

RUTENDO LATOYA MUNDANDI

and

ALLETA MAZVITA MUNDANDI

and

ROBIN TAKUNDA GOREMUCHECHE
(assisted by their father DAVID MUNDANDI)

versus

ROSEMARY JOSHUA

and

ELIZABETH KETISA

HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 18 JANUARY, 19 FEBRUARY & 7 MARCH 2002

C Dube for the applicants
Mrs Chinamatira for the respondents

Opposed Application

KAMOCHA J: The parties in this matter are close relatives. The first two applicants were born out of wedlock in a relationship between David Mundandi their father and Deborah Sithole their late mother. David Mundandi claimed that the relationship was a customary law union but the respondents denied that. The first respondent is a maternal aunt of the applicants and she is a sister in law of David Mundandi. While the second respondent is their maternal grandmother and would have been a mother in law of David Mundandi if it had been accepted that Deborah had been married to him in a customary law union.

The late Deborah Sithole had also another son called Robin Takunda

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Goremucheche ("Robin") the third applicant fathered by a different man. So Robin

was a step son of David Mundandi herein after referred as "Mundandi."

On 10 January, 2001 Mundandi and Deborah purchased a property known as

94 Hopefountain Road, Waterford, Bulawayo "the property" on behalf of the three minor children namely Robin Takunda Goremucheche, Rutendo Latoya Mundandi and Alleta Mazvita Mundandi. The property was duly registered into the names of the three minor children.

The late Deborah Sithole passed away on 9 August 2001. That is when trouble

started between Mundandi and the relatives of Deborah including the two respondents. Mundandi and Deborah together with the three children had been living

at the property before she died. But during the time of her illness some relatives

including the defendants moved in to look after her. They stayed there until she died.

After her death they did not want to leave the house.

Mundandi had to take legal action on behalf of the applicants in order to compel the respondents to vacate the premises. A provisional order was granted on 28

August, 2001 ordering the two respondents to vacate the property within 4 days of

service of the court order upon them.

While this was going on Robin Takunda Goremucheche turned 18 years on 27 August, 2001 thereby becoming a major. He then immediately disassociated himself

with Mundandi and his half siblings and then aligned himself with the two respondents who are his maternal aunt and maternal grandmother respectively. He then became opposed to the idea of evicting the respondents from the property and

invited them to continue living there. Through the invitation of Robin the two

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respondents defied the court order granted on 28 August 2001 claiming that they had a

right to live on the property since Robin was entitled to live there.

In an attempt to validate the stay of his aunt and grandmother Robin went to

court and applied for and was granted an order in a provisional form. The interim

relief granted was that his grandmother and aunt were with immediate effect permitted

and restored to occupy 94 Hopefountain Road, Waterford, Bulawayo, through Robin.

In the final order he sought to be removed from being a party to the proceedings in the

case initiated by Mundandi on behalf of the children. He pointed out that having

attained majority status Mundandi had no locus standi to represent him.

Further he asserted that as co-owner of the said property, he had absolute right

of ownership and by virtue of that right he was entitled to invite anybody to reside

with him.

Mundandi accepted in his opposing papers that he had no locus standi to

represent Robin as from 27 August 2001 in view of his attainment of majority

status. He also excluded Robin from being a party in case number HC 2537/01.

Consequently Robin was no longer a party to those proceedings when the matter was

argued. He was only a party to case number 2727/01 which was instituted by himself.

What is clear from the documents filed of record is that the two respondents

have their own properties elsewhere and that was not denied by them. It is also clear

that the respondents have caused a lot of trouble at the property. Mundandi and the

two children have had to move out of the property because of the endless problems

caused by the two respondents and their relatives. While Robin does have a right to

invite anybody he likes to live on the property he must do so without violating the

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rights of his co-owners. His co-owners are the majority shareholders whose rights

must be respected. If Robin cannot do without his troublesome relatives he should go

and join them wherever they will be. The other co-owners need to live at the property

without any disturbance.

Apart from wanting to live on the property at the invitation of Robin the respondents have no legal basis to occupy the property. The same cannot be said about Mundandi who is looking after the two girls. He is educating them. He has

sent them to private schools where he pays substantial amounts of money by way of

school fees. He regards himself as their guardian. Even before Deborah passed away

he was regarded as one of the guardians of the children. When purchasing the property on behalf of the three children on 10 January, 2001 the agreement of sale

reflects that the children were being duly assisted jointly and severally by their legal

guardians namely Deborah Sithole and David Mundandi. Quite clearly the late Deborah accepted Mundandi as a guardian of the children. He is therefore entitled to

live at the property as long as he remains the guardian of the girls. He should be

allowed to look after them in a peaceful atmosphere.

In conclusion I must emphasize that the respondents have no legal right apart

from Robin's invitation to remain at the property. They have got their own properties

elsewhere and should go and live there.

The respondents defied a court order. This type of behaviour can never be countenanced by any court of law. Regrettably defying court orders is becoming prevalent these days. Courts should always visit the culprits with punitive costs as a

sign of displeasure to such practice. The applicants are therefore entitled to their costs

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at a higher scale as prayed.

The order I make is that the provisional order in matter number HC 2537/01 issued on 28 August, 2001 be and is hereby confirmed with costs on an attorney and client scale.

The provisional order in matter number HC 2727/01 issued on 14 September, 2001 be and is hereby discharged with costs.

Paradza, Dube & Associates, applicants' legal practitioners
Bulawayo Legal Project Centre, respondents' legal practitioners