

JABULANI NYONI

Versus

DIBDEN SERVICES (PVT) LTD

And

**MINISTER OF STATE FOR NATIONAL SECURITY, LAND REFORM
& RESETTLEMENT IN THE PRESIDENT'S OFFICE**

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 15 AND 28 APRIL 2011

T Chivasa for applicant
T Cherry for first respondent
T Makoni for second respondent

Urgent Chamber Application

KAMOCHA J: This application was dismissed at the end of the hearing and I indicated that reasons would follow. These are they. On 19 August 2010 this court issued an order in the following terms:

“It is ordered that:-

- (1) It is declared that two portions of land described as Delville Park, measuring 84,7953 hectares and Delville Park Extension, measuring 23,1260 hectares under deed of transfer 964/2009 (herein after “the land”) and registered in the name of the applicant have not been properly acquired by the respondent;
- (2) It is further declared applicant is the rightful title holder of the land and is accordingly entitled to exercise all the rights of a registered owner in accordance with law.
- (3) It is further declared that any offer letter issued by the respondent in respect of the land in terms of the Land Acquisition Act or any other law is invalid and of no force or effect; and
- (4) The respondent pay costs of this application.”

The Minister of State for National Security, Land, Land Reform and Resettlement in the President's Office did not oppose the application resulting in the above order being granted by default.

The present applicant Jabulani Nyoni who was not party to the proceedings in the matter has launched this application on a certificate of urgency seeking a provisional order in the following terms.

"Interim Relief Granted

Pending confirmation or discharge of this provisional order, the applicant is granted the following relief;

- (i) That execution of the judgment obtained by 1st respondent against 2nd respondent in respect of two portions of land described as Delville Park Extension, measuring 84,7953 hectares and Delville Park Extension, measuring 23,1260 hectares under deed of transfer 964/2009 (hereinafter "the land") be and is hereby stayed;
- (ii) That applicant be and is hereby allowed to operate his current projects on the said land; and
- (iii) That 1st respondent only is to pay costs of this application at attorney and client scale only if she opposes this application."

The applicant was seeking this order pending the finalization of an application for joinder to a matter that has already been finalized. His application for a joinder was filed on 31 March 2011 and is yet to be argued in court. Thereafter, if successful, he would apply for the rescission of the order granted on 19 August 2010. The applicant averred that the land which is the subject of the court order was offered to him by the Minister in terms of the land acquisition laws of this country by letter dated 25 October 2007. It must, however, be noted that when the said offer letter was purportedly made the piece of land concerned had not yet been gazetted. It was only gazette two years later on 6 November 2009.

He further averred that he had been in effective occupation and utilization of the said land since 2004 with the authority of the previous owner, one Mr Alastair Gibson Drummond who has since relocated to the United Kingdom.

He has been doing extensive farming on the land in the form of market gardening under green house, horticulture and animal husbandry for the benefit of the local community. He was also into transport business on that same piece of land as a supporting venture.

He complained that Dibden Services (Private) Ltd should have cited him as a party to the proceedings of 19 August 2010 since it was aware that the order it sought from the court would directly interfere with his rights, interests and entitlements in the land. He contended that if he had been served with the application he would have definitely exercised his rights to be heard. He would have opposed the application.

He claimed to have only become aware of the default judgment towards the end of March 2011 when Dibden (Pvt) Ltd brought to him a lease agreement for him to sign so that he would become its tenant. The applicant decided to launch this application on a certificate of urgency in the light of the foregoing.

The Minister did not file any opposing papers although Mr *T. Makoni* from the Attorney General's Office attended the hearing in chambers.

Dibden Services (Pvt) Ltd vehemently opposed the application and averred that it was not even urgent and stated that it had never interfered in any way whatsoever with the applicant's operations. It had repeatedly expressed both in writing and verbally that it had no wish to evict applicant. All it wanted to do was to take occupation of about half the area for its own training school and workshops and come to a mutually agreeable arrangement with applicant in respect of the remainder. It concluded that the averment that it may engage in perverse conduct was simply not supported by the facts.

There was no danger of imminent harm and it had never threatened by word or deed to evict him. On the contrary, it had shown the utmost tolerance and forbearance with applicant. It alleged that until very recently he had accepted the *status quo* that Dibden was the lawful owner of the property and that he was in the position of a tenant at will.

Dibden also averred that applicant had no prospects of success in the applications for joinder and rescission but those applications were not before this court yet. Those arguments should be reserved for the appropriate stage. Suffice to say at this stage that this application was ill-conceived.

There is no danger of him being evicted from the property. The applicant has not threatened to interfere with his current projects on the said land. Instead the applicant has repeatedly assured him both verbally and in writing that it had no intention to do so. There is, therefore, no harm from which the applicant seeks to be protected. The matter is clearly not urgent and does not deserve to jump the queue. It must fail.

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In the result the application is dismissed with costs on the ordinary scale.

Chivasa & Associates applicant's legal practitioners
Webb, Low & Barry first respondent's legal practitioners