

MANNOCK TECHNICAL SERVICES (PVT) LTD
versus
BISHOP ABEL TENDEKAI MUZOREWA
and
TANYARADZWA WESLEY MUZOREWA

HIGH COURT OF ZIMBABWE
HUNGWE J
HARARE, 26 September 2001

Opposed Application

W Manase, for the applicant
JM Mafusire, for the respondents

HUNGWE J: The background to this application, according to the applicant's papers, is that the first respondent was selling a farm, No. 81 Borrowdale Brook Township, Borrowdale, Harare, for ZW\$23 million through the agency of ERS Real Estate. The applicant avers that it negotiated the price down to \$10 million with the first respondent who was later in those negotiations represented by his late son, Philemon. The agreement for sale was verbal.

Following that agreement, the applicant claims that it proceeded to seek from, and was granted subdivision permit by, the city of Harare. Having subdivided the farm into residential stands it proceeded to sell the stands to individual home seekers

The applicant claims that it made several payments towards the purchase price; initially to the first respondent, then to his legal practitioners and, subsequently, to his late son.

According to the applicant, matter came to a head after the second respondent sought to increase the purchase price following the death of his brother, Philemon Muzorewa.

Specifically, on 30 September 1999 the second respondent stopped all developments, then being undertaken by GDC Construction (Pvt) Ltd and other individual purchasers.

On the other hand, the respondents strenuously contradict this version of events, pointing out to and relying on a written agreement in which the price of \$23 million is agreed as well as

several other documents from which it can safely be concluded that the price acceptable to the respondents may not have been \$10million at the time the verbal agreement was allegedly entered into. It is the respondents' position that after the applicants failed to fulfill the terms and conditions of the agreement dated 5 February 1998, that agreement was cancelled. There was no other agreement in respect of this property whatsoever, written or verbal, although negotiations confirmed during which time certain developments were effected on the property.

According to the respondents, when it became clear that the applicant was not keen on fulfilling certain terms and in order to arrive at finality in the discussions about the sale of this property, it was decided to stop whatsoever developments on the property were taking place.

It is that step by the respondents which precipitated this application on an urgent basis. On 9 November 1999 the applicant obtained a Provisional order against the respondents in the following terms:

1. TERMS OF THE FINAL ORDER SOUGHT

"The Respondents should show cause why a final order in the following terms should not be made in the following terms:

- (a) That the 1st and the 2nd respondent and their agents be and are hereby interdicted from harassing, intimidating and/or stopping purchasers of stands at Stand 81 Bprowdale Brook, Borrowdale, Harare, from entering the site and developing their properties.
- (b) The 1st and 2nd respondents and their agents be and are hereby interdicted from barricading, blocking and/or making it impossible or otherwise obstructing motor vehicles, persons and any other chattels from entering Stand 81 Borrowdale Brooke, Borrowdale, Harare.
- (c) That the civil engineers, GDC Construction (Private) Limited, the purchasers of stands and their workers or agents at 81 Borrowdale Brooke, Borrowdale, Harare, be and are hereby granted unhindered access to Stand 81 Borrowdale Brooke, Borrowdale, Harare to carry out developmental work as they had been doing prior to the actions of the respondents.

2. INTERIM RELIEF SOUGHT

Pending determination of this matter the applicant is granted the following relief:

- (a) That 1st and 2nd Respondents and their agents be and are hereby interdicted from harassing, intimidating and/or stopping purchasers of stands at Stand 81 Borrowdale Brooke, Borrowdale, Harare from entering the site and developing their properties.

- (b) That the 1st and 2nd respondents and their agents be and are hereby interdicted from barricading, blocking and/or making it impossible or otherwise obstructing motor vehicles, persons and any other chattels from entering Stand 81 Borrowdale Brooke, Borrowdale, Harare.
- (c) That the civil engineers, GDC Construction (Private) Limited, the purchasers of stands and their workers or agents at 81 Borrowdale Brooke, Borrowdale, Harare, be and are hereby granted unhindered access to Stand 81 Borrowdale Brooke, Borrowdale, Harare to carry out developmental work as they had been doing prior to the actions of the respondents.”

The applicant now seeks a confirmation of that Provisional Order couched in the same terms. The respondents oppose the confirmation of the Provisional Order. From the applicant's papers, it is clear that the applicant seeks a final interdict. In order to succeed in obtaining a final interdict, an applicant must establish:-

- (a) a clear right;
- (b) an injury actually committed or reasonably apprehended; and
- (c) absence of similar protection by any other remedy.

Setlogelo v Setlogelo 1914 A.D. 221 @ 227

Admark (Recruitment) (Pty) Ltd v Botes 1981(1) S.A. 860@ 861

Knox'Arcy Ltd & Others v Jamieson & others 1995 (2) S.A 700

The right that forms the subject matter of a claim for an interdict must be a legal right. See *Lipschitz v Watrus* N.O. 1980 (1) S.A 662 @ 673D. Where, as here, that right depends for its existence on certain facts, such as contract, or ownership of property, then the applicant must allege those facts that, according to substantive law, will justify the conclusion that he has a legally enforceable right.

Applicant's rights in this case derive from an alleged verbal contract. The existence of that verbal contract is disputed by the first respondent i.e. the other party to the alleged contract.

Besides the bold allegation that the negotiation resulted in the first respondent, through the agency of his son Philemon, agreeing to a reduced purchase price of \$10 million, there is no averment as to the other details from which it could be reasonably concluded that such a contract indeed was concluded and became binding.

There is the admission by the applicant that of purchase price of \$10 million, only \$8 426 293-10 was paid. It is not clear at what point in time before the payment of the full purchase price the applicant would have been entitled to take occupation. It is not clear whether a portion of the various payments allegedly made constituted deposit or not.

There is just no sufficient material from which a meeting of the minds could reasonably be inferred. Nor can it be said that indeed on the happening of this or that event the applicant, as purchaser, acquired the right to take vacant possession or to deal with the property as owner.

Clearly, the applicant ought to establish these facts in order to move the court to find that it has established a clear right. The matter does not end there.

In deciding to institute these proceedings, the applicant failed to properly set out the basis upon which to found its case.

The applicant seeks an order that:

“The first and the second respondents and their agents be and are hereby interdicted from harassing, intimidating and or stopping purchases of stands at 81 Borrowdale Brook, Borrowdale, Harare from entering the site and developing their properties.”

The first and the second respondent and their agents be and are hereby interdicted from barricading or blocking motor vehicles, persons and any other chattels entering 81 Borrowdale Brooke, Borrowdale, Harare.”

The reference to “their properties” in para 1 seems to justify a right of ownership in the individual purchasers of the subdivisions to the stand. There is no evidence that these purchasers hold title to, or that they enjoy the right of ownership.

More importantly there is no averment, nor do the papers show, that these purchasers duly authorised the applicant to institute these proceedings.

In short the applicant has not established, on the papers, in what capacity it is bringing this application for the benefit of these purchasers. It is not established that they are his agents or that they are claiming some right through the applicant.

A further consideration is that according to para 2 of the order, the relief sought would clearly be for the benefit of the public at large as applicant seeks to have the respondents interdicted from blocking or barricading motor vehicles persons and any other chattels entering the property. Stand 81 Borrowdale Brooke, Borrowdale is private property. There is no

suggestion that it is a public place to which the respondents should accord the public unrestricted access.

In any event, as pointed at above, the applicant has no *locus standi* to bring an application on behalf of “persons” generally.

In the result therefore, the applicant has not shown that it has a clear right. It will not be necessary to consider whether the other requirements for the grant an interdict have been met.

The provisional order is therefore discharged.

Manase & Manase, applicants legal practitioners
Scanlen & Holderness, 1st & 2nd respondents legal practitioners