BETTY S. CHIDZIVA

versus

JEFAS MARUMBE

and

TYSON MACHAWA (DHEWA)

and

FARAI SIMANGO

and

CHRISTOPHER JUEER

and

NOAH TARUONA

and

SILAS MUSANJEYA

and

OBERT MAREKERA

and

G. MASHAVAVE

and

P. KABANDA

and

P. MASAUSO

and

D. GANA

and

S. TARUONA

and

ENCRES KALUMA

and

E. TAFIREYI

and

M. KABHANDE

and

C. KANANGA

and

T. MAHOWA

and

C. LUMELO

and

S. SIPIRIANO

and

D. MUSANJENA

and

G. TARUONA

and

T. KOKANA

and

T. MBAVARA

and

C. DICKSON

and

F. MATORE

and

P. HENRY

HIGH COURT OF ZIMBABWE

BERE J

HARARE, 14 May 2012

**Ruling**

*P. Ngarava*, for the applicant

Tyson Machawa (Dhewa) in person

Getrude Mashavava in person

Petronella Kabanda in person

Shelter Taruona in person

BERE J: Several allegations including criminal ones have been raised against the respondents by the applicant supported by one Felix Chikase.

I am concerned with the manner in which these allegations have been framed against the 26 respondents. None of the deponents have raised specific allegations against each of the respondents but the allegations are of a general nature. Not even the applicant’s security officers have deposed to an affidavit indicating what each of the respondents has done in the furtherance of the allegations levelled against them.

I am also concerned with the manner in which both the interim and the final order sought are framed. I am being asked to grant an interim order against the respondents to *inter alia* “stop forthwith stealing, vandalising property and conducting themselves unlawfully”. The irony of it is that in the event of breach of this interim order the applicant would want the respondents to be “interdicted restrained and prohibited from approaching, visiting and entering the applicant’s plot”.

In a way, I am being asked to deal with the eviction of the respondents by way of an urgent application when in fact the parties have not been served with a proper application for eviction. That approach is improper because my view is that if the eviction of any of the respondents is intended, then a proper application must be filed and served on the respondents to enable them to have their own day in court before such a drastic decision is arrived at.

If it is true that the respondents have committed criminal acts as alleged by the applicant, then the proper course of action must be to invoke criminal proceedings in the usual way and not to ask me to pronounce the respondents guilty before they are even heard and for that matter in proceedings of a civil nature.

From the explanations proffered by the four respondents who appeared before me, it is clear that they believe they have a legitimate right to stay at the farm. In addition, they have also denied involving themselves in any improper conduct as alleged. I have no reason to disbelieve their story in preference of the story told by the applicant which is loaded with hearsay.

I am more than satisfied that granting the interim order sought in these proceedings would amount to suffocating the rights of the respondents and unfairly set the tone for their eviction as is clear from the final order sought.

Accordingly the order sought is dismissed.

*Ngarava Moyo Chikono*, applicant’s legal practitioners

Respondents in person