

KINDHEARTEDNESS INVITES BETRAYAL: ORAL TESTIMONY REGARDING THE LAND DISPUTE BETWEEN TWO VILLAGE HEADS IN GUTU DISTRICT, ZIMBABWE

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ABSTRACT

Like capital and labour, land is a prized resource, and where the land is inherited from one's predecessors, it is held with reverence and is of particular significance to its inheritors. A situation involving land lies at the heart of a dispute between two village heads in Gutu district, Zimbabwe, the account of which is based on oral testimonies given by elderly members of the village which offered temporary shelter to a group of land seekers. The events recounted occurred during the late 1950s and early 1960s. Data was gathered through oral interviews and focus group discussions, supported by observations. Detailed interviews were conducted with the aggrieved village head as well as the former and current chief. Other elderly village members were also interviewed, and some were involved in the group discussions. The study revealed among other things the absence of tangible records pertaining to village boundaries, the lack of authority of the chief's rulings, and the prevalence of corruption in the settlement of land disputes. Some focused deductions are made regarding possible outcomes of a pending court verdict. A number of recommendations are suggested with the aim of assisting in the resolution of similar land disputes in Zimbabwe.

Keywords: land; oral testimonies; boundaries; kindheartedness

INTRODUCTION

Land is a valuable resource which falls in the same category as capital and labour. A number of examples can be cited to illustrate the importance of land and the sacrifices people are prepared to make for it: these include the war of liberation fought in Zimbabwe

UNISA 
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of south africa
PRESS

Oral History Journal of South Africa
<https://upjournals.co.za/index.php/OHJSA>
Volume 4 | Number 2 | 2016 | pp. 37–46

<https://doi.org/10.25159/2309-5792/333>
ISSN 2309-5792 (Print)
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(1966–1980), the Mau Mau war in Kenya (1952–1960), the Maji Maji war (1905–1907) and the Umkhonto we Sizwe struggle (1961–1994), to mention just a few.

In Zimbabwe, historical developments have contributed to the establishment of communal lands where Africans are not only crowded onto limited land, but are also involved in fierce land disputes, particularly over boundaries. This unfortunate situation originates in white Rhodesian colonial policies. The Land Apportionment Act (LAA) of 1930, for example, divided the colony known as Southern Rhodesia into six specified areas as follows: the native reserves; the native areas; the European area; the undetermined area; the forest area and the unassigned area. The white Rhodesians were assigned 50 per cent of the fertile agricultural land, while the majority of Africans were confined in “native reserves”, occupying 21 per cent of the agricultural land. Only a few could afford to buy land in African Purchase Lands, since the area constituted a mere seven per cent of the agricultural land. The white Rhodesians further consolidated their hold on land through the 1941 amendments to the LAA, which prohibited Africans from purchasing land in the areas designated for Europeans.

The Land Husbandry Act (LHA) of 1951 further worsened the plight of Africans in terms of land possession. According to the Act, the African population was divided into two categories, namely “farmers” and “non-farmers”. Small plots of land were allocated to “farmers” in native reserves. Those temporarily working in towns or on commercial farms were placed in the non-farmer category and were denied access to agricultural land. Ultimately, the Land Tenure Act (LTA) of 1969, which replaced the LAA of 1930, permanently legalised the division of land. Of the 33 million hectares of land available for agriculture, white farmers were allocated 46.9 per cent. The majority of Africans were allocated plots in 165 Tribal Trust Lands, covering 46.9 per cent of land. African Purchase Lands covered the remaining 4.5 per cent of land (Stoneman 1981).

Following the establishment of “native reserves”, Gutu district, which is the focus of this paper, was divided into portions falling under the jurisdiction of the local leadership, the chiefs, headmen and village heads as determined by the Native Commissioners. The district was subdivided into the following leadership jurisdictions:

Chiefs: 9

Headmen: 18

Village heads: over 750

NATIVE PURCHASE AREAS

The chiefdoms of Chief Chimombe and Headman Mazuru shared borders. In terms of their origins in the Gutu-Chinemukutu dynasty, these two village heads were related (Gutu District Delineation report).

THE LAND DISPUTE

According to oral testimonies, the events leading to the dispute involving the two village heads date back to the late 1950s.

THE YEAR 1959

According to oral testimony given by the village head, Utete, a family residing under chief Chimombe's jurisdiction, led by their father, Mabharanga Mupoti, reached an agreement with a relative and village head under headman Mazuru in respect of a piece of land. The village head who offered the piece of land was known by the name Chiguya. The area under his jurisdiction shared boundaries with that of a fellow village head by the name of Muzira Utete. According to the testimony given by some elderly members of the community in Utete village, when Mabharanga Mupoti arrived in headman Mazuru's area in 1959, Muzira Utete allowed Mupoti to set up temporary accommodation in a portion of his area. This was mutually agreed to in order to allow Mabharanga Mupoti to finalise arrangements relating to the piece of land about which he was in negotiation with Chiguya. At the time that a Lands and Agricultural Officer by the name of Vandira became involved in the situation, Mabharanga Mupoti and his people were settled on a piece of land under the jurisdiction of village head Chiguya. In terms of the new arrangement, Mupoti's area became the new boundary with Utete's area.

THE YEAR 1999

Forty years later, a boundary dispute arose between the two neighbours, Utete and Mupoti. Mupoti's eldest son, Beria Musimudziwa, laid claim to a piece of land which had been made available by Utete for the temporary accommodation of Mupoti and his people in 1959, before they moved into the area allocated to them by Chiguya. Musimudziwa's claim took the form of an invasion, as he without consultation built structures on and began ploughing part of the land that existed as a buffer zone and had been converted into grazing land. Efforts to resolve the dispute between the two village heads were unsuccessful, as Musimudziwa insisted that the land belonged to him, since his father had occupied it on his arrival in 1959. The dispute was taken to the headman's court for arbitration. Headman Mazuru summoned a number of witnesses from the two villages to give oral testimonies on what had transpired in the year 1959 and subsequent events up to 1999. After the oral testimonies were given, headman Mazuru took the case to the District Administrator (DA) for Gutu district. The DA resolved that the two village heads were required to observe the boundaries set in 1959. Peace prevailed until 2007.

THE YEAR 2007

The peaceful co-existence that prevailed from 1999 to 2007 was once again disturbed by Musimudziwa, who revived his invasion of the area, settling people from his area on the land which had been marked as a buffer zone between the areas under two village heads. The conflict was once more referred to the headman's court. The headman reiterated that Musimudziwa should abide by the DA's ruling of 1999. However, the headman's intervention did not solve the impasse, as Musimudziwa remained adamant, and his people continued to occupy the area they were supposed to vacate. Musimudziwa even went so far as to approach the DA. By then a new DA by the name of Mutongi was in office. The new DA visited the area in dispute and made a ruling in favour of Musimudziwa on the basis of what he called "land units". These "units", however, had not been used in the 1959–1960 land demarcation following the granting of land to Mabharanga Mupoti in 1959.

EVENTS OF 2008–2013

The impasse remained unresolved, with headman Utete challenging DA Mutongi's verdict, and the case was referred to the Gutu district magistrate's court for a hearing. The magistrate overturned the DA's ruling and found in favour of Utete, also requiring that Musimudziwa reimburse Utete all the costs he had incurred. However, instead of abiding by the ruling concerning the reimbursement, Musimudziwa appealed to the high court. Preliminary hearings were held in which the two sides were asked to furnish the court with the facts of the matter. Both parties submitted their heads of argument, and as of March 2013 the case was still scheduled for judgment.

STATEMENT OF THE PROBLEM

Land is a valuable resource, and where attempts are made to deprive people of their land, protracted struggles result. In this case, the land at stake was regarded as a birthright. The pertinent question in this instance is whether oral testimonies can be used as evidence in solving land disputes in communal areas.

JUSTIFICATION OF THE STUDY

There have been an increasing number of land disputes in Zimbabwe, most of which are boundary disputes. While the disputes may be protracted, what is of importance is the manner in which they are resolved. Chiefs, as custodians of all communal land, are responsible for resolving land disputes. For example, the chief may bring witnesses who can give testimony in the form of oral evidence. The evidence given can then be scrutinised by the chief's court so as to reach a verdict. The DA may be involved when there are problems of jurisdiction involving chiefs or headmen and land boundaries.

Justification of the study of this particular land dispute lies in its contribution to establishing whether oral testimonies are useful evidence in the resolution of communal land disputes within the context of traditional courts, thus making it unnecessary for them to be brought before conventional courts.

Objectives

1. To identify the causes of conflicts involving land in communal areas
2. To determine the role of chiefs in communal land disputes in Zimbabwe
3. To establish the difficulties encountered by chiefs in resolving communal land disputes in Zimbabwe
4. To predict the probable outcome of the land dispute under discussion
5. To make recommendations based on the progress of the case to date

CONCEPTUAL FRAMEWORK

A number of major historical conflicts have related to the possession of land. Examples are the Zimbabwe liberation war, fought from 1966 to 1980, the Mau Mau war in Kenya (1952–1960), the Maji Maji war in Tanzania (1905–1907) and the struggle waged by Umkhonto we Sizwe in South Africa (1961–1994). While the conflicts listed here were fought at national level, a number of conflicts have taken place and continue to take place at community level, between chiefdoms, villages and even between individuals. When the conflict occurs at village level, chiefs are expected to resolve any impasse, since such conflicts fall within the chiefs' jurisdiction. Two fundamental questions arise: Can chiefs successfully resolve land disputes in their courts? Can oral testimonies be considered a source of evidence in the resolution of land disputes?

REVIEW OF SCHOLARSHIP

The history of land disputes in Zimbabwe is linked to a number of segregation policies of the settler government of Southern Rhodesia. Segregation policies arising from the LAA of 1930, the LHA of 1951 and the LTA of 1969 resulted in Africans losing their prime land to the new settler administration and being restricted to communal lands, where agricultural land was limited. The result was overcrowding in the rural areas, which created friction among those living there (Stoneman 1981). The colonial policies also contributed to numerous other problems, for example in the traditional leadership system. The once powerful traditional leaders were stripped of their powers, to become mere ceremonial chiefs who no longer had complete authority over the land, as they had had during pre-colonial times. In the pre-colonial period chiefs had ruled with the assistance of spirit mediums and a council of elders (Bourdillon 1987). They presided over land disputes in communities, and their decisions in this regard were final.

The period from the 1930s until the late 1960s saw the rise of a new group of colonial administrators who were responsible for the administration of the rural communities. These were called the Native Land Commissioners (NLCs), and they were responsible for the land demarcations in areas set aside for the Africans under what were called communal areas (Moyo 1988). Under their authority new land demarcations came about which subdivided African land according to distinct boundaries, with the land placed under the jurisdiction of chiefs. The creation of native reserves had two major effects on Africans in rural areas. First, the LAA increased the population density in rural areas, with most African families being restricted to farming small plots of between two and six acres (Ndlovu-Gatsheni 2008). Second, overcrowding in native reserves led to over-cultivation and soil erosion.

At the same time, the NLC were indirectly creating labour for the settler government by bringing about an artificial land shortage so that the landless Africans would constitute a source of cheap labour. The divide and rule approach, in terms of which Africans were restricted to limited areas, was almost guaranteed to engender conflict relating to encroachment, as in the case under discussion.

METHODOLOGY

A qualitative approach was employed to collect data from the informants. Qualitative research involves various kinds of non-numeric data (Remler and Van Ryzin 2011). Data was gathered through oral interviews, focus group discussions and observations. These methods were supported by transect walks carried out in the area under study. The qualitative method was a suitable approach, since it can be conducted in the natural setting of the phenomenon under study. The natural setting allows the researcher to interact with the informants and gather their views using multi-faceted instruments such as the ones mentioned above.

Interviews were conducted with purposively selected elderly members of the community who were eye witnesses to the events of the late 1950s when the new inhabitants arrived in the area that subsequently came under dispute. The criterion used to select the informants was in line with sample expectations which Stangor (2011) explains as involving smaller groups of people who actually participate in the research. Ten informants were selected from among key village members, considered to be key informants based on the fact that six of them were married and owned homesteads, and the remaining four were mature young men living in the village. These informants were part of the group that discussed agreements which led to the offering of temporary shelter to the new land seekers.

To collect data from the informants, the researcher conducted three individual interviews: one with the incumbent village head from the village which offered temporary shelter to the new land seekers, and one each with two village members who assisted the village head in 1959 and participated in the deliberations which led to the granting of permission for temporary occupancy by the new inhabitants. In addition two

group discussions were held, with five participants in each focus group. Participants were divided into two groups so as to try and arrive at the truth of the matter by noting facts from the narrations given. The researcher's intention was to establish whether or not group members corroborated one another's accounts, and to assess the reasons for any differences. The researcher also conducted transect walks along the strip of land at the heart of the dispute in order to establish evidence of farming activities and the existence of housing structures as claimed by the village which alleged betrayal.

THE INTERVIEW GUIDE

An interview guide was used to structure the interview sessions. An interview guide is a set of open-ended questions, which are sometimes accompanied by probing in order to guide or structure the discussion (Bryman 2004, 524). Asking open-ended questions which allowed interviewees to speak more widely about topics raised by the researcher gave the researcher flexibility (Denscombe 1998, 113). Interviews are usually conducted either to obtain more general information from a large number of people or to obtain more detailed information from a smaller number of people (Denscombe 1998, 112). The researcher opted for the latter approach. By way of example, an extract from one of the interviews with the village head is included below:

Interviewer: What was your marital status in 1959 when Mabharanga Mupoti and his people arrived in your area?

Interviewee: By the time Mabharanga Mupoti and his people arrived in our area I was married and had two children.

Interviewer: What were the events which led Mupoti and his people to come and temporarily settle in your village on their arrival from chief Chimombe's area?

Interviewee: It is a long story, and initially it involved Chiguya who was our neighbor then. He reached an agreement to offer Mabharanga Mupoti a piece of land to stay with his people. Mupoti was living in a neighbouring chiefdom, Chimombe. When Mupoti arrived, he did not go straight on to the piece of land allocated to him, so with the involvement of the Agriculture Officer (Mudhumeni) called Vandira, discussions were held with my brother Muzira Utete and his selected team of which I was included. We reached an agreement that we could offer Mupoti and his people a temporary place to stay on until the finalization of their new area. We did this because we had vast land under our control, having inherited it from our father. Mupoti and his people did not stay longer in our areas as they moved to their allocated land under village head Chiguya before the end of the year. What that meant is Mupoti was now sharing village boundaries with Utete village. We lived peacefully and Mupoti later died.

Interviewer: How did the current dispute arise since there was peaceful co-existence with the new village head Mupoti?

Interviewee: Events started in a dramatic way and that was in the year 1999. The eldest son to Mabharanga Mupoti, by the name Beria Musimudziwa had taken over as the village head following his father's death. He suddenly made claims that the land between his boundary and ours, belonged to him. However, this was the land which we had offered his father for temporary shelter in 1959. During that year, Beria was still a baby. The land was left fallow and acted as a buffer zone (*muganhu*), but literary the land belonged to Utete. Beria Musimudziwa remained adamant and even went ahead to set up structures on the piece of land. We are really disappointed with what he did, and up to date, efforts are still under way to resolve the impasse. To be precise, Beria has taken the case to the high court and we are waiting for the court's ruling.

RESEARCH FINDINGS

The findings from an analysis of the individual interviews, focus group discussions and observations are as follows:

1. Chiefs do not have documented information relating to the village boundaries of the areas under their jurisdiction. The information which chiefs and headmen have concerning land boundaries emanates from the oral testimonies of those who witnessed the land allocations.
2. Either chiefs have lost the traditional authority and power they used to hold during the pre-colonial period, when the decisions that they made according to facts were final,
or
3. corruption is causing a miscarriage of justice. This is evident from the fact that despite oral testimonies given by witnesses from Utete village suggesting wrongdoing by the invading village head, Musimudziwa, the chiefs concerned are reluctant to institute severe measures against the offender, who is bringing disharmony among community members by generating unwarranted disputes.
4. Wealthy individuals in the community try to use their influence and wealth to violate the rights of fellow community members. Musimudziwa, who is a successful businessman, is trying to deprive Utete of a piece of land that he knows to belong to Utete village.
5. Overcrowding in rural areas is leading to over-cultivation of the land; the action of headman Musimudziwa in invading land that does not belong to him is a sign of desperation.

FOCUSED DEDUCTIONS

Since the case is still pending at the high court, it is interesting to consider what the outcome may be, based on the developments thus far. Three outcomes seem possible:

- i. The high court might rely on verdicts passed by the chief's court in 1999 and upheld by the District Administrator.
- ii. The high court might rely on the verdict passed by the lower court (magistrate's court) in 2007.
- iii. The high court might institute new investigations into the case and make a ruling according to the findings.

CONCLUSIONS

The problem of land disputes in Zimbabwe dates back to the colonial period. The Rudd Concession was signed in 1888, and paved the way to the invasion of the country by the British South Africa Police (BSAP) in 1890. Under the British South Africa Company (BSAC) administration and the responsible government, land segregation and expropriation began. The LAA was promulgated in 1930, followed by the revised Act in 1941. In 1951, the LHA was promulgated, and the LTA was promulgated in 1969. All these pieces of legislation stripped the Africans of their fertile land, and crowded them together in what came to be known as "native reserves". Although there was opposition against the colonial powers in order to get the land back, the land segregation measures created a divide and rule scenario whereby Africans engaged in disputes amongst themselves concerning land. A typical example is the land dispute between the two village heads under discussion in the study reported on in this article. The strategies employed by the colonial powers in conquering Zimbabwe are thus mirrored in the situation experienced by village head Utete, captured in the expression "kindheartedness invites betrayal."

RECOMMENDATIONS

While the dispute should have been dealt with and resolved by the traditional local leadership, the chief and his council of elders, the manner in which the case actually unfolded gives rise to the following recommendations:

- The high court should expedite its verdict on the land dispute so as to set a precedent which may help in the resolution of similar disputes in Zimbabwe.
- The high court should make use of the information which has been gathered since 1999 to help resolve the land dispute.
- The high court should recognise and endorse the role of chiefs in solving land conflicts in communal areas.

- Traditional leaders (chiefs and headmen) should have land maps for the areas under their jurisdiction so as to solve land conflicts on the basis of appropriate evidence, while still taking into account oral evidence or testimonies by those who were witnesses to the events.

REFERENCES

- Bourdillon, M. F. C. 1987. *The Shona Peoples*. Gweru: Mambo Press.
- Bryman, A. 2004. *Social Research Methods*, 2nd ed. Oxford: Oxford University Press.
- Denscombe, M. 1998. *The Good Research Guide: For Small-scale Social Research Projects*. Philadelphia, USA: Open University Press, 113.
- Mazuru, P. (former chief), interview with the researcher, chief's kraal, Dandavare School, Gutu, Zimbabwe, August 2010.
- Moyo, S. 1988. *The Land Question in Zimbabwe*. Harare: SAPES Books.
- Mukandatsama, M. (current chief), interview with the researcher, chief's kraal, Chinanga School, Gutu, Zimbabwe, January 2011.
- Ndlovu-Gatsheni, S. J. 2009. "Mapping Cultural and Colonial Encounters, 1880s–1930s." In *Becoming Zimbabwe: A History from the Pre-colonial Period to 2008*, edited by B. Raftopoulos and A. Mlambo. Harare: Weaver Press.
- Remler, D. K. and G. G. van Ryzin. 2011. *Research Methods in Practice: Strategies for Description and Causation*. Thousand Oaks: Sage.
- Stangor, C. 2011. *Research Methods for the Behavioural Sciences*, 4th ed. Belmont: Wadsworth Cengage Learning.
- Stoneman, C. 1981. "Agriculture." In *Zimbabwe's Inheritance*, edited by C. Stoneman. London: Macmillan.
- Utete, C. (village head), interview with the researcher, Utete village, Gomba School, Gutu, Zimbabwe, August 2010.
- Zimbabwe Government. Customary Law and Local Courts Act: Chapter 15: 282 (section 2).