

REBECCA MASAWI
versus
USHEWOKUNZE COOPERATIVE SOCIETY (PVT) LTD
and
CREST BREEDERS INTERNATIONAL (PVT) LTD

HIGH COURT OF ZIMBABWE
MUSITHU J
HARARE, 24 May 2024 and 17 February 2025

Opposed Application-Declaratur

D Mwonzora, for the applicant
S Hashiti, for the 2nd respondent

MUSITHU J: The applicant approached this court for the relief of a *declaratur*. The relief sought is couched in the draft order as follows:

“IT IS HEREBY ORDERED THAT: -

1. Stand number 145 on the Remaining Extent of Saturday Retreat Farm, be and is hereby declared to belong to the Applicant.
2. The 2nd Respondent be and is hereby ordered to pay costs of this Application on an Attorney-Client Scale.”

Background to the Applicant’s Case

The applicant claimed that sometime in 1986, and under deed of transfer 4035/86, the first respondent, a housing cooperative acquired the Remaining Extent of Saturday Retreat Farm, measuring 1057, 380 hectares. Sometime in 1999, the Government of Zimbabwe acquired the said farm in terms of the Land Acquisition Act [*Chapter 20:10*] (the Act). According to the applicant, part of the farm which measured 411 hectares remained occupied by the second respondent. The remaining land was given to landless people under the Act.

On 20 February 2004, the Ministry of Local Government, Public Works and National Housing allocated 4100 stands on the acquired land to the first respondent for distribution amongst its members. The applicant claims to be a member of the first respondent. In that capacity she claimed to have been allocated stand number 145, which is part of the 4100 stands allocated to the first respondent. She also claimed to have made some improvements to the said stand.

According to the applicant, the second respondent has been harassing her in connection with the said property demanding that she makes certain payments to it. The second respondent

demolished a structure that she had constructed on the property. The applicant averred that the second respondent had no right to interfere with her property since it had lost all rights in the property.

The Second Respondent's Case

The second respondent averred that the applicant's failure to join the government ministries responsible for the acquisition and allocation of land made her application fatally defective. These authorities had a direct interest in the *declaratur* that was being sought by the applicant. The applicant was also accused of forum shopping in that she launched the present application aware that there was another matter pending before the court under HC 7807/19. It was further averred that the applicant had no *locus standi* to bring an application against the second respondent in her own right. Her rights were only enforceable as against the first respondent. There was no nexus between her and the second respondent. She had failed to establish any cause against the second respondent.

The second respondent contended that the Government Gazette attached to the applicant's application was just a notice of intention to acquire the land which was never followed through. The Gazette did not confer the applicant with any rights in the land. The relevant acquiring authority attempted to acquire the land in 2001 and 2002 but did not see the process through after acknowledging that the land fell within the boundaries of the Greater Harare municipality. All proceedings to acquire that land were consequently withdrawn. The land in issue was not susceptible to acquisition after it was proclaimed urban land on 15 March 1996, under Proclamation 2 of 1996, Statutory Instrument 41 of 1996.

The second respondent also averred that the first respondent had no power and or right to grant or allocate housing stands in the way it did as the first respondent was neither the acquiring authority nor the owner of the land in question. Prior to 2015, the land belonged to the second respondent. Any allocations of land that were made by the first respondent to the applicant were null and void and of no effect. At any rate, the applicant had made baseless claims against the second respondent, as these were not supported by any evidence. According to the second respondent, the Administrative Court and the Supreme Court had granted orders in which the acquiring authority gave the second respondent unreserved authority over the acquired land.

SUBMISSIONS

Mr *Hashiti* for the first respondent submitted that the applicant's claim ought to be directed towards the first respondent from whom she derived her rights. At any rate, there was no proof of the allocation of the said property to her. There was also no proof that she was a member of the first respondent. Further, according to counsel, the Supreme Court had in the case of *Chevhu Housing Cooperative Society Limited and 8 Ors v Crest Breeders International (Private) Limited & Anor* SC 19/21, determined that the first respondent was an illegal occupier of the land. The applicant could not therefore have acquired better rights than the first respondent.

Counsel further submitted that there was another matter pending before the court involving the same cause in which the first respondent was the main claimant. Two similar matters were therefore essentially pending before the court at the same time.

In response, Mr *Mwonzora* for the applicant submitted that the principal land in issue was gazetted in 2001. In 2004, the then Ministry of Local Government issued a certificate to the first respondent. Counsel further submitted that the applicant's membership to the first respondent could not be disputed. She therefore had a real and substantial interest in the matter.

As regards, the submission on *lis pendens*, Mr *Mwonzora* submitted that there was no evidence of any case pending before the court involving the applicant. There was no case pending before the court in which the applicant was a party.

ANALYSIS

The court found the preliminary point on *lis pendens* to be without merit for the simple reason that no further information was placed before the court to support the averment that similar proceedings involving the same parties and the same cause were pending elsewhere. It was not enough for the second respondent's counsel to simply allege by referring to a case number without further details on the nature of dispute pending elsewhere which it was being alleged was similar to the present matter.

As regards the question of *locus standi*, it was averred that the applicant had no cause of action against the second respondent because there was no nexus between her and the said party. The applicant on the other hand argued that it was common cause that she was the owner of the property in dispute by virtue of her membership in the first respondent. Attached to the applicant's founding affidavit was a certificate of registration for the first respondent. The certificate was issued on 20 February 2004. The applicant did not attach any evidence to confirm her membership of the first respondent and that she was allocated the stand in question.

In *Allied Bank Limited v Dengu & Anor*¹ MALABA DCJ (as he was then), explained the principle of *locus standi* as follows:

“The principle of *locus standi* is concerned with the relationship between the cause of action and the relief sought. Once a party establishes that there is a cause of action and that he/she is entitled to the relief sought, he or she has *locus standi*. The plaintiff or applicant only has to show that he or she has direct and substantial interest in the right which is the subject-matter of the cause of action.”

A litigant must be able to demonstrate a correlation between the cause of action and the relief that they seek before the court. It is not sufficient for a party to just approach the court for a remedy without asserting the kind of interest they have in their cause. The application before the court is one for a *declaratur*. In her draft order, the applicant wants, as substantive relief, that the court declares her the owner of stand number 145 on the Remaining Extent of Saturday Retreat Farm. I have already observed that the applicant has placed nothing before the court that connects her to the property. The status of the property she wants to be declared owner is unknown. It is not even clear whether that property exists, because there is no documentation that speaks to the said property.

There is also nothing before the court that connects the property to both respondents herein. It is not clear in whose name the property is currently registered as between the first and second respondents. In short, the applicant’s cause of action against the second respondent has not been clearly demonstrated. The applicant has failed to establish her connection with the property. There is not a single document that speaks to her title before the court. In the absence of documentation that speaks to her title, then on what basis can she seek to assert any rights against the second respondent? The first respondent, from whom the applicant allegedly acquired rights in the property, said nothing about the applicant’s own rights in the property. Further, no evidence was placed before the court to show that the second respondent interfered with the applicant’s possession of the property.

To establish a cause of action, the applicant was expected to demonstrate the existence of a set of facts or circumstances which clearly gave rise to an enforceable claim against third parties. She was expected to demonstrate her connection to the property, and not just making a mere averment in an affidavit. She was expected to show how she acquired title from the first respondent as she claimed, and how the second respondent sought to interfere with her title. The applicant cannot assert to have *locus standi* if she cannot demonstrate that she has a cause

¹ SC 52/16 at p 6 of the judgment

of action against anyone in the first place. She failed to assert the existence of a legally enforceable right against the second respondent to sustain any claim against the said party.

It is for the foregoing reasons that the court finds merit in the second respondent's preliminary objection that the applicant lacked the requisite *locus standi* to institute the present proceedings against the second respondent. The applicant's cause can only be against the first respondent from whom she claims to have acquired rights in the property. In view of the conclusion reached based on the preliminary point, it is unnecessary for the court to deal with the merits of the matter.

COSTS

The second respondent urged the court to dismiss the application with costs on the attorney and client scale. I found no justification to dismiss the application with costs at that level. An order of costs on the ordinary scale is more appropriate.

Resultantly, IT IS ORDERED THAT:

1. The application is hereby dismissed.
2. The applicant shall bear the second respondent's costs of suit.

Mwonzora and Associates, legal practitioners for the applicant
Nyawo Ruzive Attorneys, legal practitioners for the 2nd respondent