GIFT CHISANGO
versus
PRIVILEDGE CHISANGO
and
MINISTER OF LANDS, AGRICULTURE, WATER, CLIMATE
AND RURAL RESETTLEMENT

HIGH COURT OF ZIMBABWE
CHINAMORA J
HARARE, 3 November 2021 and 19 October 2022

Urgent chamber application

Mr *W Madzimbamuto*, for respondent
1st respondent in person
No appearance for the 2nd respondent

CHINAMORA J:

Introduction

This matter was filed as an urgent chamber application on 29 October 2021. The applicant was seeking the following provisional order:

> **TERMS OF FINAL ORDER SOUGHT**
>
> That you show cause to this Honourable Court why a final order should not be made in the following terms:
>
> 1. The applicant's possession, use and occupation of Plot No.9 Carrisbrooke Farm, Seke District, Mashonaland East, be and is hereby declared to be lawful.
> 2. The first respondent and all those acting through her, be and are hereby barred from interfering, occupation or use in any manner of Plot No.9 Carrisbrooke Farm, Seke District, Mashonaland East.
> 3. The first respondent shall pay applicant's costs of suit on the legal practitioner and client scale.

TERMS OF INTERIM ORDER GRANTED

Pending the determination of this matter on the return date, the applicant is granted the following relief:

1. The respondent and all those acting or who may act through her are interdicted from entering, ploughing, planting or conducting and activity on Plot No.9 Carrisbrooke Farm, Seke District, Mashonaland East.

2. Pending confirmation of the final order, first respondent and all those acting through her are hereby directed to vacate the said plot within 24 hours of this order. Failure of which the Sheriff of the High Court of Zimbabwe with the help of the Zimbabwe Republic Police to eject the same.

3. First respondent pays costs of this suit on an attorney and client scale.

SERVICE OF THIS PROVISIONAL ORDER

The applicant/applicant's legal practitioner and/or employees be and are hereby permitted to serve copies of this provisional order on respondents or their legal practitioners/employees.

On 3 November 2021 after hearing the parties, I granted the interim order sought.

Background facts

The applicant's case can be summarised as follows. Sometime in 2019, the applicant's mother, Joice Chisango, (now deceased) ceded her rights and interest under Plot No.9 Carrisbrooke Farm, Seke District, Mashonaland East, to the applicant. This property will hereinafter be referred to as "Plot No.9 Carrisbrooke Farm". On 20 November 2020, the respondent wrote a letter to the applicant in the following terms:

"Date: 20 November 2019

A1 LAND OFFER

This letter serves to certify that CHISANGO GIFT
ID NUMBER: 63-623138-J18

ADDRESS: 13390 Kuwadzana Extension, Harare
Has been allocated Plot No.9 Carrisbrooke Farm, measuring approximately six (6) hectares in the District of Seke in Mashonaland East Province.

The A1 Land Offer is subject to the following conditions:

1. That you take up permanent residence on the holding upon your acceptance of this offer, which should be communicated to this office within 30 days of receipt.
2. You shall not cede, assign or part thereof or grant any right of occupation in respect of the pieces of land offered to you.
3. In the event of withdrawal or change of this letter, no compensation shall be claimable or payable whatsoever.
4. The interpretation of this letter solely lies with the Ministry of Lands, Agriculture, Water, Climate and Rural Resettlement.

L Munamati
PROVINCIAL AGRICULTURAL EXTENSION OFFICER – Mashonaland East Province"

The above letter is part of the record on page 15, and is marked Annexure "A".

Subsequently (in June 2021), the second respondent increased the size of the applicant's plot from to 20 hectares. Following this, the applicant started clearing the land. On 9 July 2021, the first respondent filed an urgent chamber application under HC 3750/21 seeking to interdict the applicant from occupying and working on the land he was allocated. The applicant and the second respondent opposed the application. The second respondent, in his opposing affidavit in HC 3750/21, averred that the applicant had a valid offer letter, while the first respondent had neither an offer letter nor evidence to support her right to occupy Plot No.9 Carrisbrooke Farm. The opposing affidavit spans from pp 17-22 of the record, and is Annexure "B". The 1st respondent's application in HC 3750/21 was dismissed with costs on 15 July 2021. A copy of the order of this court (per Chinamora J) appears as Annexure "C" on p 23 of the record. The first respondent did not challenge to my order, aforesaid.

On 21 October 2021, the applicant got information that the first respondent had sent people who were ploughing on Plot No.9 Carrisbrooke Farm, with a tractor. He personally went to the portion of land concerned and saw people putting lines in preparation for planting. In addition, the applicant took pictures of what he saw, and those pictures appear on pp 24-27 of the record marked Annexures "D1", "D2", "D3" and "D4". In his founding affidavit, the applicant deposed that efforts to engage the first respondent failed. As a result, he filed an urgent chamber application on 25 October 2021, which was struck off the roll. This prompted him to file this application after addressing the defect.

The applicant argued that he had a *prima facie* right and referred to the offer letter, Annexure "A" as the source of his right to occupy Plot No.9 Carrisbrooke Farm. Further, he submitted that the matter was urgent owing to the first respondent in forcing her way on his

property despite this court dismissing her claim under HC 3750/21. The applicant, in my view, treated the matter as urgent since he approached the court on 25 October 2021, after confirming on 21 October 2021 that the first respondent was ploughing on his property.

The applicant contended that there was no other satisfactory remedy available to him, except an interdict, as the first respondent had intruded on his property after failing to assert any right on this property in HC 3750/21. For the same reason, he argued that the balance of convenience favoured him.

Analysis of the case

The law on urgency is settled in this jurisdiction. (See *Kuvarega* v *Registrar-General and Anor,* 1998 (1) ZLR 188 (H). I took the view that this application is urgent and that the applicant treated it as such. From the record, it is clear that the applicant disclosed to the court when the need to act arose. For the avoidance of doubt, the events which prompted to act happened (and were confirmed by him) on 21 October 2021. He made efforts to resolve the issue with the first respondent, which did not bear fruit, leading him to file an urgent chamber application on 25 October 2021. Even though this application was filed on 29 October 2021 after the first one was struck off, I do not consider the delay from 25 to 29 October to be long enough to defeat the aspect of urgency.

The applicant holds an offer letter from the second respondent, which is on record as Annexure "A". Nothing has been placed on record by the first respondent to establish the basis of her claimed right to occupy Plot No.9 Carrisbrooke Farm. It is clear from the papers before me that the first respondent approached this court under HC 3750/21 in order to interdict the applicant from occupying and using the property for which he was issued an offer letter. Her application was dismissed with costs, and did not take the issue any further. Thus, my order issued in HC 3750/21 remains extant. The only conclusion I must make is that the applicant managed to demonstrate a *prima facie* to occupy and use Plot No.9 Carrisbrooke Farm in terms of the offer letter issued to him on 20 November 2019.

On irreparable harm or prejudice, I accept that harm would accrue as a result of the conduct of the first respondent. She lost her case in court. Despite that, she demonstrated lawlessness by invading (as it were) the applicant's property completely unperturbed by her resort to an unlawful process. In my view, the first respondent has nothing to lose, while the applicant has conditions to comply with endorsed on the offer letter. I therefore consider that the balance of convenience favours the applicant who is lawfully in occupation in terms of an

offer letter duly issued to him. On the other hand, I believe the balance of convenience cannot favour the first respondent who has nothing to back her right to occupy the disputed property.

It for the foregoing reasons that I concluded that the applicant had established a case for grant of the interim relief that he asked for. As regards costs, the general rule is that costs follow the result. My order awards costs against the first respondent on an attorney and client scale, and I need to explain why. The level of costs was for a good reason, given that the first respondent knew that she had no offer letter or other document to support her claim that she was entitled to occupy Plot No.9 Carrisbrooke Farm. Moreover, she had previously come to this court (under HC 3750/21) litigating in respect of the same property and failed. She knew the order dismissing her case was extant, and she had done nothing to reverse that outcome. In *casu*, her tenacity in defending an interdict and eviction in what essentially was an application akin to an *actio rei vindicatio* had no basis in law. My view was that such foolhardiness, if not foolishness, deserved censure by an award of punitive costs.

Kajokoto & Company, applicant's legal practitioners