

Obert Mpofu loses Supreme Court fight over Esidakeni invasion

ZimLive by staff reporter

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'The High Court properly frowned at self-help which is repugnant to our constitutional values'



Contested ... Esidakeni Farm in Nyamandlovu is in the middle of an ownership dispute

BULAWAYO – The Supreme Court on Monday accused Zanu PF secretary for administration and former mines minister Obert Mpofu of resorting to “anarchy and chaos” in his bid to wrest control of a coveted Matabeleland North farm part-owned by a prominent rights lawyer.

Mpofu, reputed to be one of the largest land owners in Zimbabwe, occupied Esidakeni Estate in Nyamandlovu in November 2021 after driving out the farm’s owners – NUST scientist Zephaniah Dhlamini, human rights lawyer Siphosami Malunga and miner Charles Moyo.

Moyo claimed an offer letter for 145 hectares of the 554-hectare property issued to him and his wife, Sikhanyisiwe, empowered him to take occupation. He proceeded to position armed guards at the gate and drove out Dhlamini, Malunga and Moyo mid-cropping.

The three farmers challenged the government’s compulsory listing of the farm for resettlement at the High Court, and while a decision was pending, the court issued an order that Mpofu should vacate the farm. He appealed at the Supreme Court, leading to Monday’s ruling.

Supreme Court judges – Deputy Chief Justice Elizabeth Gwaunza, Hlekani Mwayera, Alphas Chitakunye – ruled that Mpofu had resorted to “self-help”* in seeking to impose whatever perceived rights over the land.

“The coming in of the appellants (Mpofu and wife) was not sanctioned by law since there was no court order for eviction,” the judges said in a judgement written by Mwayera with Gwaunza and Chitakunye concurring.

The judges said by “descending on Esidakeni and starting land preparations,” Mpofu and his wife “disrupted the respondents’ peaceful and undisturbed occupation possession.”

They added: “In spoliation matters, it is apparent that the deciding factor is that deprivation should be effected lawfully, our law deprecates self-help... Anarchy and chaos brought about by self-help is not acceptable. The individual with an offer letter has the *locus standi in judicio*** to seek the eviction of a former owner *after* acquisition of land by the state. This by no means suggests authorisation of invasion in a lawless manner.

“The fact that the appellants had an offer letter does not entitle them to self-help in taking over possession without due process of the law... The dispossession of the respondents by the appellants was unlawful and it was done without the respondents’ consent. The High Court properly frowned at self-help which is repugnant to our constitutional values. It thus properly restored possession to the respondents by granting the spoliation relief.

“The appeal is without merit and must fail... Accordingly, the appeal is hereby dismissed with costs.”

The High Court is yet to rule on the main matter of the three farmers’ challenge to the compulsory acquisition of the farm for resettlement. They argue that the constitution protects black farmers from land dispossession.

The government argues that Malunga, Dhlamini and Moyo were required to obtain a “certificate of no present interest” from the lands ministry before they bought the farm from its former white owners in 2017, which they neglected to do.

The land dispute [has attracted international attention](#) and its resolution is seen as a test of the government’s attitude to land ownership rights under President Emmerson Mnangagwa.

Malunga fears they were targeted for his outspoken criticism of rights abuses by Mnangagwa’s regime.

Advocate Thabani Mpofu and Josphat Tshuma appeared for Malunga and partners, while Advocate Sindiso Siziba represented Mpofu and his wife.

<https://www.zimlive.com/2022/07/obert-mpofu-loses-supreme-court-fight-over-esidakeni-invasion/>

Definitions:

*Self-help evictions are attempts at removing anybody from a property without the necessary court order, and are also called unlawful evictions.

**In law, *locus standi* means the right to bring an action, to be heard in court, or to address the Court on a matter before it. Locus standi is the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party’s participation in the case.