHU J: The applicant approached the court for the eviction of the respondent and all those claiming occupation through him from House No. A7 Mt View, Bindura (hereafter referred to as the property). The applicant's claim arose from the termination of the contract of employment between the applicant and the respondent.

Background to the Applicant's Claim

The applicant and the respondent had an employment relationship in terms of which the respondent occupied the property by virtue of a lease agreement concluded between the parties in April 2014. In terms of clause 1.1 of the lease agreement, the respondent's right of occupation would lapse on termination of the contract of employment. The respondent was required to vacate the property within one (1) calendar month from the date of termination of the employment contract.

Following the termination of the contract of employment sometime in April 2023, the lease agreement was consequently terminated after one month, and the respondent ceased to have any legal right to remain in occupation of the property. Discussions about having the respondent vacate the property were not fruitful, and the respondent was consequently served with a notice to vacate the property.

The applicant averred that the respondent had no lawful cause to remain in occupation of the property. The applicant had every right to reclaim possession of the property from the respondent once the employment relationship was terminated.

The court was urged to grant the relief sought with costs on the punitive scale. The prayer for costs on the punitive scale was motivated by the fact that the respondent was aware that he ought to have vacated the property upon termination of the contract of employment, which was tied to the lease agreement.

The Respondent's Case

In his opposing affidavit, the respondent raised a preliminary point at the outset. The point was that the applicant adopted the wrong procedure in bringing proceedings before the court. There were material disputes of fact that were unresolvable on the papers without recourse to oral evidence. The applicant was fully aware that the respondent had a claim of right in respect of the same property. There was a need for oral evidence to be led in court from the parties and their witnesses in order to resolve the factual dispute. The court was urged to dismiss the application with costs on the legal practitioner and client scale, if it found in favour of the respondent in respect of the preliminary point.

As regards the merits of the application, the respondent insisted that he had a claim of right in the property. He alleged that whilst the applicant was operating as Ashanti Goldfields Zimbabwe Limited, it divested itself of any rights over the housing units and resolved to dispose same to employees, who were sitting tenants in the properties. The respondent claimed to have supporting documents which proved that the property in question, along with other houses in similar localities, no longer belonged to the applicant.

The respondent further averred that Bindura Estates, the rightful owners of the properties, were supposed to cede rights in the housing units and subsequently pass title to the employees. This was in fulfillment of a disposal memorandum dated 1 December 2003. The applicant was accused of having reneged on its part by failing, refusing and neglecting to give the respondent the necessary documentation to complete the purchase process. The respondent attached several documents to his opposing affidavit, which he averred supported his claims.

The respondent averred that the contract of employment attached to the application showed his date of employment as 3 September 2003, but surprisingly the effective date was shown as 1

January 2023. The contract was allegedly signed by the respondent on 10 January 2023, by the Head of Department on 16 November 2022 and by the Human Resources Manager on 18 November 2022. The respondent dismissed the alleged contract of employment as a fraudulent document designed to deceive people on the correct state of affairs regarding his contract of employment with the applicant.

It was further averred that the notice of eviction issued by the applicant was inconsequential since the applicant had no mandate from Bindura Estates. The court was urged to dismiss the application with costs on the legal practitioner and client scale because it was hopeless and without any legal basis.

The Answering Affidavit

The applicant denied that there were material disputes of fact arising in the matter. The applicant's claim arose out of the termination of the employment relationship and the consequent lapse of the lease agreement executed by the parties. The respondent had no claim of right to the property. It was further averred that the alleged disputes of fact were nonexistent, and this was why the deponent was coy to outline or particularize them in the point *in limine*.

The applicant dismissed the respondent's claims as false. This was because the respondent neither signed an agreement of sale nor made any payments towards the purchase of the property. This was simply because the property that he occupied did not form part of the properties that were disposed of. The lease agreement signed by the parties confirmed that the respondent was merely a tenant of the applicant, whose tenancy arose as a benefit of the employment relationship that existed between the parties. It was inconceivable that the respondent would sign a lease agreement in respect of a property that he owned. If the respondent had any other right to the property, then he would have pursued such rights with the alleged legitimate owner.

The applicant dismissed the averment that the respondent's contract of employment was a sham. The respondent had been in the applicant's employment since 2003 and had undergone a series of promotions. The contract of employment attached to the founding affidavit was executed when the respondent was promoted to his final role. The respondent had also sued the applicant before in the Labour Court on the basis of the same employment contract without making any complaints of fraud which were now being raised herein.

Submissions and analysis of the preliminary point

Ms *Tsara* for the respondent submitted that there was a long history to the matter, and the relationship between the parties was more than that of landlord and tenant. The applicant had not challenged the authenticity of the documentary evidence placed before the court by the respondent. The documents confirmed that the properties were offered to sitting tenants. Counsel further submitted that the matter ought to be referred to trial in view of the live factual dispute concerning the status of the property.

In her response, Ms *Mabwe* for the applicant submitted that the preliminary point was devoid of merit. This was because the applicant had proved that the respondent was in possession of the property through a lease agreement, and by virtue of the employment relationship between the parties. The respondent had no right to remain in occupation of the property. The alleged disputes of fact had to be pointed out. None had been pointed out herein.

Ms *Mabwe* further submitted that at common law, the lessee had no rights to challenge the lessor's title to the property. The applicant had laid down the requirements for this kind of application. These were not disputed by the respondent.

The test for determining the existence of disputes of fact is a much-travelled path in this jurisdiction. In *Supa Plant Investments (Pvt) Ltd v Chidavaenzi*, the court set out the test as follows:

“A material dispute of facts arises when material facts alleged by the applicant are disputed and traversed by the respondent in such a manner as to leave the court with no ready answer to the dispute between the parties in the absence of further evidence.”¹

In *Muzanenhemo v Officer in Charge CID Law and Order & 7 Ors*², the court held that the mere allegation of a possible dispute of fact was not conclusive of its existence. The respondent was required to demonstrate in his opposing papers that there was a *bona fide* dispute of fact which could not be resolved on the papers without recourse to *viva voce* evidence. In determining the materiality of the disputed facts, the court must also consider the circumstances of the case including the relief sought by the applicant.

What is clear from the authorities is that a respondent must not only allege the existence of a dispute of fact. The respondent must go further to demonstrate the nature of the dispute of fact and how in his view, the court was disabled from resolving that question of fact on the basis of the

¹ 2009 (2) ZLR 132 (H) at 136F-G

² CCZ 3/13

papers placed before the court. In *casu*, the respondent alleged the existence of a claim of right which entitled him to remain in possession of the property. The respondent averred that Bindura Estates, which he claimed was the rightful owner of the property, was supposed to cede rights and pass title in the property to him. This followed a decision that had been made years back to sell the houses to sitting tenants.

The respondent placed before the court a large amount of documentation, presumably to demonstrate his rights in the property. None of the documents were specific to the respondent herein. The documents were concerned with the disposal of company houses to employees of the applicant. One such memorandum dated 2 December 2003 was addressed to all employees by the Housing Committee. The memorandum was on an Ashanti Goldfields Freda Rebecca Mine letter head. The document stated that the disposal of the houses would take place in phases. Phase 1 dealt with houses in Chiwaridzo, Chipadze, Grey Line Flats and Bindura Low Density area. Phase 2 dealt with Mount View, Oval, Zororo Park and Batanai. The memorandum gave the employees until February 29, 2004, to decide whether to purchase the houses they were living in or not.

As I have already stated, none of the documents placed before the court identified the respondent as a beneficiary of the property. There was no offer letter which would have confirmed the intention by the applicant to sell the property to the respondent. There was no agreement of sale which would have confirmed the disposal of the property to the respondent. The applicant attached to its founding affidavit, a lease agreement which the respondent did not deny signing. In terms of clause 1.1 of the lease agreement, the lease was tied to the subsistence of the parties' contract of employment.

In the absence of documentation confirming that the applicant sold the property to the respondent, the court finds the respondent's submission on the alleged disputes of fact unconvincing. The respondent did not point to the material facts that were averred by the applicant and which he refuted, leaving this court in no better position to resolve them on the papers. Further, as correctly submitted on behalf of the applicant, a lessee could not contest the lessor's rights or title in the property in a claim for eviction. In the case of *Chatprill Enterprises (Pvt) Ltd v Mahere* HH 994/15 CHITAKUNYE J (as he was then) made the following insightful remarks at p 5 of the judgment:

"The ownership or authority to sublet the premises by appellant was not a prerequisite for the validity of the sub lease as long as the sublandlord provided *vacuo* possession and the subtenant

paid rentals. In *Robson v Grimm* 1996(2) ZLR 73(s) KORSAN JA quoted with approval the words of SOLOMON J in *Clark v Nourse Mines Ltd* 1910 TS 512 at 520-521 wherein the judge opined that:-

“It seems to me that the rule (that a lessee cannot dispute a lessor’s title) may be based on one or other of two very simple grounds. The first is that the lessor having performed his part of the contract and having placed the lessee in undisturbed possession of the property is entitled to claim that the lessee should perform his part of the contract and should pay him rent which he agreed to pay for the use and enjoyment of the premises. The second ground is that the lessee having had the undisturbed enjoyment of the premises under the lease and having had the undisturbed enjoyment of the premises under the lease and having had all for which he contracted it would be against good faith for him to set up the case that the lessor had no right to let him the property.”³

Taking a cue from the foregoing authorities, the applicant was merely required to demonstrate the existence of a lease agreement between the parties and that the respondent remained in unlawful occupation of the property after the termination of his contract of employment, to which the lease was tied. The court finds no merit in the preliminary point, and it is hereby dismissed.

The Merits

As regards the merits of the dispute, counsels largely abided by the documents filed of record. Ms *Tsara* argued that the applicant had no *locus standi* to seek the eviction of the respondent from the premises. She persisted with the respondent’s argument that the property belonged to Bindura Estates. Counsel further submitted that the lease agreement between the applicant and the respondent was null and void from the outset. The applicant was misrepresenting its ownership of the property.

In my disposal of the preliminary point, I highlighted the point that the respondent could not at this stage challenge the applicant’s title to the property. The lease agreement between the applicant and the respondent was tied to the respondent’s contract of employment. The respondent could not seek to dismiss his contract of employment as a sham, when in proceedings before the Labour Court involving the same parties in LCH 133/24, he relied on the same employment contract. He did not dispute that he was a former employee of the applicant. If the respondent had a claim of his own against the applicant, then nothing precluded him from filing a counter-application or to institute a separate action of his own to assert his rights in the property.

³ See also *Zuva Petroleum Limited v S Chirenje* HH 166/16 at p 6-7 and *Tsiko v Shamu* HH 662/22 at p 2

In the final analysis, the court determines that nothing stands in the way of the applicant's claim herein. The respondent has failed to demonstrate that he has a *bona fide* defence against the applicant's claim for eviction from the property. The applicant's claim must therefore succeed.

COSTS OF SUIT

The court was urged to grant the applicant's claim with costs on the punitive scale of attorney and client. The court was not persuaded to make an award of costs on such a scale, and it will refrain from doing so.

Resultantly it is ordered that:

1. The application for eviction be and is hereby granted.
2. The respondent and all those claiming occupation through him be and are hereby ordered to vacate the property known as House No. A7, Mount View, Bindura within 7 (seven) days of the granting of this order.
3. Should the respondent fail to comply with paragraph two (2) above, the Sheriff is hereby directed and empowered, with the assistance of the Zimbabwe Republic Police, to cause the eviction of the respondent and all those occupying through him from the said property.
4. The respondent shall pay the applicant's costs of suit.

Chimuka Mafunga Commercial Attorneys, legal practitioners for the applicant
Tsara & Associates, legal practitioners for the respondent