



FILE REF: ZHRC/CHI/2037/17

In the matter between:

**MAGANGA ESTATE RESIDENTS**

**COMPLAINANTS**

And

**MINISTRY OF LANDS AND RURAL RESETTLEMENT**

**RESPONDENT**

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**INVESTIGATIVE REPORT**

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*Complaint No: ZHRC/CHI/ 2037/17*

***Key Issues***

- *Freedom from arbitrary eviction-Constitution Sec 74*
- *Right to shelter, Constitution Sec 28*
- *Right to administrative justice-Constitution Sec 68*

## THE COMPLAINT

1. This was a complaint on the arbitrary eviction and alleged violation of the complainants' freedom from arbitrary eviction, right to dignity, the right to privacy and other interrelated rights of residents of Maganga Estate in Marondera-Mashonaland East Province (hereinafter referred to as the complainants). The complaint was filed on the 7<sup>th</sup> November 2017 by Mr. Farai George Siyawamwaya (Village Head), who approached the Zimbabwe Human Rights Commission (ZHRC/Commission) on his own accord on behalf of his village.
2. The violations are alleged to have been committed on 8 November 2017 by officials from the Ministry of Lands and Rural Resettlement who were accompanied by the members of the Zimbabwe Republic Police (ZRP/Police).
3. The ZHRC began its investigations into the matter on the 7<sup>th</sup> November 2017 when a letter of enquiry was written to the Head Office of the Ministry of Lands and Rural Resettlement in Harare to find out the circumstances of the evictions since Complainants were not served with any eviction order or written notice. Almost a month lapsed without getting a response from the Ministry. The response dated 30 November 2017 was received by the ZHRC on the 1<sup>st</sup> of December 2017. Due to the protracted delay in getting a response the ZHRC advised Complainants to institute legal proceedings against Respondent; which they did in Case Number B125/17 of the Magistrates Court for Mashonaland East.
4. Complainants encountered difficulties in accessing legal aid services for them to institute legal proceedings against Respondent. The legal aid service providers whom they were referred to by the ZHRC namely Legal Resources Foundation and Zimbabwe Lawyers for Human Rights indicated that they were over-booked and did not have enough manpower to assist. ZimRights indicated that they did not handle land issues emanating from the land reform.

5. Complainants then made contributions towards legal fees for a private lawyer who agreed to take up their matter. Respondent defaulted on the court proceedings leading to default judgment being issued. An interdict was granted against Respondent. The court order stated that the Respondent (Ministry of Lands and Rural Resettlement) was ordered not to forcibly evict Maganga villagers without any court order
6. Before hearing of the court case, the Commission visited Maganga Estate to interview some of the complainants and assess the human rights situation. The field visit to Marondera was carried out on the 13<sup>th</sup> November 2017.

### **COMPLAINANTS' ACCOUNT**

1. Complainants alleged as follows:
  - 1.1 They first settled on Maganga Estate in 2000. They were initially evicted in 2002 but returned in 2005 after authorisation by the District Administrator since they are custodians of Tsindi Ruins, a historical monument located within the Estate. They were, however, not given offer letters.
  - 1.2 Since 2005, they had peaceful occupation of the Estate until 1<sup>st</sup> November 2017 when they were given 7 days verbal notices to vacate the Estate by the Respondent.
  - 1.3 Towards the end of the 7 days' notice most of the villagers had demolished their houses and removed building materials which they then used to make temporary structures. The police later came to check if the villagers had moved out of their houses and demolished the structures. The Police finished off and burnt some of the structures which had been left intact.

### **RESPONDENT'S ACCOUNT**

2. The ZHRC, in investigating the issues raised by the complainants, received the following response from the Secretary for the Ministry of Lands and Rural Resettlement:
  - 2.1.1 That a cabinet directive was given to the Ministry to remove all illegal settlers from farms acquired under the Land Reform Programme by 6 September 2016.

- 2.1.2 To this end as from August 2016, the Ministry informed members of the public through the print and electronic media to vacate state land that they had illegally settled on.
- 2.1.3 This notice of eviction was not followed through to allow the illegal settlers sufficient time to relocate so the verbal notices were therefore simply to reiterate the already stated position.
- 2.1.4 That alternative land is not provided for people who would have illegally settled themselves since it would set a wrong precedent for people to unlawfully settle themselves in the hope of getting alternative land.
- 2.1.5 That legally settled people who were affected by other circumstances were the ones who had alternative land provided for them.

### **HUMAN RIGHTS INVOLVED**

3. The following human rights were allegedly violated:
  - 3.1 The right to shelter and adequate housing – Section 28
  - 3.2 The right to administrative justice – Section 68
  - 3.3 Freedom from arbitrary eviction – Section 74

### **ANALYSIS OF THE COMPLAINT**

#### **4. Whether or not freedom from arbitrary eviction was violated**

4.1 Section 74 of the Constitution provides that: *'No person may be evicted from their home or have their home demolished without an order of court made after considering all the relevant circumstances.'* In the present case, complainants confirmed that seven days' notice had been given verbally. Since there was no court order for their eviction, complainants' freedom from arbitrary eviction was violated.

4.2 The Committee on Economic, Social and Cultural Rights, General Comment No. 7 (1997) on the right to adequate housing: forced evictions: states that Forced eviction is "*the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or*

land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”.

In this case, complainants were being removed against their will but they had access to appropriate forms of legal protection since they approached the ZHRC and later the courts which granted an interdict against Respondent thereby stopping their eviction without a court order.

4.3 The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, which Zimbabwe ratified, requires in article 3(1) (a) states parties to “*refrain from, prohibit and prevent arbitrary displacement of populations.*” The principles of human rights are clear that before you displace people, you need to have established alternative accommodation for them.

In this case, it was clearly explained by the Respondent that no alternative land was provided to people who settled themselves on state land after the year 2000 when the widespread land invasions took place since this would encourage other people to settle themselves on state land without offer letters or permits.

#### **Whether or not the right to adequate shelter was violated**

4.4 Section 28 of the Constitution states that: “*The State and all institutions and agencies of government at every level must take reasonable legislative and other measures, within the limits of the resources available to them, to enable every person to have access to adequate shelter.*” This implies taking measures to provide alternative shelter to evictees. Failure to take such measures constitutes a violation of the right to adequate shelter.

4.5 This provision is analysed taking into consideration the fact that the villagers settled themselves on state land without offer letters or permits.

#### **5. Whether or not the right to administrative justice was violated**

5.1 Administrative justice in terms of Section 68 of the Constitution requires that any administrative action be fair, reasonable and procedurally fair. Procedural fairness includes, in this present case, giving complainants

adequate notice before demolitions. From the investigations conducted, the ZHRC established that the complainants were given seven days verbal notices to vacate the Estate yet there was no court order to that effect as specified by Section 74 of the Constitution. The right to administrative justice was therefore violated.

## **6. CONCLUSION**

Evictions of illegal settlers continue unabated in Zimbabwe. This is largely due to the fact that Zimbabwe does not have rules and regulations on the eviction procedure of both former farm workers and illegal settlers on agricultural land (former white commercial farms). Therefore, in the present case, although the complainants were illegal settlers and could not hold or have right of title to the farms (through possession of Offer Letters), their eviction from farms without any alternative land being offered is a violation of their right to adequate shelter and their freedom from arbitrary eviction without considering all the relevant circumstances.

## **7. RECOMMENDATIONS**

In light of the above findings and conclusion, the ZHRC makes the following recommendations:

### **TO and PARLIAMENT OF ZIMBABWE**

- 11.1. To ensure a law is enacted that curb illegal grabbing and invasion of farms;
- 11.2. To enact laws that specifically deal with the eviction of illegal settlers from farms;
- 11.3. To enact laws that protect the rights of former farm workers.

### **MINISTRY OF LANDS, AGRICULTURE AND RURAL RESETTLEMENT**

- 11.4. To find a way of finalising and ensuring that the Land Reform does come to an end; and
- 11.5. To provide shelter for evicted illegal settlers.