

ST MARTINS HOUSING CO-OPERATIVE SOCIETY LIMITED
versus
CITY OF HARARE

HIGH COURT OF ZIMBABWE
FOROMA J
HARARE, 4,26 July & 1 August 2023

Opposed Matter

L Ziro, for the applicant
N Nyathi, for the respondent

FOROMA J: This is an application for condonation of late filing of an application for review of respondent's decision declining allocation of land to applicant for the benefit of its members.

Background to the Application

Applicant was registered as a housing Co-operative in 2013 with the primary objective of applying for land for developing medium density housing units for its members. The applicant approached respondent for allocation of land it had identified in the St Martins area opposite One Commando Barracks through the office of the District Administrator Harare Central District which referred it to the Department of Housing at respondent. Pursuant to the application for the aforesaid land the applicant's members were invited to attend interviews at respondent's Council offices in February 2018. A total of 62 members were interviewed but no communication was addressed or sent to either applicant or any of its members advising of the outcome of the said interviews. A considerable period of time passed without applicant hearing from respondent in respect of the outcome of the interviews despite persistent follow up by the applicant's chairman. Instead of informing applicant of the outcome of the interviews aforesaid respondent's officials demanded payment of the sum of US 5.00 per applicant's member towards purchase of the land which must have been the applicant's contribution towards servicing of the land in question. Before any payment of \$5.00 per member was done respondent reviewed the contribution to double the amount (us\$10.00) which applicant's members refused to accept as they argued that they had their/own donor who was willing to service the land for them.

No progress in resolving the matter of allocation to applicant of the land for development of housing project was made despite the applicant's approaches and representations through the Ministry of Local Government and the District Administrator's office. Totally frustrated, Applicant was compelled to approach the Zimbabwe Anti-Corruption Commission with a complaint to no avail as respondent would not communicate its decision on the outcome of the interviews aforesaid. This eventually forced applicant to approach the courts through its current legal practitioners who filed two urgent chamber applications seeking to interdict respondent from disposing of the land in question without firstly resolving applicant's legitimate expectation to be allocated land for housing development alternatively respondent providing applicants the reasons why after the interview the applicants would not be allocated the land in question.

The Current Application

Both urgent applications per case HC 6492/22 and HC 7838/22 did not resolve the matter. They were both withdrawn in order for respondent to provide an official communication of its decision of applicant's application consequent upon the interviews conducted in February 2018. As a result of the proceedings held before the late TAGU J in HC 7823/22 on the 21 November 2022, respondent's counsel addressed letter dated 21/11/22 to applicants legal practitioners under cover of a letter in which he said

"2- As discussed please find attached hereto the documents that we showed you at the hearing for ease of reference. May you direct any further processes to us under reference (R2 ac)."

Among the documents referred to in the letter quoted above was a copy of letter dated 27 December 2018 .

According to applicant this was the first time they were presented with the result of the interviews (the respondent's alleged refusal to allocate its members land for housing development). The letter dated 27 December 2018 from the Director OF Housing and Community Services addressed to the Chairman of St Martins Housing Co-operative had never previously been delivered at either applicant's address or that of any of its members. The said letter addressed to applicant's chairman at 42 Appel Aveune St Martins Harare read as follows- "I acknowledge receipt of your letter dated 12 December 2018 and the contents therein have been noted. Kindly be advised that our assessment of the beneficiaries from the information provided for during interviews indicate that your members had no capacity in terms of both income and savings hence they did not qualify for allocation in St Martins Scheme. However, your members are urged to continue renewing their Housing Waiting Lists and be considered

individually for allocation through Pay Schemes according to prevailing Council Housing Policy as and when land becomes available.

Yours faithfully

A Nhekairo

Director of Housing and Community Services”

The said letter has signs of being a recent fabrication for the following reasons among others:

- (i) there is no explanation given by respondent as to why interviews conducted around 1 February 2018 were only assessed 10 months later which is apparent from the date of the alleged communication of the outcome of the interviews.
- (ii) The letter does not bear respondent ‘s date stamp for the 27 December 2018 the date it purportedly was dispatched by Respondent to Applicant;
- (iii) There is also no reference in the said letter to the need for applicant’s members to join Respondent Pay Schemes contrary to respondent’s claim that Applicant’s members were required to join Pay Schemes when they were considered as not qualified for allocation in the St Martins Scheme. Applicants were only urged to continue renewing their Housing waiting lists.

It is worth noting that , respondent has conceded in its opposing papers that it never reverted to the applicant after the interviews- of its members. Respondent makes this very clear in para 15 of its opposing affidavit which says “(15) The fact that the respondent did not revert back to the applicants after the initial interviews which were no guarantee of allocation speaks for itself.”

Such a statement made under oath puts paid to any suggestion elsewhere in respondent’s opposing papers that respondent communicated its decision on the interviews as the letter of 27 December 2018 aforesaid purports to do-(underlining is for emphasis)

In the circumstances paragraph 17 of Respondent’s opposing affidavit is *prima facie* a perjured deposition in so far as it reads: -

“17 The respondent has in clear and unambiguous language informed applicant it is not offering the applicant the land in question.”

It is clear therefore that respondent infact did not communicate to applicant or its members its decision on the applicant’s application for allocation of land for housing development at all. It thus follows that letter dated 27 December 2018 aforesaid was not the

official position of respondent on the matter. If anything it is confirmation that it is indeed a recent fabrication. It is clear that by letter dated 21 November 2022 from respondent's legal practitioners' applicant was cheated into believing that respondent had made a decision declining to offer Applicant land for housing development in the St Martins Scheme as far back as 2018. For that reason, it follows that to date Respondent's decision on the applicant's application has in fact not officially been made or communicated to applicant in regard to the outcome of the February 2018 interviews aforesaid.

What then is the position of applicant's application to respondent for land for medium density housing development in light of Respondent's deliberate attempt to mislead the court apparent from respondent's notice of opposition to applicant's application for condonation? In the court's view the respondent's notice of opposition does not deserve to be considered by the court. The court will disregard the opposing affidavit on account of it being a self-serving perjury. In the circumstances therefore nothing deposed to by the respondent or on its behalf in the notice of opposition deserves any consideration by the court. Applicant's application is therefore as good as unopposed.

Considering that Respondent has not in fact officially communicated its decision on the results of the interviews of applicant's membership to date it is clear at law that there is no decision by respondent that can be said to be susceptible of a review. By parity of reasoning no condonation can be said to arise for consideration as no portion of the 8 weeks within which a review in terms of rule 62 (4) the High Court rules has yet commenced to run. Put differently no right to an application for a review can be said to have yet accrued to applicant by reason of the proceedings in question not having terminated as contemplated by the said rules.

In case, it is contented that Applicant should be deemed to have become aware of the respondent's decision on 24 November 2022 when its legal practitioner received letter dated 27 December 2018 through Respondent's legal practitioners (which I have ruled to be a recent fabrication) then and considering the tardy manner in which respondent has dealt with this matter and considering the importance of the matter to applicant and to the Respondent as a Local Authority and residents thereof I would have no hesitation in granting applicant the condonation it seeks. It is time Local Authorities as administrative institutions are reminded of the need to be not only accountable but transparent in the discharge of their service delivery obligations.

In the circumstances, it is ordered that:

- (1) The applicant's application for condonation of late filing of an application for review is hereby granted.
- (2) Applicant shall file his application within 15 days of the grant of this order.
- (3) The respondent shall pay the costs of suit on the scale of legal practitioner and client.

Takaindisa Law Chambers, applicant's legal practitioners
Gambe Legal Group, first respondent's legal practitioners