GIBSON BOSTON SIZIBA
versus
THABANI MPABANGA
and
BAFOKAZANA MASUKU

HIGH COURT OF ZIMBABWE
MATHONSI J
BULAWAYO 4, 7 AND 10 MARCH 2016

Urgent Chamber Application

M. Ncube for the applicant
Respondents in person

MATHONSI J: This urgent application was filed on 5 January 2016 and although according to the records it was allocated to me, it was not brought to my attention until 29 February 2016. I then set it down for hearing today. It is surprising though that the applicant did not agitate for the set down of his matter for almost two months.

Could this be a question of a boundary dispute? The applicant complains of an act of spoliation while the second respondent insists that he has always remained farming at his own piece of land which was allocated to him as far back as 2002 and increased in 2007. The first respondent has been caught in cross fire, he being merely an employee of the second respondent not a "friend" as alleged by the applicant.

Historically, the applicant was allocated subdivision 3 of Bulembe in the Insiza District of Matabeleland South Province, a farm measuring 750 hectares, by an offer letter issued by the acquiring authority on 20 September 2007. He says that farm is a consolidation of plots 3, 4, 5, 6, and 17 of Bulembe Farm. The consolidation was recommended by the District Administrator by letter dated 15 August 2007 in consideration of his capacity to effectively utilize the land.

The second respondent was also allocated subdivision 1 of Bulembe Estate measuring 142,3 hectares by offer letter dated 21 November 2002 which offer was later revised by another offer letter dated 20 September 2007 so that subdivision 1 of Bulembe was increased to 287,6

hectares. It is not clear how this was done but the second respondent has helpfully provided two maps tending to show the location of the subdivisions. If those maps are anything to go by then it is not easy to understand how the parties could possibly have a boundary dispute. This is because subdivision 1 is very far away from the subdivisions being claimed by the applicant. In particular plot 17 which the applicant claims was invaded by the respondents is not connected at all to the land allocated to the second respondent.

Be that as it may, the applicant complains that his peaceful occupation of the land allocated to him was disturbed by the respondents on 28 December 2015. They invaded his plot 17 and, using a tractor, ploughed 6 hectares of it while exhibiting an uncompromising and menacing mood. To him this was an unprovoked aggression on a neighbouring farm, a real act of spoliation by any standard. It is as a result of that continuing act of spoliation that the applicant has made this urgent application for restoration of possession interfered with in the middle of a cropping season by persons who have resorted to self-help.

The second respondent has filed an opposing affidavit in which he states that the first respondent is in fact his manager. He says that he has been conducting his agricultural activities on his own subdivisions, which he does not specify but maintains that the boundaries were shown to him by the Insiza District Land Committee. He has no interest whatsoever in the subdivisions of the applicant and has never trespassed on subdivisions 3, 4, 5, 6 and 17. In fact he is the one who filed a report with the police on 31 December 2015 that the applicant was interfering with his farming activities. Again he has not substantiated that claim or described the nature of the interference.

This is a spoliation application in which the applicant only has to prove possession which was forcibly or wrongfully interfered with in order to succeed. As stated by REYNOLDS J, a pronouncement with which I associate myself, in *Chesveto* v *Minister of Local Government and Town Planning* 1984(1) ZLR 240 (H) 250 A – D:

> "It is a well-recognised principle that in spoliation proceedings it need only be proved that the applicant was in possession of something and that there was a forcible or wrongful interference with his possession of that thing – that *spoliatus ante amnia restituendus est (Beukes v Crous and Another* 1975 (4) SA 215) (NC)). Lawfulness of possession does not enter into it. The purpose of the *mandament van spolie* is to preserve law and order and to discourage persons from taking the law into their own hands. To give effect to these objectives, it is necessary for the *status quo ante* to be restored until

> such time that a competent court of law assesses the relative merits of the claims of each party. Thus it is my view that the lawfulness or otherwise of the applicant's possession of the property in question does not fall for consideration at all."

See also *Moyo* v *Chinhamo* HB 111/11; *Mukuvisi Tashinga Housing Co-operative* v *Musukuma and Others* HH 478/15.

The applicant has stated that the respondents approached him on two separate occasions prior to moving in to plough his land requesting to be allowed to access his land and till it. The first approach was made in 2014 while the second in December 2015. On both occasions, he turned them down. They then elected to resort to self-help on 28 December 2015. Although the second respondent denies those claims and maintains that he has not encroached on any land belonging to the applicant, it is difficult to accept that because the applicant would not have a basis for complaint at all.

In addition, the second respondent himself would not have had a cause to approach the police at Fort Rixon complaining about interference by the applicant if the two of them had maintained a touch-me-not attitude which the second respondent would want to suggest.

What is clear is that the second respondent is well aware of the applicant's boundaries as he claims that he has "never used any soils or land of subdivisions of 3, 4, 5, 6 and 17." There is therefore no boundary dispute. If anyone has ploughed 6 hectares of plot 17 which admittedly belongs to the applicant, they have wrongfully interfered with the applicant's occupation thereby entitling him to a spoliation order. If I am wrong in arriving at that conclusion, then I still take comfort in that the second respondent will not be prejudiced at all because according to him, he has not encroached.

I am therefore satisfied that the applicant has made out a good case for the relief that he seeks.

In the result, the provisional order is hereby granted in terms of the draft order.

Phulu and Ncube, applicant's legal practitioners