TAMABOGA NYAMHUNGA

and

SNAKE KAMHANGA

and

SHAME NYARUVANGA

and

VENGAI CHINGOKA

and

MISHECK MUSEKAROMBE

and

EMMANUEL JAMBURUKA

and

CAIN KACHIRA

and

OBERT MABIRI

and

SPENCER DUBE

and

30 OTHERS

versus

ENIAS MUMVURI

and

MARSHALL MUMVURI

and

THE OFFICER IN CHARGE

BINDURA CENTRAL POLICE STATION

HIGH COURT OF ZIMBABWE

CHIWESHE JP

HARARE, 2 March 2011

*F.K. Maenzanise*, for the applicants

*A.A. Debwe*, for the first respondent

*T.O. Dodo*, for the third respondent

CHIWESHE JP: In this urgent chamber application the applicants sought a provisional order in the following terms:

**“TERMS OF THE FINAL ORDER SOUGHT**

1. The purported exercise of eviction to be finalised by the 28th of February 2011 and all evictions already carried out by the first respondent and all those acting through him be and are hereby declared unlawful.
2. Applicants shall continue to reside at Zuvarabuda Village on Zuvarabuda Farm P.O. Box 147, Bindura unless a court of law rules otherwise.
3. That respondents shall pay the costs of this application.

**TERMS OF THE INTERIM RELIEF GRANTED**

1. 1st respondent be and is hereby ordered to return vacant possession of premises at Zuvarabuda Village on Zuvarabuda Farm P.O. Box 147, Bindura to applicants, that is to say, all locks, key and other effects of the said premises must have been returned to applicants within 24 hours of the delivery of this judgment.
2. Respondents are hereby interdicted from:
3. Verbally abusing the applicants in any manner.
4. Threatening, assaulting or applying force on the person any of the applicants.
5. Tampering with or destroying applicants’ property.
6. Engaging in any conduct that is likely to threaten the applicant’s peace and security.
7. Pending the return of this matter, the 3rd respondent and his lawful Officers or any other members of the Zimbabwe Republic Police (ZRP) are hereby authorised to arrest first and second respondents and any other person acting through them and bring them before this Honourable Court for contempt of court should he breach any terms of this order.
8. 3rd respondent is ordered to investigate the malicious damage to property, arson and assault reported by applicants and to report his finding to this Honourable Court on the return date.”

In their founding affidavit deposed to on their behalf by their legal practitioner, Mr David Tinashe Hofisi, the applicants state that they are farm workers who have been resident at Magamba Zuvarabuda Village, Bindura. They have been so resident for various periods of up to thirty years. They work at Zuvarabuda Farm on which the village is situated. According to the applicants first respondent took occupation of Zuvarabuda Farm in 2005. They are unaware of the lawful authority upon which first respondent took over the farm. They have nonetheless worked for him since then and have been in peaceful co-existence with him till 8 February 2O11. On that day the first respondent summoned all the applicants to a meeting at the farm which was also attended by seven police officers from Bindura. At that meeting first respondent told the applicants that they were to vacate the farm failing which they would be evicted by the police officers from Bindura and, in addition, their homes would be destroyed. Despite the applicants’ pleas with regards the fate of their school going children, their crops and other resultant hardships, the applicant was adamant that they move out of the farm.

Various acts of spoliation are then attributed to the first respondent on behalf of the second, third, fourth, fifth, and sixth applicants. These include, but are not limited to, the bull-dozing of their homes by means of first respondent’s tractor, the removal of various movables from the applicants’ homes into the open, the destruction by fire of some of their personal property, the locking up of their dwellings in order to prevent applicants’ entry thereto, assaults and other ills. According to the applicants, all these acts were committed by the first respondent and his son (2nd respondent) in the presence of police officers from Bindura. Needless to say reports made by the applicants to the police station at Bindura proved futile as no arrests were made nor was there any feed-back as to the progress of investigations, if any.

As a result of all these acts of hostility, the applicants have fled their homes and are being sheltered elsewhere on humanitarian grounds.

In their opposing affidavits the first and third respondents have denied acting as alleged. The second respondent is a minor according to the first respondent, his father. He therefore represents him – any acts alleged against him are also denied. The third respondent says the police were only involved in mediating a dispute between the first respondent and the applicants. They were referred to the civil courts. The mediation was conducted at the police station in Bindura and not at the farm. The third respondent denies being present at the farm during the alleged mayhem, and denies any knowledge of it, let alone his involvement or that of his officers.

In his opposing affidavit the first respondent states that he was allocated Plot 3 of the farm by the Government in 2003 and occupied it in 2005. He produced what appears to be a valid offer letter issued by the responsible Minister as well as a signed letter of acceptance of that offer. He says he has since then been requesting the applicants to look for alternative places – some of them have since done so. He has also encouraged them to apply for resettlement. Some of them opted to work for him but others declined.

The first respondent has denied that he has evicted or threatened to evict the applicants. He states that the applicants are still at the farm and he doubts whether some of them are aware of the present application. He further states that his plot 3 is situated on Claverhill Hill North Farm and not Zuvarabuda Farm as alleged. He has no knowledge of some of the families listed in the applicants’ papers and denies that they are farm workers at Claverhill. He says he had on numerous occasions advised those applicants not engaged as his employees to leave the farm but to no avail. According to him their continued occupation of Claverhill Farm without his consent constituted a criminal offence. He had therefore convened a meeting with the applicants at which he had invited the police so that the consequences of the applicants’ actions would be explained to them by members of the police. He never evicted or threatened any one with eviction. Nor did his son or the police engage themselves in the manner alleged. He however lamented various misdeeds by the applicants including thefts of his property and tendencies of violence against his person. The first respondent denies being in breach of any law as alleged, be it domestic or international law.

It is evident from the foregoing that serious disputes of fact arise in this application. These are disputes which cannot be resolved without hearing “*viva voce*” evidence. The applicants should have foreseen these factual disputes and should accordingly have proceeded by way of action rather than application.

It was for these reasons that I dismissed the urgent application with costs.

*Zimbabwe Lawyers for Human Rights*, applicants’ legal practitioners

*Debwe & Partners,* first respondent’s legal practitioners

*Civil Division of the Attorney General’s Office*, third respondent’s legal practitioners