

STOODBLAZE ENTERPRISES PVT (LTD)
versus
CITY OF HARARE
and
DIRECTOR HOUSING & COMMUNITY SERVICES
(CITY OF HARARE)

HIGH COURT OF ZIMBABWE
TAGU J
HARARE; 18 January & 8 February 2023

Opposed Application

P Mutetwa, for the applicant
A Moyo, for the respondents

TAGU J: This is an application for a compelling order. The relief sought is couched as follows;

- “1. The 1st Respondent be and is hereby ordered to prepare an agreement of sale for stand number 210 Mt Pleasant encompassing the terms recorded in the offer letter dated 15 December 2016 addressed by the Applicant and signed by the 2nd Respondent.
2. The second Respondent be and is hereby directed to sign the agreement of sale between the Applicant and the 1st respondent as directed paragraph 1 above.
3. The 2nd Respondent processes and signs all such documents as may be necessary to cause transfer of stand 210 Mt Pleasant Hare into the name of the applicant from the name of the 1st respondent.
4. The 1st respondent pays the costs of this application.”

It is common cause that applicant applied to the first respondent for housing development land on 8 February 2016. It is not in dispute that on 15 December 2016, the first respondent proceeded to conditionally allocate the applicant stand 210 Mt Pleasant measuring 15000 square metres that being a sign that the application for land had been successful. Applicant accepted the allocation and proceeded to satisfy the conditions of allocation by paying all the amounts which first respondent demanded had to be paid in terms of the allocation letter. It is further common

cause that despite applicant's discharge of its own obligation, first respondent is now reneging on its obligations to allow applicant to take vacant possession of the property in issue and to effect transfer of title into the applicant's name. According to applicant the facts above and the evidence on record show that an agreement of sale came into existence between the parties, once applicant accepted the offer of allocation of the land (which is the *merx in casu*) and the pretium of USD105 000.00 plus USD15 750.00 VAT, was tendered as payment to the respondents.

In response the respondents raised a point *in limine* that the stand in question Stand 210 Mt Pleasant is also the subject matter of an application filed earlier in this court, which matter has not been disposed of Under case 582/21 the applicants (who are different from the Applicant herein) Seek similar relief against the respondent (which is the 1st Respondent herein). More specifically in that case the applicants seek a compelling order to have the first respondent herein to carry out a valuation of the stands and transfer to their names purported subdivided stands held under Stand 210 Mt Pleasant . Therefore it would be undesirable for this Honourable court to deal with this matter before disposing of HC 587/21 as there might be conflicting judgments over the same property.

On the merits the respondents averred that the said transaction was void ab initio as there was no due process that was followed so as to create the alleged stands. That Stand 210 Mt Pleasant is owned by the City of Harare by virtue of Deed of Transfer 438/58. That the land is designated public open space set aside for a passive recreation purposes according to the Operative City of Harare Arundel Local Development Plan and the land measures 20360 hectares in extent. It said certain procedures were not followed. Accordingly, second respondent acted out of his mandate and went on a frolic of his own when he purportedly allocated and sold the said stand to the applicant. The powers of the second respondent are limited to allocation of residential stands which would have been properly planned by the City Planning Division. It was averred further, that transaction is a sham and a fraud since there is no Council Resolution authorizing the second respondent to dispose of the piece of land to the applicant. Further, in passing the procedure for disposal of Council land in s 152 of the Urban Councils Act was not followed, hence first respondent cannot be held liable neither can it be compelled to transfer land which lawfully belongs to it.

At the hearing of this matter the respondents indicated that they were not pursuing the point *in limine* as the same has been overtaken by events. Mr Moyo for the respondents submitted that the point *in limine* has been overtaken by events to the disadvantage of the applicant. He produced case no. SC 1/23.

Having been asked by the court to comment on the judgment SC 1/23, Mr P Mutetwa submitted that the applicant is not bound by the Supreme Court's findings in SC 1/23 because the applicant was not a party to the proceedings thereof. It was not heard. In the absence of their representation, we believe that they should not be bound by the Supreme Court judgment and this court must consider what is before it.

I had occasion to read case SC 1/23. I gathered that the City of Harare (the present 1st Respondent) was the appellant against Wonder Munzara and three others in the court *a quo*. The respondents (then applicants) in the court *a quo* had obtained the following orders against the City of Harare:

- “1. The respondent is hereby ordered to advise the applicants in writing the actual intrinsic values in respect of Stands Nos. 1051, 1045, 1044 and 1052 Mount Pleasant Township Harare within 7 days of this order.
2. Should the respondent not comply with this order within the period aforementioned, the provisional intrinsic values already paid by the applicants shall be deemed to be the full and final payments in respect of the intrinsic values for the stands.
3. The respondents to pay costs of this application at the rate of attorney and client scale (sic).”

It is not in dispute that the Applicant in the present case claims to have bought stand 210 Mt Pleasant measuring 15 000 square metres. The respondents on the other hand submitted that the alleged stands were subdivisions of Stand 210 Mt Pleasant. In SC 1/23 the stands under review were said to have been subdivisions of Stand 210 Mt Pleasant. The SC in SC1/23 made certain comments which I find to be relevant and binding to the parties in the present case. The Supreme Court at p 11 of the cyclostyled judgment stated:

“The irrefutable evidence placed before the court *a quo* was that the open space which is stand 210 Mount Pleasant was partially subdivided to create only two recognizable stands namely, stands 1043 and 1044 specifically for church use. It was certainly not for residential purposes as claimed by the respondents. More importantly, those two stands were already allocated to two church organizations prior to their purported allocation to the respondents.”

Further, at p 13 the Supreme Court said-

“The question whether or not the appellant’s Town Clerk and Director of Housing and Community Services had authority to allocate the stands to the respondents pales to insignificance regard being had to the non-compliance with both s 49 (2) and (3) and s 39 of the Regional Town and Country Planning Act and s 152 (2) of the Urban Councils Act [*Chapter 29.15*]. Whatever it is that those officials agreed with the respondents was of no legal consequence. It is a nullity and does not bind anyone.”

The above sentiments apply with equal force to the situation in this case. The first respondent’ officials were on a frolic of their own. Whatever they agreed with the applicant is of no legal consequence. It is a nullity and does not bind anyone if regard is had to the fact that ss 49(2) and s 39 of the Regional, Town and Country Planning Act, s 152 (2) of the Urban Councils Act were not complied with.

The application lacks merit and is dismissed.

IT IS ORDERED THAT

1. The application is dismissed.
2. Applicant is ordered to pay costs.

Sibongile Kampira, applicant’s legal practitioners
Gambe Law Group, respondents’ legal practitioners.