EXQUISITE MARKETING (PRIVATE) LIMITED
versus
GODFREY RUJEKO MATEWA
and
FENCING KING (PRIVATE) LIMITED
and
REGISTRAR OF DEEDS
and
SURVEYOR GENERAL OF ZIMBABWE
and
CHIDO MATEWA
and
LOVEJOY PASIPAMIRE MATEWA
and
MASTER OF HIGH COURT

HIGH COURT OF ZIMBABWE
DEME J
HARARE, 12 January 2023

Opposed Application

Mr T Nyamucherera, for the applicant
Mr J Dondo, for the 5th respondent
1st respondent appearing in person and also appearing for the 2nd respondent
6th respondent appearing in person
No appearance for the 3rd, 4th and 7th respondents

DEME J: On 12 January 2023, I delivered an order in favour of the applicant validating the title deed issued under Deed of Transfer No. 4106/2010. The first and fifth respondents requested for the reasons of the order. Thus, this judgment is an exploration of the reasons for the 12 January order.

By way of background, the applicant approached this court seeking a declaratory order in terms of s 14 of the High Court Act [*Chapter 7:*06]. The applicant also prayed for consequential relief in form of interdict. More particularly, the relief sought by the applicant is expressed in the following manner:

"It is hereby ordered that:

1. The title deed issued under Deed of Transfer No. 4106/2010 be and is hereby declared valid.

2. The Certificate of Beacon Relocation dated the 4th of November 2021 and the survey record 39673 be and are hereby declared valid and the current reflection of beacons for Stand No. 432 Mandara Township of Subdivision A of Lot 2 of Mandara of the Grange.
3. The 1st and 2nd respondents be and are hereby interdicted from interfering with the applicant's operation at Stand No. 432 Mandara Township of Subdivision A of Lot 2 of Mandara of the Grange.
4. The 1st and 2nd respondents shall jointly and severally, the one paying the other to be absolved, pay the costs of this application."

The applicant is a company which is duly registered in terms of the laws of Zimbabwe. The first respondent is the director of the second respondent which is the company duly registered in terms of the laws of Zimbabwe. The third, fourth and seventh respondents are sued in their official capacities. The fifth and sixth respondents are the executrix and executor respectively of the estate of the late Stephen Tapindwa Matewa and the late Judith Matewa the late parents of the first, fifth and the sixth respondents.

According to the applicant, it purchased Stand Number 432 Mandara Township of Subdivision A of Lot 2 of Mandara of the Grange (hereinafter called "the property") from a company called Ace of Trumps Investments (Pvt) Ltd in 2010. The applicant had the property transferred into its name according to the deed of transfer annexed to the founding affidavit. The applicant claimed that it was then approached by the first and second respondents who offered fencing services to the applicant which the applicant accepted and paid for the service in full. The applicant claimed that at this moment the mother of the first respondent (who also happened to be the mother of the fifth and the sixth respondents) was alive at the material time and she witnessed the occasion. According to the applicant, the dispute ensued when the first and second respondents failed to complete the fencing services despite having been paid in full. The applicant asserted that it was consequently forced to engage the other service provider to finish the project of fencing the property.

The applicant alleged that in 2019 the first and second respondents then disputed the applicant's ownership of the property which prompted the applicant to cause a land survey to be done in the presence of the first respondent's siblings, which survey was confirmed by the surveyor-general. The applicant asserted that in 2021 the first respondent gave it a notice to remove the perimeter fence and equipment at the property in question. Applicant's legal practitioner responded by advising the first respondent that there was no basis for the claim. The first respondent and his siblings subsequently reported the applicant at the Highlands police station for illegally acquiring the property in dispute.

The applicant averred that the first, second, fifth and sixth respondents had not been able to produce any proof of ownership whereas the applicant had been able to produce a valid title deed in respect of the disputed property. The applicant alleged that the first, second, fifth and sixth respondents are disturbing its ownership rights and farming operations currently being conducted at the property. The applicant therefore sought an order declaring the title deed issued by the third respondent and the beacons surveyed and registered with the fourth respondent valid. The applicant additionally sought an interdict against the fifth, second, fifth and sixth respondents from interfering with applicant's right to ownership of the property.

The present application was opposed by the first, second, fifth and sixth respondents. The first, fifth and sixth respondents argued that their late father bought Stand 431 Mandara Township together with the property in question under a composite title deed on 6 June 1986. According to the first, fifth and sixth respondents their father never developed the property in dispute because of the landscape but it remained the property of their late father. The first respondent alleged that he discovered that the property in dispute had been transferred to Lovemore Pfupajena Chihota with a title deed in his name. The first respondent also affirmed that the circumstances that led to Mr Chihota's acquisition of the property are not clear as even Mr Chihota could not say how his name came to be on the title deed. The first respondent also alleged that two title deeds to the same property are in existence. According to the first, second, fifth and sixth respondents the applicant had not furnished proof of payment and transfer of the property in question between itself and Ace of Trumps Investments (Pvt) Ltd.

The first respondent asserted that the fence around the property in dispute was put up in 2010 by the second respondent upon the instruction of the fifth respondent after the applicant had been constantly harassing the family claiming to own the property. The first respondent claimed that the agreement to fence the property in dispute was done without his consent and in his absence. The first respondent also denied that the survey of the property that was conducted was done in the presence of his siblings.

The first, fifth and sixth respondents alleged that they had been dispossessed of their property through theft, corruption, threats, intimidation and theft by conversion all perpetuated by the applicant in collusion with the City of Harare officials who sought to illegally split Stands 431 and 432 in favor of the applicant. The first, second, fifth and sixth respondents vehemently maintained that the applicant had failed to produce its title deed and

can therefore not be said to have a valid case before this court. In the premises, the first, second, fifth and sixth respondents prayed for the dismissal of the present application. The first, second, fifth and sixth respondents also maintained that the applicant had not exhausted the remedies available prescribed in terms of s 18(7) of the Land Survey Act [*Chapter 20:*12] (hereinafter called "the Land Survey Act") before approaching this court and therefore insisted that the present application must be dismissed on that basis as well.

The applicant filed the answering affidavit wherein it responded to some of the issues raised by the respondents. The applicant alleged that the composite title deed does not exist. The applicant gave the history of the title to the two properties which are adjacent to each other. It alleged that the property in dispute was formerly under title deed number 2183B/73 dated 30/03/73 issued in favour of the company called Monreith Investment (Private) Limited. According to the applicant, the property was later transferred to Lovemore Pfupajena Chihota on 14 February 1985 under title deed number 753/85. The property was later transferred to Ace of Trumps Investment (Private) Limited in 1989 under title deed number 963/89 before being subsequently transferred to it on 10 September 2010 under title deed number 4106/10.

The applicant additionally affirmed that the property known as number 431 Mandara Township had a separate title deed. Stand 431 originated from title deed number 2183A/73 issued in favour of Monreith Investment (Private) Limited. According to the applicant, this property was subsequently transferred to Stephen Matewa in 1986 well after the property in dispute had been transferred to Lovemore Pfupajena Chihota. According to the applicant a company called Monreith Investment (Private) Limited bought the two properties at the same time in 1973 and paid the total price of $25 000 for the two properties. The applicant, in addition, asserted that the deeds for the two properties have similar purchase price clauses which were captured. According to the applicant, the purchase price clauses recognizing this fact were inserted in the subsequent deeds of the two properties. The applicant also affirmed that the first, second, fifth and sixth respondents failed to produce title to the disputed property. The applicant denied that its agents harassed the first respondent's family at any given time. It also asserted that the first respondent's family willingly agreed to offer services of fencing the property in question through the second respondent and accepted full payment but failed to complete the project.

The sole issue for determination is whether the applicant is entitled to the declaratory order together with consequential relief as prayed for.

The present application is founded upon Section 14 of the High Court Act, [*Chapter 7:06*] which provides as follows:

> "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."

Our jurisprudence has established various principles that define the scope and application of s 14 of the High Court Act [*Chapter 7:*06]. MANZUNZU J, in the case of *Robbert Samaya* v *Commissioner General of Police N.O. & Ors* quoted with approval the case of *Johnson* v *Afc*[1], where GUBBAY CJ commented as follows:

> "The condition precedent to the grant of a declaratory order under s 14 of the High Court of Zimbabwe Act 1981 is that the applicant must be an "interested person", in the sense of having a direct and substantial interest in the subject matter of the suit which could be prejudicially affected by the judgment of the court. The interest must concern an existing, future or contingent right. The court will not decide abstract, academic or hypothetical questions unrelated thereto… At the second stage of the enquiry, the court is obliged to decide whether the case before it is a proper one for the exercise of its discretion under s 14 of the Act. It must take account of all the circumstances of the matter."

In the case of *Family Benefit Society* v *Commissioner for Inland Revenue*[2] the court, in considering the issue of interest, it superlatively stated the following observations:

> "The interest must be a real interest, not merely an abstract of intellectual interest".

Furthermore, in the case of *Family Benefit Friendly Society* v *Commissioner for Inland Revenue, (supra),* the court propounded the following remarks at page 125H-J:-

> "The court will not make a declaration of rights unless there are interested persons upon whom the declaration would be binding. It follows that interested persons against whom or in whose favour the declaration will operate must be identifiable and must have had an opportunity of being heard in the matter. *Ex parte Van Schalkwyk NO and Hay NO* 1952 SA 407 (A) at 411 C & D; Anglo-*Transvaal Collieries Ltd* v *South African Mutual Life Assurance Society* 1977 (3) SA 63 (T) at 636 C-F and see 1977 (3) SA 642 A at 655 D."

In the case of *Adbro Investment Co Ltd* v *Minister of the Interior & Ors*[3] the court stated that the plaintiff must not have a "mere academic interest" in the right or obligation in question but that:-

[1] 1995 (1) ZLR 65 (S) at p 72E.
[2] 1995 (4) SA 120
[3] 1961 (3) SA 283 T at 285D

"… some tangible and justifiable advantage in relation to the applicant's position with reference to an existing {,} future or contingent legal right or obligation must appear to flow from the grant of the declaratory order sought".

The cases of *Family Benefit Friendly Society* v *Commissioner for Inland Revenue, (supra)* and *Adbro Investment Co Ltd* v *Minister of the Interior & Ors* (*supra*) were quoted with approval by the Supreme Court in the case of *Ngulube* v *Zimbabwe Electricity Supply Authority & Anor*[4].

In my view, the applicant has a direct and substantial interest in the present application by virtue of having purchased the property in dispute. The applicant's interest in the property involves the existing right of property rights as enshrined in s 71 of the Constitution of Zimbabwe. In my opinion, the applicant's interest in the property is far from being defined as an academic or abstract interest. Rather, it is a real interest in the property. Thus, the present application passes the test set out for the first inquiry by the Supreme Court in the case of *Johnson* v *AFC* (*supra).*

At the second inquiry, I am enjoined to make a determination of whether this court can exercise its discretion in the subject matter as established by the Supreme Court in the case of *Johnson* v *AFC* (*supra*). The High Court can exercise its discretion in matters involving title to the land. In terms of s 8 of the Deeds Registries Act [Chapter *20:05*], (hereinafter called "the Deeds Registries Act"), this court has power to cancel the title deed to the property. Section 8 of the Deeds Registries Act provides as follows:

"8. Registered deeds not to be cancelled except upon order of court;

(1) Save as is otherwise provided in this Act or in any other enactment, no registered deed of grant, deed of transfer, certificate of title or other deed conferring or conveying title to land, or any real right in land other than a mortgage bond, and no cession of any registered bond not made as security, shall be cancelled by a registrar except upon an order of court.

Upon the cancellation of any deed pursuant to an order of court—

(a) The deed under which the land or any real right in land was held immediately prior to the registration of the deed which was cancelled shall be revived to the extent of such cancellation unless a court orders otherwise; and

(b) The registrar shall make the appropriate endorsement on the relevant deeds and entries in the registers."

It is as plain as the nose on one's face that power to cancel registered title also includes, by implication, power to validate registered title. Reference to the court in s 8 of the

[4] SC52/02.

Deeds Registries Act must be construed to be the High Court in terms of the definition of "Court" in Section 2 of the Deeds Registries Act.

Before my attention was placed no evidence by the first, second, fifth and sixth respondents suggesting that the property in dispute was acquired by Stephen Matewa. The deed of transfer for Stand Number 431 Mandara provides that the purchase price for the Stand Number 431 includes the price for Stand Number 432 which is the property in question. On page 37, it provides as follows:

> "…….the purchase price had been paid, the said price amounting to the sum of twenty-five thousand Dollars ($25 000, 00) which includes the price of stand 432 Mandara Township of Subdivision A of Lot 2 of Mandara of the Grange".

Furthermore, the deed of transfer 753/85 issued in favour of Lovemore Pfupajena also captures the same issue of the purchase price. On page 47 of the record, it states as follows:

> "….the purchase price had been paid, the said price amounting to the sum of twenty-five thousand Dollars ($25 000, 00) which includes the price of Stand 431 Mandara Township of Subdivision A of Lot 2 of Mandara of the Grange".

The property in dispute was transferred to Lovemore Pfupajena Chihota on 14 February 1985 while Stand 431 was transferred to the late Stephen Matewa a year later. Assuming that the version of the contesting respondents is anything to go by, then it means that by 1985, Lovemore Pfupajena Chihota purchased Stand 431 and hence the late father of the first, fifth and sixth respondents could have no claim to Stand 431. The first respondent avoids dealing with this matter directly in his pleadings. The first respondent, in attempt to confuse the court, in his opposing affidavit, asserted that the circumstances under which the property in dispute was transferred to Lovemore Pfupajena Chihota are unclear. The first respondent also asserted that there are two deeds to the same property being Stand 431. Reference is made to para(s) 18 and 18.7 of opposing affidavit filed on behalf of the first and second respondents. The first respondent is employing a selective interpretation of the purchase price clause appearing on two deeds in order to favour his situation. Thus, the first respondent has adopted two inconsistent positions a conduct ordinarily called approbating and reprobating. Having discovered that the property in dispute was transferred under uncertain state of affairs, the first respondent took no meaningful action. This inconsistent demeanour of the first respondent flies against reason and common sense. This can only help to explain that the first respondent is trying his luck.

Furthermore, it is obvious that the title deed issued in favour of the late Stephen Matewa only related to one property namely Stand Number 431 and not Stand Number 432. The appropriate provision of the deed of transfer, on p 36, is as follows:

> "…certain piece of land situate in the District of Salisbury, Rhodesia, called Stand 431 Mandara Township of Subdivision A of Lot 2 of Mandara of the Grange measuring 5,1475 (five comma one four seven five) hectares as will more fully appear from the annexed diagram S.G. No. 7693/56 and the Deed of Transfer, No. 4504/54 with diagram annexed, made in favour of GORDON MURRAY MOIR on the 7th day of December 1954 relating to the whole of subdivision A of Lot 2 of Mandara of the Grange, which property was laid out as Mandara Township………AND SUBJECT FURTHER to the relevant conditions of establishment of MANDARA TOWNSHIP contained in Southern Rhodesia Government Notice No. 159 of 1957."

According to the Southern Rhodesia Government Notice No. 159 of 1957, which is on p 40 of the record, seventeen stands were established ranging from Stand Number 430 to 446. The appropriate provision of the Notice is as follows:

> "The name of the Township shall be Mandara (10). It shall consist of Stand 430 to 446 and streets as shown on General Plan No. C.G.1633 filed in the office of the Surveyor-General."

It is evident from the Southern Rhodesia Government Notice No. 159 of 1957 that the properties from 430 to 446 were to be treated as separate stands. There is no subsequent certificate which consolidated Stand Number 431 and 432 issued by the third respondent. Section 40(1) of the Deeds Registries Act provides for the manner in which pieces of land may be consolidated. It provides as follows:

> "If a diagram has been framed and approved under the provisions of the Land Survey Act [*Chapter 20:12*], and such diagram represents two or more pieces of land which are—
> (a) Contiguous to each other; and
> (b) Owned by one person or by two or more persons in the same undivided shares in each such piece of land; and
> (b) Situate wholly within one of the areas defined in the Schedule;
>
> The title deed or deeds of said pieces of land may, on compliance with the requirements of this section and subject to the provisions of Part VI of the Regional, Town and Country Planning Act [*Chapter 29:12*] be superseded by a certificate of consolidated title issued by the registrar in the prescribed form."

No evidence has been placed by the first, second, fifth and sixth respondents suggesting that the two different but adjacent pieces of land have been consolidated to become one piece of land in terms of Section 40 of the Deeds Registries Act. Monreith Investment (Private) Limited, though it owned these two adjacent properties did not take steps to consolidate title for the two pieces of land. Rather, it kept the two pieces of land as two distinct properties. It subsequently sold the two different properties to two different

purchasers on two different occasions. Its intention, in my view, was never to consolidate the two properties.

The first, fifth and the sixth respondents claimed that the property in dispute falls under the same composite deed of transfer alongside Stand 431. However, no evidence of such composite deed was placed before the court. The Deeds Registries Act, in s 24 sets out the procedure for transferring two or more pieces of land by one deed. The section in its subsection (2) provides as follows:

> "Subject to the provisions of section twenty-one, two or more pieces of land may be transferred by one deed by one person or by two or more persons holding such pieces of land in undivided shares, to one person or two or more persons acquiring such pieces of land in undivided shares, if each piece of land is described in a separate paragraph."

There is no separate paragraph describing the particulars of the property in dispute according to the deed of transfer issued in favour of the late Stephen Matewa. In the circumstances, the deed of transfer in question cannot be described to be the composite deed.

On being asked why their conveyancer did not comply with the provisions of s 24(2) of the Deeds Registries Act, the first respondent maintained that the conveyancer for their late father committed an error by failing to fully describe the disputed property under the same deed of transfer. However, no evidence was made available for the court demonstrating the first respondent's attempt to address this error. This clearly shows that the first, second, fifth and sixth respondents are embarking on an adventurous fishing expedition.

The third respondent in the letter dated 21 July 2022 penned by T. Nyachoto, attached by the applicant to its answering affidavit as he was responding to the opposing affidavit filed by the fifth and sixth respondents, confirmed that:

> "I acknowledge receipt of original client's copy of deed of transfer 4106/2010 dated 10 September 2010 registered in favour of Exquisite Marketing (Private) Limited for verification. I declare that it is a true copy of original for the above property."

The third respondent is the custodian of the title to land in Zimbabwe. In the absence of evidence to the contrary, its records should be sufficient proof of ownership of the piece of land in question. Section 14 of the Deeds Registries Act specifies the legal effect of and the manner in which the registered title to land may be conveyed from one person to another. It provides as follows:

> "Subject to this Act or any other law—
>
> (a) The ownership of land may be conveyed from one person to another only by means of a deed of transfer executed or attested by a registrar;

> (b) Other real rights in land may be conveyed from one person to another only by means of a deed of cession attested by a notary public and registered by the registrar:
>
> Provided that attestation by a notary public shall not be necessary in respect of conveyance of real rights acquired under a mortgage bond."

In casu, there is no other deed of transfer or deed of cession contemplated by s 14 of the Deeds of Registries Act placed before the court as evidence for the first, second, fifth and sixth respondents to substantiate their claim. Such bald and empty assertions make the case of the first, second, fifth and sixth respondents fatally defective. It is unambiguous from the diction of s 14 of the Deeds Registries Act that a deed of transfer executed or attested by the third respondent conveys real rights to the holder of such deed. The Supreme Court extensively discussed the effect of this section in the case of *Takafuma* v *Takafuma*[5], where MCNALLY JA, as he then was, superbly postulated the following remarks:

> "The registration of rights in immovable property in terms of the Deeds Registries Act [*Chapter 139*] (now [*Chapter 20:05*]) is not a mere matter of form. Nor is it simply a device to confound creditors or the tax authorities. It is a matter of substance. It conveys real rights upon those in whose name the property is registered. See the definition of 'real right' in s 2 of the Act. The real right of ownership, or *jus in re propria*, is 'the sum total of all the possible rights in a thing' – see Wille's *Principles of South African Law* 8 ed p 255."

In casu, the deed of transfer for the property in question conveys real rights to the applicant. The case of *Takafuma* v *Takafuma* (*supra)* was quoted with approval by the Supreme Court in the case of *Chapeyama* v *Chapeyama*[6]. In my view, the only dispute between the parties can be best described as the boundary dispute. Title to the property cannot be deemed to be in dispute under such circumstances when it is clear that the first, second, fifth and sixth respondents have failed to proffer any iota of evidence to buttress their assertions. The dispute of title between the parties hereto can be easily resolved by employing elementary conveyancing principles which the first, second, fifth and sixth respondents must appreciate.

It is common cause that the second respondent offered fencing services to the applicant and such services were partly rendered. The first respondent made this fact a common cause in his opposing affidavit in para(s) 19.1 to 19.5. In para 19.2 of the opposing affidavit, which I have randomly picked, the first respondent averred that:

---

[5] 1994 (2) ZLR 103 (S). At 105H-106A
[6] 2000 (2) ZLR 175 (SC).

> "In order to safeguard my mother's health and the safety of the family, Chido Matewa decided that there must be a fence erected to separate the Applicant from Stand 431 Mandara Township where my mother and Chido Matewa were staying. This was a measure to create peace between the Applicant and our family. I was in South Africa and not aware of this."

A conscientious examination of the above paragraph suggests that the first respondent is a dishonest person whose version cannot be believed. Clearly, if there was a threat to peace, the fifth respondent who decided that the disputed property be fenced could have engaged the services of the Police instead of electing to have the disputed property fenced. Fencing does not prevent peace from being disturbed. This averment defies logic and common sense. A person of at least above average intelligence like the fifth respondent could not be expected to behave in the manner as she did assuming that there was imminent and real threat to the family's peace. In my view, para(s) 19.1 up to 19.5 are pure lies meant to mislead the court. This court should treat such averments with a high degree of circumspection.

Furthermore, there is no evidence that the property in dispute was recorded under the estate of the late Stephen Matewa. If such evidence was available, the first, second, fifth and sixth respondents would have made the information available to the court in light of the fact that, at one time, all of them had legal representation.

In addition, assuming that the first, second, fifth and sixth respondents were genuine in their narration of the events, they could have made a counter application for the cancellation of the deed of transfer of the property in dispute. This line of argument was also pursued by the applicant's counsel, Mr *Nyamucherera*. The application for cancellation of title to land is lodged in terms of s 8 of the Deeds Registries Act. On being asked by the court why this avenue was not pursued, the counsel for the fifth respondent, Mr *Dondo*, did not give a satisfactory explanation for the failure to exploit this remedy. This patently demonstrates that the first, second, fifth and sixth respondents had no genuine defence.

Litigants must be reminded that this court is the court of law and can only be guided by law and clearly defined evidentiary guidelines and procedures. Any departure from this would be an assault upon the principles of natural justice. The court cannot act upon the hollow affirmations especially where such affirmations contradict written evidence.

I was hesitant to validate the survey conducted at the disputed property as the Applicant ought to have exhausted available remedies before coming to this court. Section

18(7) of the Land Survey Act provides for arbitration procedures where a boundary dispute has erupted. It provides as follows:

> "If any contiguous owner has failed to sign the agreement and has, within the period mentioned in any such notice as is referred to in subsection (4), lodged with the Surveyour-General an objection to any beacon or boundary adopted in the survey of such piece of land, or to the diagram thereof, the Surveyor-General may, if every person affected by such objection undertakes in writing to accept the award of an arbitrators or arbitrators to be appointed by the Surveyor-General as final and conclusive upon all matters in dispute in connection with such beacon or boundary, and in regard to costs of or incidental to such arbitration, appoint such arbitrator or arbitrators to determine such matters and costs, and his or their award thereon shall thereupon be final and conclusive."

Section 18(4) of the Land Survey Act referred to in Section 18(7) of the Land Survey Act quoted above provides as follows:

> "If any contiguous owner fails to sign the agreement within a period of one month from the date upon which he or his duly authorized agent was called upon to sign the agreement, the owner of such piece of land or his duly authorized agent shall serve upon such contiguous owner or his duly authorized agent a notice in writing, informing him that if he fails, within a further period of one month from the date of service of such notice, to lodge with the Surveyor-General an objection to the boundaries or beacons of such piece of land as set forth in the agreement which he was called upon to sign, he will be deemed to have agreed to such boundaries and beacons:
>
> Provided that—
>
> (i) If such contiguous owner is outside Zimbabwe when so called upon to sign such agreement and when so served with such notice, such period of one month shall each be extended to three months;
>
> (ii) If the address of any such contiguous owner cannot be ascertained by diligent inquiries, the publication of such notice in one issue of statutory instrument and once every week during two consecutive weeks in a newspaper, to be approved of by the Surveyor-General, circulating in the district within which such piece of land is situate shall be deemed to be a service for the purpose of this subsection."

Thus, the applicant has the option to proceed in terms of s 18(4) of the Land Survey Act. The Surveyor-General is the best qualified official to deal with boundary or beacon dispute at first instance. His or her office is able to verify the authenticity of the survey record attached to the present application. For this reason, I saw it prudent to defer the boundary dispute to the fourth respondent. Parties are at liberty to approach the fourth respondent for the finalization of the dispute relating to the boundaries or beacons of the two contiguous properties.

I was also loath to grant the consequential relief for interdict prayed for by the applicant since the parties are not in agreement as to the exact boundary lines of the two

contiguous properties. It is only just and fair that such consequential relief be sought after the boundary or beacon dispute has been finalized.

With respect to costs, it is just that the first, second, fifth and sixth respondents should bear the costs of this application on an ordinary scale. In my view, such costs are reasonably sufficient. However, in future it may be necessary to make an appropriate order of punitive costs given the conduct of the first, second, fifth and sixth respondents for misleading the court with empty affirmations and for wasting the time of the court with frivolous and vexatious defences.

In the circumstances, the reasons aforesaid motivated my decision of 12 January 2023.

Lawman Law Chambers, applicant's legal practitioners
Dondo and Partners, fifth respondent's legal practitioners