

WELLINGTON MARAIRE
versus
CHITURUMANI LYSIAS
and
MINISTER OF LANDS AND RURAL RESETTLEMENT

HIGHCOURT OF ZIMBABWE
NDEWERE J
HARARE, 13 May 2014 and 4 June 2014

Opposed matter

Applicant, in person
M. Mutsvairo, for the first respondent
S. Chihuri, for the second respondent

NDEWERE J: On 20 November, 2013, the applicant filed an application seeking an eviction order against the first respondent. Applicant said Subdivision 31 of Umzururu Farm in Zvimba District was offered to him by the Minister of Lands on 28 September 2010 through an offer letter issued to him by the said Minister on that date. He attached his offer letter as Annexure A. Applicant said first respondent had no right to be on the land issued to him and should therefore be evicted.

Applicant's claim was supported by the offer letter he attached as Annexure A to the affidavit and a statement dated 5 November 2012 from the District Lands officer for Zvimba, one Mashinga Charles Tigere whose copy he attached as Annexure B to his affidavit.

On 14 January, 2014, the first respondent filed a notice of opposition. He said he is entitled to remain on Subdivision 31 Umzururu because he too had an offer letter. He attached a copy of an offer letter dated 14 November for the same subdivision 31 Umzururu. First respondent further said applicant's offer letter had been withdrawn and to support this contention, he attached a copy of a letter addressed to the applicant allegedly from the Minister of Lands withdrawing the offer to applicant of "26 April 2011." To support his contention that applicant's offer letter was withdrawn, first respondent attached an affidavit dated 25 February 2013 from the Zvimba District Lands Officer which said a decision to

withdraw applicant's offer letter had been made and that first respondent was now the lawful occupant. However, applicant in his papers, said he was never served with a withdrawal letter.

On 4 December, 2013, the second respondent filed a notice of opposition. Mr Elias Ziro, the Director of Resettlement in the Ministry of Lands and Rural Resettlement deposed to an affidavit on the Minister's behalf. In the affidavit, second respondent said applicant holds a valid offer letter to occupy Subdivision 31 of Umzururu Farm in Zvimba. He said applicant therefore has a right to evict first respondent.

During the hearing, first respondent's counsel was asked to produce the original offer letter to him from second respondent. Counsel for first respondent said he did not have the original letter and he did not foresee that the original offer letter to his client would be required.

In its submissions in court, Counsel for second respondent reiterated the second respondent's position as given in his papers, that the lawful occupant of subdivision 31 Umzururu was the applicant.

In view of the above facts, the court granted the application and said its written reasons would follow later. I now proceed to give the reasons for granting the application.

The parties in the court application are the applicant, the first respondent and the second respondent. The second respondent is the Minister who issued the offer letter of 28 September, 2010 to applicant. The Minister is the same person who, in his opposing affidavit, said the offer letter of 28 September, 2010 was genuine and its holder should be recognised as the lawful occupant. By implication, the Minister is denying withdrawing the offer. The court accepted the position given by the second respondent in its court papers as the correct position.

The court rejects first respondent's claims of having a valid offer letter because despite the contestation by applicant in its founding affidavit, he did not bother to avail the original offer letter to him to the court. The proof of a document is the document itself and if first respondent had a valid offer letter, he would have availed it to the court.

The court also rejected his assertion that applicant's offer letter was withdrawn. He provided the court with a copy of a withdrawal letter and attached an affidavit from the District Lands Officer saying the offer letter had been withdrawn. However, the office that has the authority to withdraw offer letters in terms of para 7 of the offer letter is the Minister of Lands and Rural Resettlement, not the District Lands Officer. In any event, the District

Lands Officer does not come out as a reliable witness because the same District Lands Officer supported the applicant in its initial claim and gave a statement to that effect. Three months later, he had changed his position and was now supporting the first respondent, saying he had visited the area and checked the facts. A serious District Lands Officer checks his facts first before issuing any statement to anyone instead of issuing a statement and changing three months later saying he had since checked the facts.

In addition, applicant in his papers said he was never served with a withdrawal letter. No evidence was submitted to prove that he was served so the court takes applicant's assertion that he was not served with a withdrawal letter as the correct position. It is trite law that a withdrawal is effective only if the party previously granted the disputed property is formally advised that what had been issued to him is now being withdrawn. Without that communication, there is no withdrawal. So even if there was a valid withdrawal letter, the fact that it was not served on the applicant would render such a withdrawal null and void.

Furthermore, it is common cause that applicant was offered the disputed land first, in 2010. The first respondent says he was offered the same land in November, 2013. So even if first respondent were to produce a valid offer letter, applicant's claim supersedes that of first respondent because applicant was the first to be offered the land in issue.

The application was therefore successful.

It is ordered that:-

1. First respondent be and is hereby ordered to vacate Subdivision 31 of Umzururu Farm measuring 33,36 hectares, in Zvimba District, Mashonaland West, within 7 days after being served with a copy of this order.
2. If first respondent does not vacate the farm within the period specified above, the Deputy Sheriff be and is hereby directed to evict the first respondent.
3. The first respondent to pay the costs of suit.

Mushonga, Mutsvairo and Associates, first respondent's legal practitioners
Attorney General's Office, second respondent's legal practitioners