

SIDROS CHANGACHIRERE
versus
JUDITH HLATSHWAYO

HIGH COURT OF ZIMBABWE
FOROMA J
HARARE, 28 March 2023

Judgment

AT Mbotywa, for the applicant
W Bherebhende, for the respondent

FOROMA J: In this matter the applicant sued the respondent for eviction from premises called stand 274 of stand 1 Gletwyne Harare. Applicant instituted its claim against respondent by way of a court application which respondent opposed.

The matter was set down for hearing before me as an opposed application. A perusal of the respondent's heads of argument showed that the respondent considered the issue for determination to be whether or not applicant has *locus standi* to evict the respondent? Respondent's contention was that as applicant did not have a deed of transfer over the property in question he did not have real rights which he could enforce against respondent a (third party) as his were mere personal rights.

At the hearing Mr Bherebhende who appeared on behalf of the respondent raised this respondent's defence as a point *in limine* believing that its determination would irrevocably resolve the matter. With applicant's consent I agreed that respondent assume the duty to begin. Mr Bherebhende therefore addressed the court first and appellant's counsel in response argued that the test for *locus standi in judicio* is whether the party appearing before the court had a direct and substantial interest in the matter the subject of the dispute. In support of his argument applicant's counsel relied on the case of *Pedzisayi v Chikonyora* 1992(2) ZLR 445 a judgment of GUBBAY JA and the case of *Stephenson v Minister of Local Government and others* SC 38/2022. Applicant's counsel further argued and in the court's view correctly, that bearing in mind the judgment of the

Supreme Court (Order by consent) in the appeal SC 163/22 respondent had divested herself of any rights in the property in dispute and could not claim any right to occupy the property in question. Applicant's counsel thus submitted that applicant had eminently demonstrated that the applicant had the requisite *locus standi in judicio* and moved for relief as prayed for in the draft order.

When Mr Bherebhene rose to address the court in answer I had a brief engagement with him as a result of which he conceded:-

- (i) that the test for *locus standi* as submitted by applicant's counsel was common cause.
- (ii) that on the papers applicant as purchaser had established that he had a direct and substantial interest in the subject matter of the dispute that is stand 274 Gletwin which he had purchased from respondent.
- (iii) that in light of (i) and (ii) above respondent had no defence to applicant's claim.

It was in light of the concessions made that I asked Mr Bherebhende if the court could proceed to grant applicant an order in terms of the draft by consent to which he agreed. I accordingly granted applicant an order in terms of the draft order.

R Mhandu Attorneys, applicant's legal practitioners
Bherebhende Law Chambers, respondent's legal practitioners