

CHITUNGWIZA MUNICIPALITY
versus
UNITED WE STAND CO-OPERATIVE
and
FREDRICK MABAMBA N.O

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 31 DECEMBER 2013

Urgent Chamber Application

R. Matsikidze, for the applicant
T.E. Mudambanuki, for the 1st and 2nd respondents

Although this application could have been more elegantly drafted, it simply amounts to this: The applicant is the local authority responsible for the allocation of land, approval of any land development, provision of services and the collection of revenue in the Chitungwiza Municipal area.

The first respondent is one of a number of land development co-operatives operating in Chitungwiza and when everything is being done in accordance with the law, it would be allocated land by the applicant which it would parcel out to its members for construction of houses.

The applicant complains bitterly that the first respondent, which is headed by the second respondent, has now clothed itself with municipal authority to allocate land to its members without its approval, to sell stands to individuals for a price and to collect revenue. It also approves building plans. In short, the first respondent has usurped the function of the applicant it having constituted itself as a parallel municipal structure.

It would appear that there is method in all this because according to a report prepared for the Deputy Minister of Local Government, Public Works and National Housing dated 18 October 2013;

“Land Authorities which are running a parallel council have emerged and these have their own Architects, Town Planners, Building Inspectors, Civil Engineers and Housing Officers. They design their own layouts, survey the stands, draw their own building plans, approve and stamp them and undertake building inspections all for a

fee as if they are a fully-fledged Urban Local Authority within another Local Authority”.

The applicant seeks a provisional order interdicting the respondents from engaging in these activities which have resulted in illegal structures mushrooming within its municipal area, lawlessness and unmitigated chaos.

Mr *Mudambanuki* for the respondents has taken two points *in limine* namely that the matter is not urgent because the *status quo ante* obtaining at the moment has subsisted since 22 November 2011 when a full council of the applicant resolved to regularise the subdivisions and land development undertaken by the respondents. He made reference to the minutes of that date where under recommendations it is stated:-

“Item 4.1. That all subdivisions/developments done by Mr Mabamba be regularised and the Director of Urban Planning services submits reports to the committee for noting”.

It appears common cause that at that time the respondents had undertaken subdivisions and land development projects on Municipal land without approval. It is for that reason that it became necessary for council to regularise such project, that is, to clothe it with legality in retrospect.

The respondents are missing the point in that what the applicant complains of is continued violation of urban planning laws by the respondents who have allegedly continued subdividing land and issuing land development permits as if they have municipal authority. This, the applicant states, has continued even after ministerial intervention and even after the respondents were advised to desist from that activity. Therein lies the urgency of the matter. I am therefore persuaded that the matter is indeed urgent and should be allowed to jump the queue.

The second point *in limine* taken by Mr *Mudambanuki* is that the respondents are not guilty of any wrongful conduct they having done nothing on the site since the regularisation in 2011. This argument is not borne by the evidence that has been placed before me. Paragraph 11 of the opposing affidavit of the second respondent, suggests that a lot of activity has been taking place on the sites. This had to be stopped temporarily to allow the ministerial audit to be conducted. He says:-

“The absence of any activities at the sites concerned was because of the audit which was taking place”.

To me this confirms the applicant's claim that allocations of land have resumed. In fact Mr *Mudamanuki* appears to concede, albeit with tongue in cheek, that pegging and layouts are happening.

The question which arises is; in terms of what lawful authority are the respondents carrying out these activities? More importantly, one is left to wonder how this has been left unchecked for such a long time. The applicant states that following engagements with the respondents which also involved Deputy Ministers, the activities were halted. But this turned out to be a pyrrhic victory because the respondents resumed their activities on 5 December 2013 and have refused to stop, forcing the applicant to make this application.

This country is a constitutional democracy which prides itself with its adherence to the rule of law. Lawlessness of any kind will not be tolerated. Illegal land mongers and barons cannot be allowed to take root in our midst and delegate to themselves the responsibility to municipal authorities, including the collection of revenue and the selling of municipal land leading to a proliferation of illegal structures. Such conduct should be firmly and decisively suppressed in the interest of good order.

Throughout the second respondent's opposing affidavit there is nowhere whatsoever where he even begins to explain the legal basis upon which they are entitled to allocate land in a municipal area. He however found time to confirm that their previous similar conduct had to be regularised *post facto* because it was irregular and also to dispute that the respondents have collected revenue. He also had time to accuse the applicant of;

“Sheer jealousy that another black Zimbabwean is making it in the area of land development (and) should not be used by some elements in the applicant's camp to elicit the help of the court”.

The applicant seeks to interdict the respondents from usurping its authority and parcelling out municipal land. It is the authority charged with that responsibility and therefore possesses a clear right. If the respondents are allocating land without council approval, a point not disputed in opposing papers, that is an infringement of the applicant's right.

In my view, there can be no other remedy available to the applicant except an interdict. I agree with Mr *Matsikidze* for the applicant that the respondents cannot be allowed to infringe the law and then come back later to pressure council to regularise what they deliberately do irregularly because that, in essence, is what Mr *Mudambanuki* is suggesting when he says the applicant can sue for damages. He also submitted that regularisation can be done later as it has happened before.

Indeed, the balance of convenience favours the grant of an interdict at this stage in order to restore sanity. The respondent may well make a case for the discharge of that order at a later stage but on the papers before me I am satisfied that a good case has been made for the relief sought.

Accordingly, I grant the provisional order in terms of the draft as amended, the interim relief of which reads:-

“Pending the determination of this matter the applicant is granted the following relief;

- (a) The first and second respondents be and are hereby interdicted from allocating land, approving plans, inspecting buildings, collecting revenue from Chitungwiza/Seke residents”.

Matsikidze and Mucheche, applicant’s legal practitioners
Mudambanuki & Associates, 1st & 2nd respondents’ legal practitioners