NYIKAVANHU HOUSING CO-OPERATIVE
versus
MINISTER OF LOCAL GOVERNMENT, RURAL &
URBAN DEVELOPMENT
and
THE DIRECTOR OF WORKS

HIGH COURT OF ZIMBABWE
MATANDA-MOYO J
HARARE, 23 September, 7 and 17 October, 2013

M. Hungwe, for the applicant
R.M. Bhasera, for the respondent

Civil Application

MATANDA-MOYO J: Applicant seeks the following order from this court;

"(1) That first respondent shall approve the layout plan for applicant within ten (10) days of service of this order, failure of which the Sheriff for Zimbabwe shall sign the layout plan in approval for subdivision E of Arlington Estate, Harare

(2) 1ST respondent shall pay the costs of this application if he opposes same.

(3) 2nd respondent, the administrative authority for the municipal area of Harare, shall be bound by the provisions of this court order.

ALTERNATIVELY

(4) 1ST respondent shall allocate applicant, Co-operative Society, another piece of land similar to the remainder of subdivision E of Arlington Estate measuring 530,25 hectares, both in distance from Central Business District and same value of location.

(5) if first respondent fails to comply with paragraph 4 above, the first order prayed for in paragraphs 1 to 3 shall become effective and operative."

The brief facts are that applicant is a housing co-operative duly registered under s 17 of the Co-operative Societies Act [*Cap 24:05*]. Such co-operative was registered on 26 January

2011. On 15 January 2006 applicant was allocated certain piece of land, namely, subdivision E of Arlington Estate, measuring 530,25 hectares. Applicant produced layout plans for a housing project and submitted the plans to first respondent's department of Physical Planning for approval. The Department of Physical Planning refused to approve the layout plans because applicant did not have a valid offer letter for that piece of land. Applicant failed to produce documentation to the effect that it is the lawful owner of that piece of land.

For applicant to succeed in its claim it has to show that it is the lawful owner of the piece of land. Applicant has to provide proof of such entitlement. Applicant has annexed to its application a letter dated 15 January 2006 titled "OFFER TO DEVELOP THE REMAINDER OF SUBDIVISION E OF ARLINGTON ESTATE (530, 25 HECTARES)". In that letter applicant was offered the said piece of land on various conditions. Applicant is silent on whether it satisfied the said conditions in that offer letter.

The land in question was acquired by the State in 2012. When the above offer letter was made to the applicant it was not made by a competent authority. The offer of 15 January 2006 is therefore invalid. Again the offer was made to a non-existent co-operative. From the certificate of registration annexed to applicant's founding affidavit, applicant was registered as a co-operative on 26 January 2011. Applicant was not in existence on 15 January 2006 and had no capacity to accept any piece of land. The purported offer and acceptance of the piece of land can therefore not stand.

I agree with respondent's submission that the offer letter that applicant was given was void and anything flowing from such an offer letter is a nullity see *McFoy* v *United Africa Company (1961*) 3 ALL ER 1169 at 1172 where LORD DENNING said;

> "every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse."

As applicant's claim is based on a nullity, it cannot stand.

Applicant's argument on legitimate expectation cannot succeed as it is trite that the law only protects those expectations which are legitimate. See National Director of Public Prosecutions v Phillips 2002 (4) SA 60 (W).

I will not grant respondent costs as he is responsible also for this confusion.

Accordingly the application fails and is dismissed with no order as to costs.

Hungwe & Partners, applicant's legal practitioners

Civil Division of the Attorney General's Office, respondents' legal practitioners