

GREATER SPITZKOP RESIDENTS' ASSOCIATION
versus
VEVHU RESOURCES (PVT) LTD
and
THE MINISTER OF LOCAL GOVERNMENT AND PUBLIC
WORKS AND NATIONAL HOUSING
and
ZVIMBA RURAL DISTRICT COUNCIL
and
NIFS INVESTMENTS PVT LTD
and
VALLEYSET PROPERTIES
and
DIVINE HOMES (PVT) LTD
and
VEVHU MARKETING INVESTMENTS (PVT) LTD

HIGH COURT OF ZIMBABWE
WAMAMBO J
HARARE, 23 August and 5 September 2022
and 23 February 2023

Urgent Chamber Application

V C Maramba with M Musimbe, for the applicant
L Mundieta with B Hodzi, for the first respondent
No appearance for the 7th respondent

WAMAMBO J: This urgent chamber application was set down and heard on 23 August 2022. I reserved judgment to 5 September 2022 and pronounced my reasons for the decision to the parties in chambers. I have now been requested to furnish full reasons for the purposes of an appeal. These are they:

The application is premised on the following as per applicant's founding affidavit.

The applicant is a body corporate bound by a Constitution. The first, fourth, fifth, sixth and seventh respondents are legal entities. The second respondent is the Minister of Local Government, Public Works and National Housing in his official capacity.

The applicant's members purchased immovable property from the first, fourth, fifth, sixth and seventh respondents. The said property is located within Lot 12 and 14 of Spitzkop Farm located in Zvimba district measuring 348.68 hectares in extent.

The first, fourth, fifth, sixth and seventh respondents are in the process of repegging and readjusting the boundaries of the residential stands sold to the applicant's members. This process commenced on 5 August 2022 and was not brought to the attention of applicant's members.

The actions of first, fourth, fifth, sixth and seventh respondents were not sanctioned by applicant's members and will result in the displacement of various members as the existing stands of 200m² are being increased to 400m². There is a reality that the applicant's members will lose out on both the land they purchased and the money they used to pay for the stands. The Land Commission and second respondent are of the view that the land in question is State Land. The first, fourth, fifth, sixth and seventh respondents hold no title deeds to the said land.

There has been no negotiation nor compensation to applicant's members. There will be financial prejudice to applicant's members as a result.

It is the first respondent who created various companies to act as its agents to advertise and sell the land in question which, however, resulted in double allocations to applicant's members' prejudice.

First respondent filed a notice of opposition. She raised a number of points *in limine* on the papers namely that the matter is not urgent, the relief sought is invalid at law. In oral submissions the first respondent raised more points *in limine* namely that the court cannot interdict a lawful order and applicant has *no locus standi*.

I will deal with the issue of urgency. First applicant was able to prove that she only discovered on 5 August 2022 that the first respondent was re-pegging and re-setting the land boundaries to the stands. This application was lodged on 12 August 2022 about a week after the discovery of the re-pegging exercise by the applicant. The first respondent argued that the need to act arose on 19 July 2022. I found no sound basis laid for such a submission.

KUDYA AJA (as he then was) in *Equity Properties (Private) Limited v Alshams Global BVI Limited and Registrar of Deeds* SC 101/21 at p 11 said the following:

"The law on urgency is settled. Urgency is manifested by either a time or consequence dimension. See *Kuvarega v Registrar General & Anor* 1998(1) 188(H) at 193E."

The learned Judge of Appeal continued thus at p 12:

“It is apparent that the consequence dimension presupposes that the harm sought to be protected in an impending matter would be amorously, irremediable without the interim indulgence”.

In the circumstance of this case the application is premised on fear of financial prejudice and jeopardy of double allocation of stands. I find on the face of it that the harm sought to be protected is of utmost urgency and can only be cured by interim relief. It is an issue that involves accommodation and possible homelessness. To that end I find that the matter is urgent.

I will deal with the issue of *locus standi* next. It was averred by the first respondent that there is no list of residents who seek relief in this matter. Further that there are no contracts between the applicant's members and first respondent attached to the application. Counsel for applicants submitted that the list was available but same was inadvertently not attached to the application.

There was however a Constitution of applicant which was attached to the application. The first respondent argued fiercely on this point *in limine* although I note that she conceded in many forms that applicants interacted with her on the issue of the stands. At p 36 of the record is a letter by first respondent to fourth respondent confirming the handing over of 360 stands at Lot 15 Spitzkop to fourth respondent's members. Attached thereto is a list of stand numbers, the quantity and the total number of stands. See also p 37.

At p 45 is confirmation that the first respondent allocated Block 2627-2731 to fourth respondent. I note that those letters as referred to above were not impugned in any way by the first respondent.

In first respondent's notice of opposition, first respondent makes reference to toilets and wells being haphazardously positioned placing members of the applicant in harm's way showing the necessity of the repegging exercise. Paragraph 9.1 of first respondent's opposing affidavit makes reference of “members of the applicant” disrupting activities and the riot police being called onto the land.

In *ZTA & Op v Ministry of Education and Culture* 1990(2) ZLR 48 EBRAHIM J (as he then was) said at p 52-53 thus:

“It is well settled that in order to justify its participation in a suit such as the present a party has to show that it has a direct and substantial interest in the subject matter and outcome of the application.”

I find in the circumstances of this case as reflected above that the applicant has a direct and substantial interest in the subject and outcome of this application. To that end I dismiss lack of *locus standi* on applicant's part as raised by first respondent.

On the point *in limine* that the relief sought is invalid at law the first respondent averred that applicant should have proceeded to launch their application in the Administrative Court. The High Court is not displaced or barred from entertaining such application as in the instant case. The instant application seeks interim relief on an urgent basis and can lawfully be entertained by this court. I was not referred to any legal principle or statutory provision that bars the High Court from hearing the instant application. I therefore also dismiss this point *in limine*.

I was unable to find the basis for the averment that there is a lawful act that this court cannot interdict. I was not referred to any lawful order or the basis that the order sought goes against a lawful act in the circumstances of this case. I also dismissed the point *in limine*.

I turn to the merits. Applicant mainly argued that its members bought stands and could easily lose them. First respondent argued that there was no *prima facie* right established. The other arguments raised were already raised in the points *in limine*.

I find that the ingredients of an interdict were established. The threat of homelessness on the face of it was established. I also note that the allegations of threats and inducements as raised by applicant were not rebutted or impugned in any way.

The Lands Commission findings at p 32 para. 26.5 established irregularities committed by the first respondent which are regurgitated below:

- Vevhu Resources (Pvt) Ltd sold State land long before its application for change of use from agricultural to urban developments.
- Vevhu Resources (Pvt) sold state land without an approved layout plan.
- Vevhu Resources (Pvt) Ltd is collecting intrinsic value from the beneficiaries without authority of MLG and has not surrendered the money to MLG. The money was converted to its own use.
- The agents which were appointed to sell State land on behalf of Vevhu Resources (Pvt) Ltd caused double allocations, collected intrinsic value and converted it to their own use.

The above remarks on the face of it speak to the possibility of irreparable harm to the applicant and its members.

I find also that in the circumstances as aforementioned there is no other remedy open to applicant except to approach the court. It is in light of potential loss to housing stands and

financial prejudice where the process as carried out by first respondent and its agent are *prima facie* irregular.

I was thus satisfied that applicants deserve the relief as sought which was granted as follows:

“TERMS OF FINAL ORDER SOUGHT

That you show cause to this Honourable Court if any, why a final order should not be made in the following terms:

1. The implementation of the proposed subdivision of Lot 14 of Spitzkop by the respondents is to be carried out in consultation with the applicant and its members.
2. The 1st, 4th, 5th, 6th and 7th respondents are hereby ordered not to charge the applicant and its members for the implementation of the proposed subdivision of Lot 14 Spitzkop.
3. Respondents are to pay costs of suit.

INTERIM RELIEF GRANTED

That pending confirmation of the final order sought, applicants are granted following relief:

1. The respondents be and are hereby interdicted from carrying out activities such as re-pegging the residential stands of the 1st applicant and its members and any other activities pursuant to the implementation of the proposed subdivision of Lot 14 of Spitzkop until the determination of this urgent chamber application is finalized.
2. The 1st, 4th, 5th, 6th and 7th respondents be and are hereby interdicted from collecting any money from the applicant and its members in pursuance of the implementation of the proposed subdivision of Lot 14 of Spitzkop until the determination of the proposed subdivision of Lot 14 of Spitzkop until the determination of this urgent chamber application is finalized.
3. The 1st, 4th, 5th, 6th and 7th respondents be and are hereby interdicted from threatening applicant and its members to sign new contracts or forms and to receive any money from applicant and its members until the determination of this urgent application.
4. In the event that the 1st, 4th, 5th, 6th and 7th respondents have commenced the activities of repegging the residential stands of the applicant and its members and the opening of new roads or any process pursuant to the proposed subdivision of

Lot 14 of Spitzkop Farm the respondents are hereby estopped from carrying on such activities until the determination of this urgent chamber application.

SERVICE OF PROVISIONAL ORDER

The applicant's legal practitioners are to serve a copy of the provisional court order on the respondents."

Maseko Law Chambers, applicant's legal practitioners
Mundieta & Wagocha-Madzivanyika, first respondent's legal practitioners