

TANDA NGULUBE

Versus

ZISCO STELL LIMITED

And

ASSISTANT REGISTRAR OF DEEDS

IN THE HIGH COURT OF ZIMBABWE
CHIWESHE J
BULAWAYO 11 & 20 MARCH 2003

J Nyarota for the applicant
Ms P Dube for the 1st respondent

Urgent Chamber Application

CHIWESHE J: The applicant is an employee of the first respondent.

Sometime in the year 2001 the respondent resolved to sell the block of flats occupied by the applicant to its employees. The applicant avers that in pursuance of that objective the first respondent advised its employees to form a co-operative in order that they pull their resources together to raise the purchase price. Thus the Millenium Co-operative Society was formed. The applicant made contributions to that society.

In April 2002 the applicant was dismissed from work in a case involving theft. The applicant is challenging that decision in the Labour Relations Tribunal. At the same time the 1st respondent has sought to evict the applicant from the flat. That matter too is pending before the Magistrates' Court at Kwekwe.

The applicant has information to the effect that the 1st respondent has sold the flat to a third party, one Linda. He fears transfer of the relevant section of the flat may go through any time. Further the Millenium Co-operative Society has barred applicant from making further contributions and indicated its intention to terminate

his membership of that society.

The applicant has reason to believe that transfer of the property may be imminent and that he stands to be prejudiced if the property were transferred to a third party before his employment status is determined by the Labour Relations Tribunal. He avers that first respondent has in the past transferred properties to third parties under similar circumstances to the prejudice of its employees.

It is on that basis that the applicant seeks a provisional order interdicting the first respondent from selling and transferring to a third party flat number 24, Globe Court, Kwekwe and further interdicting the second respondent from registering any transfer in respect of the said flat.

The first respondent have opposed the application on the grounds *inter alia* that the applicant has not established a *prima facie* right that he is entitled to the interim relief sought. I agree with the submissions made by the first respondent. Firstly the applicant has not furnished this court with a written offer to sell to him the flat in question nor has he furnished the court with his written acceptance thereof. It is unlikely that a transaction of this nature would have been made the subject of a verbal offer and acceptance. Secondly there is no agreement of sale concluded by the parties in respect of the property in question. It is only on the basis of such an agreement that the applicant may seek relief in the manner he does. In its absence the applicant has no leg to stand on.

The applicant implies the offer was made to the Millenium Co-operative Society. Again there is no written evidence of this. The question of whether the applicant has lost his employment has no bearing on the present application. Employee or not, the fact remains that the applicant has failed to establish the

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existence of any contractual obligation on the part of the first respondent.

Further it appears to me that the applicant has not been candid with his legal practitioner. The first respondent produced a standard offer form used for purposes such as the present. The legal practitioner was seeing it for the first time. Secondly the Millenium Co-operative Society wrote a letter to the applicant advising him of its intention to terminate his membership. That letter was produced by the first respondent. Again it had not been brought to the attention of the applicant's legal practitioner.

An application such as the present must not be made in the absence of a demonstrable *prima facie* case. It is the duty of the legal practitioner to diligently inquire into the merits of the case and advise his client accordingly.

It was for these reasons that I dismissed the application with costs.

Messrs Ben Baron & Partners applicant's legal practitioners
Messrs Coghlan & Welsh 1st respondent's legal practitioner