

Z AND N ENTERPRISES P/L
versus
PLUMTREE TOWN COUNCIL

HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 13 JULY AND 8 OCTOBER 2015

Opposed matter

H. Shenje for applicant
M Petkar for respondent

MOYO J: This is an application for review wherein the applicant seeks a review of the decision of the respondent to the effect that he pays a sum of \$6804-00 to enable the respondent to finalise the issue of the consolidation of title on his two properties namely stands 29 and 30 Plumtree and then transfer title to applicant.

The applicant allegedly acquired the relevant stands in 1999. Applicant alleges that after purchasing the two stands he then noted that there was an encroachment by the owner of an adjacent stand, namely stand number 226 into a portion of stand number 30.

The nature of the encroachment was such as to require regularisation of the site plans by the respondent as the responsible authority.

Applicant sought through a letter to have a process of simultaneous subdivision and consolidation of the affected properties to enable an amendment of the records kept at the surveyor general's office as well as the Deeds Registry.

Respondent, according to applicant did not action this request until February 2013 when applicant was told to pay a sum of \$6804-00 to enable the respondent to facilitate the issuance of title deeds.

Applicant seeks a review of that decision in fact it seeks the following relief in terms of the draft order:

- 1) That the respondent's decision to insist on an advance fee for the facilitation of title deeds be and is hereby set aside.

- 2) That to the extent noted above the respondent be and is hereby ordered to do all such things necessary to effect transfer of the said stand numbers.
- 3) That respondent pays costs of suit at an attorney and client scale.”

The premise for seeking such a relief from the applicant’s founding affidavit seems to be stemming from the mere fact that there were delays in the administrative groundwork to facilitate the transfers. It would appear applicant’s view seems to be that the delays should be found to be unreasonable so as to exonerate him from paying the requisite fees.

Respondent on the other hand has strenuously opposed the application and avers in its opposing affidavit that respondent does not carry out regularization of site plans, as that is the mandate of the provincial planning office, being the Department of Physical Planning within the Ministry of Local Government and National Housing.

The respondent further avers that the amount of \$6804-00 that applicant has to pay is the land sale and that whether there had been delays or not he would have to pay for the land.

Respondent further avers that in fact applicant could have even made the payment earlier if he had sought a lease with the Ministry of Local Government at the relevant time.

Respondent further avers that in fact the \$6804 is actually 50% off what the applicant could have paid as the land is now developed and that respondent charges 50% of the total value or cost of developed land as opposed to undeveloped land for which it would be expected to pay 100%.

Respondent avers that while the issue of regularization did take long to be finalized, it does not however, exonerate applicant from paying for the land.

Applicant in his answering affidavit states thus: at paragraph 4.1

“---- The first and most important thing being that I should have settled the amount now being requested long back, about 13 years ago, to be precise. Times have changed, and likewise my economic fortunes and circumstances have also changed.”

In paragraph 4.3 of the answering affidavit applicant avers the following:

“Whilst it may be the case, as the respondent argues, that the amount I am being asked to pay is for value of the land, with greatest respect, I fail to see where exactly it will take the respondent’s argument. The respondent accepts that there were delays. All I am saying is that but for the delays the value of the land should have been settled a decade ago. ----“

In my view the first question to determine in this matter is whether there were delays in taking a decision by the relevant authorities in this matter.

My finding on this point would be that definitely there is a delay of about 14 years from 1999 to 2013.

The next question is whether respondent is responsible for the delay. My finding on this issue is that respondent has sufficiently explained in its opposing affidavit that the decision on the consolidation of applicant's stands was being championed by the Department of Physical Planning in Gwanda which is the department responsible for such issues. While applicant has stated that he believes, respondent is the responsible authority and that respondent did not deny to him that they are responsible, respondent has emphatically denied responsibility in its pleadings and explained that in fact the situation was beyond their control since the Department of Physical Planning in Gwanda is responsible for such issues.

Applicant, has not proffered any evidence other than his beliefs based on his own correspondence to the respondent that in fact respondent is responsible. I find no evidence in applicant's papers sustaining this averment. In response to the denial of responsibility by respondent applicant has this to say in its answering affidavit:

“Whether or not it is the sole responsibility of the respondent, or the ministry, is of no material consequence. If the respondent had knowledge that it was not burdened with responsibility then they should not have waited for my application ----.

Secondly, when a recommendation was made, creating the impression that it was within councils' domain to regularize issues, council did absolutely nothing to shake off that impression, up until the time of my application.”

I do not know who made the recommendation that created an impression that respondent was responsible and I do not know on what platform council should have shaken off the impression. I also do not understand how shaking the impression or not is relevant to the issue of responsibility as it should be determined by this court. For I do not understand if applicant seeks to establish liability of the respondent on an issue where no legal liability would normally follow simply on the basis of an unshaken impression? Which impression this court does not even appreciate how, where and when it was created and on what platform? I say so for the correspondence attached by the applicant to his papers, that is, letters from respondent's officials do not in my view seem to create any impression that they are responsible. Of course the

respondent has admitted that the stands are within its jurisdiction and are therefore being administered by them save for the consolidation of stands as this is the area of the Department of Physical Planning and the Surveyor General's office. They have also stated that they forwarded all the relevant papers to that department and awaited on outcome which delayed. I accordingly find that respondent is not responsible for the delay.

Even if I could have found otherwise applicant would still have serious problems in my view. Applicant in its papers has not shown the court if he has suffered any patrimonial loss as a result of the delay and as such he rightly has not pursued any claim for damages occasioned by the delays as against the respondent. Applicant says in paragraph 13 of its founding affidavit that:

“---- By this ineptness, the applicant is now being made to incur an expense it should have paid long back.”

This paragraph does not demonstrate how applicant in paying now for something he should have paid for a long time ago, then suffers a loss.

Applicant has come to court in a bid to assert certain rights which he believes he has and he has a duty to show to the court, what he has suffered and the relief he is entitled to and on what basis. A justification of the claim by applicant should be part of its papers which I fail to find or if it is there, to comprehend.

Even if this court had found that there having been undue delays respondent is the party responsible for them and that a remedy should be available to the applicant, applicant would still encounter the following problems:

Firstly, applicant gives his cause of action as gross unreasonableness in that respondent's delay to finalizing applicants' case is inordinate and therefore grossly unreasonable. I have the following problems with the very basis of the application as enunciated above. A decision can be made after an inordinate delay yes, but does the delay then render the decision, grossly unreasonable? In my view a party may take on an administrative body that is delaying to make a decision to court in a bid to compel the administrative authority to act within a reasonable time.

Profesor G. Feltoe in his *Guide to the Zimbabwe Administrative Law* 3rd Edition 1998, at page 48 states that an unreasonable delay in making a decision does entitle a litigant who is aggrieved by the failure of an administrative authority to make a decision within a reasonable

period to seek relief at the High Court which has the power to direct the administrative authority to arrive at a decision within a specific period.

I have diligently sought for administrative law texts and case authorities which are precedent for that if an administrative authority delays in taking any administrative decision to a person's disadvantage, then that person can, after leaving the situation like that for 14 years, then seek to refuse meeting his obligations when the administrative decision is subsequently taken and then point at the delay as his reason for refusal to pay. I have sought high and low for such authorities and I have not found any, neither has applicant itself provided even a single such authority in its heads of argument. In fact applicant's heads of argument are very scant on the law.

The applicant, in my view should not have sat back for 14 years without seeking to enforce the relevant authority to act only to refuse to meet his expected obligations when the authorities have subsequently acted. I say so, for applicant has not even shown in his papers, any patrimonial loss as a result of the delay, neither is he even trying to claim any damages occasioned by the delay if any. All applicant avers that he no longer wants to pay for respondent took too long to consolidate the stands, which he admittedly has not yet paid for. I am not aware of a relief in administrative law whose basis is that if there is delay then a person must then get a service or even land title as it is in this case, for free.

Although applicant's claim is based on gross unreasonableness of the decision made by respondent, applicant has not shown how the decision to pay for land which he should at law pay for is grossly unreasonable in the circumstances. The onus for proving gross unreasonableness of the decision lies solely with the applicant. He has failed to do so in my view. Refer to this case of *Delta Consolidated Pvt Ltd and Others* 1991 (2) ZLR 234 (SC).

The remedy that applicant seeks that he be absolved from paying for a stand for the simple reason that there have been delays in effecting their consolidation in terms of his application has not been shown to me to have any legal basis. Neither has applicant shown though his heads of argument that indeed there is such an administrative or delictual remedy in our law. I accordingly find that this application is misplaced, was not well thought out and is in fact an abuse of court process. It is for this reason that I will dismiss it with punitive costs.

I accordingly order as follows:

The application is dismissed with costs at an attorney and client scale.

Shenje and Company, applicant's legal practitioners

James, Moyo-Majwabu and Nyoni, respondent's legal practitioners