

FRANCIS NYAMADZAWO	1st Applicant
And	
SIPIWE NYAMADZAWO	2nd Applicant
Versus	
GWERU MAGISTRATE (I. MHLANGA (N.O)	1st Respondent
And	
AGRIPPA HLABANGANA	2nd Respondent
And	
BARBRA HLABANGANA	3rd Respondent
And	
JOYCE SEVERINO	4th Respondent
And	
THE MESSENGER OF COURT IN GWERU	5th Respondent
And	
THE REGISTRAR OF DEEDS IN BULAWAYO	6th Respondent

IN THE HIGH COURT OF ZIMBABWE
MATHONSI J
BULAWAYO 13 JANUARY 2011 AND 27 JANUARY 2011

For the applicant: *1ST Applicant in person*
For the 2nd & 3rd respondent: *Mr G. Nyathi*
No appearance for 4th to 6th Respondents

Opposed Application

MATHONSI J: In this application the applicants seek the consolidation of case numbers HC 2335/08; HC 2078/08 and 2079/08 so that they are dealt with and disposed of at the same time. They also seek the dismissal and discharge of a provisional order issued by the Gweru Magistrates Courts on 29 October 2008 under Case No. 1965/02. They would also like the dismissal of cases that have been brought against them while at the same time asking for a number of orders against various individuals including the eviction of 2nd and 3rd Respondents from House No. 6460 Mkoba 18 Gweru.

The applicants are unrepresented and did not appear to have had the benefit of legal counsel through out this sordid affair which has seen the filing of not less than 8 matters none of which has come anywhere near bringing the matter to finality. A lot of ground has been covered in volumes and volumes of paperwork and direction less applications, which, apart from increasing the work load for the court, will never benefit anyone.

Briefly, the applicants entered into a sale agreement with one Joyce Severino on 24 October 2001 for the purchase of stand 6460 Mkoba North Gweru. Severino, later sold the same property to 2nd and 3rd Respondents who took occupation. After some spirited litigation at the Gweru Magistrates Court spanning from April 2002 to 2008, the applicants obtained an eviction order against Joyce Severino which they attempted to execute without success.

They could not execute the order because the occupants of the house were now the 2nd and 3rd Respondents who were not party to the eviction proceedings applicants had instituted against Severino. Instead 2nd and 3rd Respondents quickly obtained a provisional order at the Gweru Magistrate court which was confirmed allowing them to occupy the disputed house without hindrance.

Thereafter 2nd and 3rd Respondents instituted summons action against applicants and Severino under Case No. HC 2078/08 seeking a declaration that they are the lawful owners of the disputed house and that they be allowed to take transfer. That action has been opposed by the applicants while Severino has consented to judgment. The applicants have filed a plea in bar which they have not set down for hearing in accordance with the rules. They have therefore pleaded over on the merits but the pleadings are yet to be completed.

In case No. HC 2079/08 2nd and 3rd Respondents filed an urgent application and obtained a provisional order suspending the execution of the magistrates court eviction writ pending the finalisation of the summons action in HC 2078/08. The confirmation of that provisional order has been opposed by the applicants leaving that matter in limbo as well. Rule 92 of the High Court rules dealing with consolidation of actions provides:

“Where separate actions have been instituted and it appears to the court convenient to do so, it may, upon the application of any party there to and after notice to all interested parties, make an order consolidating such actions, whereupon –

(a) The said actions shall proceed as one action;

(b) The court may make any order which it considers proper with regard to the further procedure, and may give one judgment disposing of all matters in dispute in the said actions”

Looking at the orders sought by the applicant it is apparent that they are labouring under the mistaken belief that the court can consolidate anything and then proceed without more, to dispose of matters even without following the laid down procedure. The applicant seek a consolidation of a magistrates’ court matter in matters pending in this court. That is clearly not possible as the 2 courts are mutually exclusive. In any event magistrates court matter number 1965/02 in which a provisional order the applicants’ have taken issue with was granted, was withdrawn by the 2nd and 3rd Respondents in October 2008 and the order there in abandoned. There is therefore nothing left to consolidate.

Case No. HC 2335/08 is a review application filed by the applicants seeking to review and set aside the provisional order of the 1st Respondent made in 2008. As already stated that matter was withdrawn and the order abandoned. Therefore the review application has been rendered irrelevant and should properly be withdrawn. It cannot be consolidated with any other matter.

The only remaining matters are HC 2078/08 which is a summons action still pending and HC 2079/08 where a provisional order protecting 2nd and 3rd Respondents’ occupation of the disputed house was granted and its confirmation has been opposed by the applicants. Nothing will be served by consolidating those 2 matters and if the parties genuinely want to bring the matter to finality they

should agree to either the confirmation or discharge of the provisional order in HC 2079/08 and strive to set down the main action for trial.

That way the respective rights of the parties will be determined once and for all instead of perpetuating the proliferation of litigation which does not even attempt to bring the matter to finality. Having said that, I must point out that the applicants' problems stem from their lack of representation. They are strongly advised to seek legal representation if this dispute is the move forward instead of continuously filing documentation which is not only repetitive and at times meaningless but also unduly voluminous.

The application is clearly without merit and it is accordingly dismissed with costs.

Francis and Spiwe Nyamadzawo the 1st 2nd applicants
The Clerk of Civil Court Gweru, the 1st respondent
Messrs Sansole & Senda, for 2nd & 3rd respondents
Mrs Joyce Severino, for 4th respondent
The Messenger of Court in Gweru, the 5th respondent
The Registrar of Deeds in Bulawayo, the 6th respondent