

CHHAGANBHAI VITHAL RAMA
versus
MINISTER OF LOCAL GOVERNMENT, PUBLIC
WORKS AND NATIONAL HOUSING
and
GLORY BOOST INVESTMENTS

HIGH COURT OF ZIMBABWE
HARARE
MUSHORE J, 30th October 2020

Opposed Motion-Review –Declaratur

T C Tinarwo, for the applicant
B Moyo, for the 1st respondent
T C Masawi, for the 2nd respondent

MUSHORE J: The applicant is suing the respondents for an order declaring the validity of 60 year old leasehold, which he submits was ceded to him on the 10th March 200, after his company United Designs of Zimbabwe successfully bid in a sale of execution of ELAINE (Pvt) Ltd conducted by the Messenger of Court, (Karoi District). The applicant produced a supporting document illustrating the date that the lease to ELAINE (Pvt) (Ltd) (Lease Agreement No. L2089 STAND NO 554 (Old 547) commenced that being the 1st October 1994; and that the 60 year lease was set to expire on the 30th September 2054. Applicant states that he thereafter developed the property, and that having done so, he wrote a letter to the first respondent on the 16th June 2004, requesting a lease with option to purchase, so that at some future stage he would then be able to take title in the property. Applicant submits that the first respondent did not reply to/ or accept that offer. Nevertheless the applicant continued to conduct his activities on the property. Applicant stated that he somewhat surprised to receive a letter from the first respondent, sometime in 2009, in which letter the first respondent communicated to him its intention to cancel the leasehold on the grounds that the applicant had neglected and abandoned the property. Apparently the first respondent had done a site visit and made the observations that nothing was happening on the farm. Applicant wrote back to the applicant on the 30th November

2009 with a list of its developments to illustrate that he had developed the land. In the final paragraph of his letter (which is filed of record) the applicant wrote:-

“We would like to appeal to you to reconsider your decision which would enable us to continue the project”.

In January 2001 (two years later) the applicant wrote to the 1st respondent as a follow up request to its letter of November 2009.

On the 30th August 2016, applicant received another letter from the first respondent, in which letter the 1st respondent informed the applicant that the property was now under the ownership of the 2nd respondent. The applicant was required to vacate the property within 3 months of the 30th August 2016 which would have been by November 2016. A copy of the formal written agreement between the first and second respondent, which was date stamped 6th June 2017 is also in the record.

Applicant has submitted that the Notice of Termination of November 2009 was defective and that the subsequent sale of the lease to the second respondent by the first respondent was and is unlawful. Applicant attributes the defectiveness of the notice and the unlawfulness of the sale agreement to second respondent being due to “underhand dealings” without elaboration as to what he means. In any event it is on the basis of the defectiveness and unlawfulness that the applicant believes entitles him to an order declaring:-

- (a) the lease agreement between himself and the first respondent valid;
- (b) the lease agreement between the first and second respondent terminated; and
- (c) the sale agreement between first and second respondent null and void
- (d) costs on a higher scale.

The application was strenuously opposed. The first respondent averred that its decision to terminate the lease agreement with the applicant was because of the applicant’s neglect and abandonment of the farm which first respondent allegedly observed during a site visit to the farm; which then prompted it to immediately terminating the lease agreement due to applicant’s underutilization of the land. The first respondent denied receiving the letters which the applicant states he wrote to the Ministry. The second respondent averred that the applicant was misleading the court and had not substantiated his allegations with any facts showing that the second

respondent unlawfully entered into an agreement with the first respondent. In fact the first respondent insists that it lawfully purchased the property in a commercial transaction and received no unlawful benefit from the first respondent. The second respondent strenuously denied having received any form of preferential treatment from the first respondent and equally vehemently denied that it had had underhanded dealings with the first respondent. The second respondent also denied that its purchase of the lease agreement was a “sanitisation’ process and 2nd respondent produced its lease agreement with the first respondent which confirms that second respondent is paying rental in the amount of US\$22,000-00 for the immoveable property. The second respondent submitted that it had genuinely purchased the property in question and that it cannot be blamed for lawfully acquiring the farm.

The applicant’s claim to be awarded costs on a higher scale was strenuously challenged. The second respondent took a point *in limine* that the applicant’s claim which arose upon cancellation of the lease agreement, had prescribed.

This court is thus seized with an application to review the validity of the November 2009 termination of the lease agreement between the applicant and the first respondent before it can grant the applicant a *declaratur* based upon the applicant’s purported rights in terms of s 14 of the High Court Act which provides:-

14 High Court may determine future or contingent rights

The High Court may, in its discretion, at the instance of any interested person, inquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon such determination.

However for the court to arrive as a finding in the applicant’s favour, it has to review the decision complained of. That decision was made in 2009. The present application was filed in October 2018. The rules of thie Court demand that a review applicant shall be instituted with a period of eight weeks from which the decision complained of is made.

If the eight weeks is not met, then the party is required to seek the courts indulgence by showing proper cause for the court to review the decision out of time.

ORDER 33

“REVIEWS

256. Review proceedings by notice of motion

Save where any law otherwise provides, any proceedings to bring under review the decision or proceedings of any inferior court or of any tribunal, board or officer performing judicial, quasi-judicial or administrative functions, shall be by way of court application directed and delivered by the party seeking to review such decision or proceedings to the magistrate, presiding officer or chairman of the court, tribunal or board or to the officer, as the case may be, and to all other parties affected.

259. Time within which proceedings to be instituted

Any proceedings by way of review shall be instituted within eight weeks of the termination of the suit, action or proceeding in which the irregularity or illegality complained of is alleged to have occurred

Provided that the court may for good cause shown extend the time.

The present application for this court to review a decision made by the first respondent is out of time by some 9 years. Applicant ought to have asked for the time to be extended by showing proper cause according to the proviso in r 259 *{supra}*.

The applicant has not filed an application for condonation with this court; thus the court is and is thus not able to examine whether there was good cause for the delay in making the present application. The applicant's failure to apply for condonation has deprived the applicant of a right of audience with the court.

Added to this, the applicant has not explained why he did not carry out his intention to appeal against the 1st respondents' decision, in his November 2009 letter to the 1st respondent.

In any event, the applicant's papers are not in order. Rule 257 makes it a requirement that the application be in the form of an application for a review as follows:

257. Contents of notice of motion

The court application shall state shortly and clearly the grounds upon which the applicant seeks to have the proceedings set aside or corrected and the exact relief prayed for.

Such a lack of compliance also removes the applicant's right of audience with the court

Even if audience with the court was possible, the rights which the applicant wants declared in his favour do not exist. Applicant does not deny that he no longer has a lease agreement with the first respondent. Therefore the applicant's claim of rights in terms of section 14 of the High Court are non-existent. The fact of the matter is that it is the second respondent who owns the rights in the property; it being the lawful leaseholder to the immoveable property.

The net effect of the sum of all of the inadequacies of the applicant's case coupled with the applicant's inattentiveness to the rules of court and the lack of substance in his claim lead me to conclude that the court is not in a position to proceed with the matter. Accordingly I granted the following order:

“The application is dismissed with costs.”

Zimudzi and Associates, applicant's legal practitioners
Civil Division of the Attorney General's Office, 1st respondent's legal practitioners
Masawi and Partners, 2nd respondent's legal practitioners