

STEVEN ARTHUR DARE

Versus

ARTHUR DARE

And

CHERYL DARE

And

BOOKSET (PVT) LTD

And

THE REGISTRAR OF DEEDS N.O

IN THE HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 1 APRIL AND 14 APRIL 2022

Urgent Chamber Application

Mrs V. Chikomo, for the applicant
Advocate G Nyoni, for the 1st respondent
No appearance for the 2nd, 3rd and 4th respondents

MOYO J: This is an urgent application wherein the applicant seeks the following interim relief:-

“Pending the confirmation of the provisional order, the applicant, be and is hereby granted the following interim relief:-

- 1) Pending the finalisation of HC 235/22, 1st, 2nd and 3rd respondents be and are hereby barred and interdicted from selling and transferring No. 45 Southway Road Burnside, Bulawayo.
- 2) In the event that 1st and 2nd respondents have sold the immovable property, 4th respondent be and is hereby interdicted from effecting transfer of the immovable property to any third party pending the finalisation of HC 235/22.
- 3) 4th respondent places a caveat over the title deed of the property known as 45 Southway Road, Burnside, Bulawayo registered in the names of the 3rd respondent at the cost of 1st and 2nd respondents.”

The background to this matter is that applicant and 1st respondent are related in that applicant is 1st respondent’s son. 1st respondent is also married to 2nd respondent who is

applicant's step mother. 3rd respondent is a legal entity wherein applicant, 1st and 2nd respondents are shareholders. Applicant lays claim to an immovable property known as 45 Southway Burnside. He avers that he purchased the property personally from his own funds but got it registered in the name of 3rd respondent. 1st and 2nd respondents have since made a resolution to sell the property and from the notice of opposition the property has already been sold to a 3rd party.

The chronology of events as shown by the annexures to the founding affidavit is that:-

1) On the 4th of January 2022 the 1st respondent sent an email to applicant advising applicant that 3rd respondent will be selling 45 Southway Burnside and that an offer has been made for USD 180 000-00. He was being offered the right of first refusal as a shareholder. Another email was sent again by the 1st respondent to applicant on 5 January 2022 wherein applicant was advised that if he does not take the offer, 1st respondent would be signing an Agreement of Sale and receiving a deposit by the end of the week.

On 5 January 2022 applicant wrote to 1st respondent and advised him that he had instructed a solicitor to object to the sale of any asset and to apply for a court order. He further requested for information regarding interested buyers as his solicitor had requested for such information. Applicant later issued summons on 10 February 2022.

Whether this matter is urgent

Applicant's counsel argued that despite the chain of events from 5 January 2022 right up to 9 March 2022 the date of issue of this urgent application, this court should consider that these people are family and that there were various negotiations and discussions prior to the final step of taking the matter to court.

This however, is not consistent with applicant's email of 5 January 2022 where he advised 1st respondent that he had already instructed a solicitor to object to the sale and apply for a court order.

Respondent's counsel submitted that the matter is not urgent as the cause of action arose in January 2022 about 3 months ago. He further submitted that applicant could not wait for discussions when there had been no undertaking that the threat to sell the property would not be carried out. Clearly, the need to act arose on 5 January 2022, even from applicant's

own perception of the issues as shown in his email dated 5 January 2022, addressed to 1st respondent, he saw the need to object to the sale and seek a court order as at that date. In fact the email does not even state that he intends to instruct a solicitor but it states that one has already been engaged and that his instructions were to object to the sale and apply for a court order. Applicant, per his own correspondence saw the need to act as at January 2022. He nevertheless did not act until in March. Even if one would accept for a moment, the applicant's counsel's argument that as family they decided to discuss the matter, however, on 10 February 2022, when they issued summons against the respondents, applicant had since realised that the discussions were not yielding anything positive hence the need to commence litigation. At that juncture again, applicant had a second chance to commence this application to protect the outcome of HC 235/22 which he had already filed. Applicant however sat back again for a month between the date of issue of summons and the filing of this application on the 9th of March 2022 which was exactly a month from the time the summons had been issued. The urgency envisaged by the rules does not allow for unnecessary delays in taking action. An urgent matter cannot wait, it cannot wait for discussions without any guarantees. The moment the threat to dispose of the property was communicated to applicant on 4 January 2022, the need to act arose, as an urgent matter cannot wait. Applicant cannot approach the court on 9 March 2022 to seek an interdict against an action that was communicated to him in January 2022 yet at no time did 1st respondent tell applicant that he was no longer proceeding with the sale. Applicant failed to even act at a later stage when he issued summons against the respondents because at that stage surely it had dawned on him that the discussions were not fruitful hence the need to commence litigation. He would have been expected to file an urgent chamber application, within a week after the issue of summons.

It is my considered view that applicant has failed to satisfy the requirements for urgency in that he neglected to act when the need to do so arose. He left the matter too long without taking recourse. The matter is certainly no longer urgent in the circumstances. Refer to the case of *Kuvarega v Registrar General & Another* 1998 (1) ZLR 188 (H). It is for these reasons that I find that this matter is not urgent.

The application is accordingly struck off the roll with costs.

V. Chikomo Law Chambers, applicant's legal practitioners

Cheda & Cheda, 1st to 3rd respondents' legal practitioners