BEN MUTAMBU

and

ADMIRE GADZIKWA

and

CHENJERAI MUGWAGWA

versus

THE MINISTER OF LANDS & RURAL RESTTLEMENT

and

THE PROVINCIAL GOVERNOR, MASHONALAND WEST

and

THE DISTRICT ADMINISTRATOR

and

STANLEY MHONDORO

and

OFFICER COMMANDING POLICE, MASHONALAND WEST PROVINCE

HIGH COURT OF ZIMBABWE

ZHOU J

HARARE, 20, 28 AUGUST, 3& 19 SEPTEMBER, 2012

*Ms Munangati-Manongwa* for the applicants

*Mr Mumbengegwi* for the first, second, third and fifth respondents

*T. Mugabe* for the fourth respondent

ZHOU J: This is an urgent chamber application in which the Applicants seek an interdict restraining the Respondents from evicting them and twenty-eight other farmers from Lion Kopje Farm in the Mashonaland West province. The matter was initially set down for argument on 20 August 2012 but was postponed to 28 August 2012 to enable the Applicants’ legal practitioner to respond to the opposing affidavit which had been filed on the same date. It was also hoped that during the postponement the parties would explore the prospects of a settlement. On 28 August the matter was again postponed to 3 September as Ms Munangati-Manongwa had had bereavement in the family. The matter was eventually argued on 3 September, 2012.

The three Applicants and twenty-eight other families were allocated plots on Lion Kopje Farm by the Government of Zimbabwe under the land reform exercise from about 2004. Apparently the families were already staying at the farm then, having moved onto the farm in 2001. The letters confirming the allocation of the plots to the Applicants were signed by or on behalf of the District Administrator for Zvimba District. By copy of a letter dated 1 August, 2012 the Applicants and the other families occupying Lion Kopje Farm were notified that the offer of plots on that farm was being withdrawn and that they were being relocated to another farm. The reason given for that was that the farm, Lion Kopje, had been allocated to Chief Zvimba, the fourth Respondent herein. The letter was written by the third Respondent. The first Applicant states that he received the letter on 4 August, 2012.

Meanwhile by letter dated 16 July 2012 the first Respondent had offered the Lion Kopje Farm to the fourth Respondent. The letter was, according to the date stamped, received by the third Respondent on 7 August 2012. The fourth Respondent has not yet signed the letter to signify his acceptance of the offer of the farm.

On 6 August 2012 the Applicants and the other families on Lion Kopje Farm were notified by a delegation which comprised a Chief Lands Officer, Mr Vambe, the second, third and fourth Respondents, that they were to vacate the farm and abandon their home for the last eleven years by the 15th August 2012. If they failed to leave the farm members of the Zimbabwe Republic Police Riot Squad would be deployed to evict them. These facts are admitted by the fourth Respondent, in paragraph 11 of the opposing affidavit.

The application is opposed by the Respondents on essentially two grounds, namely, (1) that the application is not urgent, and (2) that the Applicants are in breach of the law by remaining in occupation of the farm after their right to occupy it was withdrawn. In this regard, it is also contended that the Applicants have approached the Court with dirty hands.

The first issue I should consider is whether the twenty-eight other farmers referred to in the Applicant’s papers are entitled to relief in this application. The Applicants have attached a typed document headed “Resolution by Lion Kopje Resettled Farmers” to which is annexed a handwritten document containing names, national identity numbers and signatures, presumably of the affected farmers. Only the three Applicants have deposed to affidavits. The other twenty-eight persons have not deposed to affidavits. They are, therefore, not properly before the Court and no relief may be granted for or against them. See *Panganai & 20 Others v Kadir and Sons (Pvt) Ltd & Another HH 26-95 at p. 3; Prosser & 35 Others v Zimbabwe Iron and Steel Company Limited HH 201-93 at p. 1-2*. Only the three Applicants who have deposed to affidavits are properly before the Court.

The next issue to be considered is whether the matter must be heard on an urgent basis. In the case of *Dilwin Investments (Pvt) Ltd t/a Formscaff v Jopa Engineering Company (Pvt) Ltd HH 116-98,* at p. 1, this Court stated that a chamber application “may properly be regarded as urgent where, as the rule states, it is one that ‘cannot wait to be resolved through a court application’.” The court must be satisfied that if the matter is not heard urgently substantial injustice would result to the Applicants. See *Pickering v Zimbabwe Newspapers (1980) Ltd 1991 (1) ZLR 71(H) at 93E*.

The Respondents contend that the Applicants’ occupation of the farm became unlawful in 2006 after the Gazetted Land (Consequential Provisions) Act *[Cap 20:28*] was enacted. For that reason, so goes the argument, the Applicants knew that they were supposed to vacate the farm at that stage. That argument is not supported by the facts of the case. The application was precipitated by the withdrawal of the Applicants’ right to occupy the plots allocated to them on Lion Kopje Farm and the consequent demand, accompanied by the threat to invoke the force of the riot police, that they abandon their homes of more than ten years within a week. The Applicants acted timeously by instituting the present application on 14 August 2012, a day before the date on which they were to be forcibly evicted. But for the urgent application they would have been evicted from their homes by now. The fourth Respondent admitted that indeed he intended to enlist the force of the police to remove the applicants from the farm without an order of court. As the Applicants were only given just over a week to vacate the farm there was no time for them to institute an ordinary court application to stop the evictions. This, therefore, is not a matter which could wait to be resolved through an ordinary court application.

The Respondents’ conduct constitutes a threat to disturb the applicants’ occupation of Lion Kopje Farm without an order of court. Such conduct cannot be countenanced by the Court, as it amounts to self-help. This court has stated that even where a person has been issued with an offer letter in respect of land they may not, without an order of court, take the law into their own hands by just moving onto the farm and forcibly ejecting those in occupation. See *Dodhill (Pvt) Ltd & Anor v Minister of Lands& Rural Resettlement & Anor 2009 (1) ZLR 182(H); Spenser &A nor v Minister of Lands &Ors 2010 (1) ZLR 144(H)*.

The Respondents’ contention is that the Applicants are in breach of the provisions of the Gazetted Land (Consequential Provisions) Act *[Cap 20:28]* by remaining in occupation of the farm after their right to occupation was withdrawn when they were offered alternative land. I do not agree. The Government allowed the applicants to remain in occupation of the farm after it had been gazetted. The Applicants occupied the plots which were allocated to them and on which they built homes. The withdrawal of their right to remain on those plots is not pursuant to the gazetting of the land. It is merely because the farm has been allocated to the fourth respondent. The letter dated 1 August 2012 states that the withdrawal of the land offer and relocation offer were necessitated by the allocation of the farm to the fourth Respondent.

Any attempt to eject the applicants from their plots without an order of court would be unlawful. In any event, it is unreasonable to expect persons who have built homes on a farm at which they have been residing for more than ten years to vacate the farm and relocate to another place within a week.

Accordingly, the following provisional order is granted:

**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 respondents shall not evict the applicants from the plots allocated to them at Lion Kopje Farm until after 30 April 2013.
2. The fourth respondent shall pay the costs of this application.

**INTERIM RELIEF GRANTED:**

Pending determination of this matter, the applicants are granted the following relief:

1. The respondents are interdicted from evicting the applicants from or otherwise interfering with their occupation of the plots allocated to them on Lion Kopje Farm without an order of court.

**SERVICE OF PROVISIONAL ORDER:**

The Applicants’ legal practitioners are granted leave to serve a copy of this provisional order on the Respondents.

*Munangati & Associates,* legal practitioners for the applicants

*Nyakutombwa Legal Counsel,* legal practitioners for the fourth respondent

*Civil Division of the Attorney-General’s Office,* legal practitioners for the 1st, 2nd, 3rd, & 5th Respondents