KENNETH MUCHAKATISO
versus
INNOCENT PFIDZAI MANWERE
and
CITY OF KADOMA
and
SHERIFF OF ZIMBABWE

HIGH COURT OF ZIMBABWE
MAXWELL J
HARARE, 6 April & 19 May 2023

Urgent Chamber Application

C Mbiriri & CT Zvobgo, for the applicant
T Matiyashe, for the respondent

MAXWELL J: On 6 April 2023 I ruled that the application by the applicant was not urgent. On 24 April 2023 I received a request for written reasons for that decision. These are they.

Applicant stated that he is the owner of immovable property known as Stand Number 6216(A) Westbrook Park, Kadoma (the property). It is owned through cession title registered with the second respondents. Further that the applicant and his family have resided at the property for the past five years.

On 06 March 2023 applicant and his family were evicted from the property through a spoliation order obtained *ex parte* by first respondent. Applicant sought the discharge of the provisional order but was not successful. On 28 March 2023 the rule *nisi* was confirmed.

On 30 March 2023 applicant field an application seeking a declaratur that the first respondent's rights emanating from the deed of cession signed on 10 March 2015 have prescribed and that the deed of cession is unenforceable on account of non-fulfillment of the condition precedent set out therein. Applicant expressed the fear that first respondent could choose to sell the property to a third party before the determination of the application filed on 30 March 2023, being HC 2233/23. He therefore approached the court for an interim order barring

first and second respondents from causing, facilitating or authorising the sale, disposal, transfer of ownership or any other form of alienation of rights in the property of any other third party pending the return date of the application.

The application was opposed by first respondent who attached a letter from the second respondent dated 13 April 2023 in which second respondent confirmed him as the registered owner of the property. At the hearing of the matter Mr *Matiyashe* raised a point *in limine* to the effect that the matter is not urgent. He submitted that parties entered into a deed of cession in 2015 and that second respondent changed the registration of the property from applicant to respondent in August 2022. He further submitted that first respondent got possession of the property on 6 March 2023 and 28 March 2023 through a spoliation order.

Mr *Matiyashe* pointed out that throughout the application and certificate of urgency there is no averment that first respondent intends or is selling the property. In his view, applicant brought before the court mere speculation and fear is not sufficient to create the need to act. He submitted that applicant must prove acts that show an intention to sell. Having not done so, he submitted that there is no cause of action as there is no evidence that first respondent is selling the property.

Mr *Mbiri* confirmed that parties entered into a deed of cession in 2015. He pointed out that applicant proceeded to build a house on the property in 2016 and took occupation in 2018. He disputed that first respondent ever took possession of the property. According to him the need to act arose on 28 March 2023 when the court confirmed the order that had been granted *ex parte*. He submitted that first respondent is at liberty to dispose of the property and applicant is therefore seeking anticipatory relief. He submitted that the law protects the vigilant and that if the order sought is not granted applicant will suffer financial and emotional prejudice. According to him, if first respondent does not intend to dispose of the property then he will suffer no harm if the order sought is granted.

There is a plethora of cases that have defined what constitutes urgency. In *Document Support Centre (Pvt) Ltd* v *Mapuvire* 2006 (2) ZLR 240, it is stated that a matter is urgent if, when the cause of action arises giving rise to the need to act, the harm suffered or threatened must be redressed or arrested there and then, for in waiting for the wheels of justice to grind to their ordinary pace, the aggrieved party would have irretrievable lost the right or legal interest

that it seeks to protect and any approaches to the court thereafter on that cause of action will be academic and of no direct benefit to the applicant. It is therefore important to know what the cause of action is.

In the certificate of urgency, the deponent states that the matter is exceedingly urgent. The reasons given for the urgency are:-

1) The applicant's ownership of the immovable property is unquestionable.
2) The applicant's clear right has already suffered harm given that the first respondent used the deed of cession to take away applicant's possession through the spoliation application.
3) The clear right faces even greater threat given that there is nothing preventing the first respondent from disposing of the property to a third party in a bid to undermine HC 2233/23 in which the question of ownership will be dealt with.
4) Applicant has no other remedy available at his disposal.

The same reasons are given for urgency in the founding affidavit. It appears that applicant's cause of action is the need to protect an alleged clear right. In my view it is not correct that applicant's ownership of the property is unquestionable. As stated above, second respondent confirmed that first respondent is the registered owner of the property. There is therefore no clear right that applicant is talking about.

Even if the applicant had a clear right, the relief sought could only be granted where there is a well-grounded apprehension of irreparable harm. The imminency of such harm would confirm urgency. I was not persuaded that applicant had established a reasonable basis for his fear. No facts or conduct was advanced as indicative of first respondent's intention to sell the property. Had such facts or conduct existed, they would have provided a starting point for the assessment of whether or not applicant acted timeously to avert irreparable harm.

I am alive to the fact that an anti-dissipation interdict is anticipatory in nature. However, in *Bozimo Trade & Develoment Company (Pvt) Ltd* v *First Merchant Bank of Zimbabwe Ltd & Ors* 2000 (1) ZLR 1, it was pointed out that the issue to be decided when considering whether or not to grant an anti-dissipation interdict is whether there is evidence to support the applicant's apprehension that the assets may be secreted in order to frustrate the execution of any judgment

which the applicant might obtain. *In casu*, there was no evidence tendered to support applicant's apprehension. As a result there was no justification for the urgency.

For the above reasons, I found the matter not urgent.

Zvobgo Attorneys, applicant's legal practitioners
Matiyashe Law Chambers, first respondent's legal practitioners