(1) NESBERT MUKORA (2) LIANGMIN JIN
v
FISHROD INVESTMENTS (PRIVATE) LIMITED AND 16 OTHERS

SUPREME COURT OF ZIMBABWE
MAVANGIRA JA, UCHENA JA & KUDYA JA
HARARE, 20 MAY 2021

T. Mpofu, for the appellants

T. Zhuwarara, for the respondents

UCHENA JA: This is an appeal against an order handed down by the High Court on 16 June 2020. The first to the fourteenth respondents filed an urgent Chamber Application in the High Court against the fifteenth to the sixteenth respondents seeking an interdict against disposal and transfer of a certain open space in the vicinity of Carlisle Drive in Alexandra Park, Harare. A provisional order was granted against the fifteenth to seventeenth respondents. The appellants who had an interest in the matter had not been cited. The provisional order granted by the High Court affected them.

After the provisional order had been granted, the first respondent sought the joinder of the appellants which was granted. On the return date the High Court, after hearing the parties, granted an order which had not been sought by either party. The appellants noted an appeal against that order and raised four grounds of appeal of which the third ground attacked the granting of an order not sought by the parties. In their Heads of Argument, the

respondents conceded that the court *a quo* had irregularly granted an order not sought by the parties.

In view of this concession, the appeal should be allowed in terms of the relief sought as amended. Accordingly it is ordered as follows:

1. The appeal be and is hereby allowed with costs.
2. The order of the court *a quo* is set aside and is substituted by the following:

   "The application is dismissed with costs on a legal practitioner and client scale."

MAVANGIRA JA: I agree

KUDYA JA: I agree

Mutumbwa, Mugabe & Partners, appellant's legal practitioners

Mawere Sibanda Commercial Lawyers, respondents' legal practitioners