

ZIMBABWE HOMELESS PEOPLE’S FEDERATION  
t/a MUTARE FEDERATION HOUSING ASSOCIATION  
versus  
MUTARE FEDERATION HOUSING ASSOCIATION  
and  
SILENT CHAKARISA  
and  
ELIAS MASHINGAIDZE  
and  
AMOS PANGANAI MAHEMBE  
and  
ESTHER MUKUCHA  
and  
CITY OF MUTARE

HIGH COURT OF ZIMBABWE  
MUZENDA J  
MUTARE, 29 May 2023

### **Opposed Application**

Ms N Tambirai, for the applicant  
Mr C. N Mukwena, for the respondents

MUZENDA J: Applicant is seeking the following relief:

*“IT IS ORDERED:*

- 1. That the Applicant be and is hereby declared to have the sole mandate, power and entitlement to administer, manage, allocate and develop the 1 200 stands in Dangamvura, Federation, purchased from Sixth Respondent in terms of an agreement between Applicant and Sixth Respondent dated 27<sup>th</sup> May 2004 for the benefit of its approved members.*
- 2. That any purported allocation of any of the Applicant’s stands by the First to Fifth Respondents and anyone claiming through them be and is hereby declared null and void and consequently any such occupants shall vacate such stands forthwith.*
- 3. That the first to fifth respondents and anyone claiming through them be and are hereby interdicted from interfering with the applicant’s management, administration, allocation or development of its 1200 stands in Federation, Dangamvura, Mutare, forthwith.*
- 4. That the first to fifth respondent shall pay the costs of suit on attorney-client scale jointly and severally the one paying the other to be absolved.”*

### **Background Facts**

The parties

Applicant calls itself Zimbabwe Homeless People's Federation, and trades as Mutare Federation Housing Association. Applicant attached no constitution for Zimbabwe Homeless People's Federation but that of the trading name. First respondent bears an identical appellation to applicant's trading name and a constitution was annexed. Second to fifth respondents are the management Committee Members of first respondent. The sixth respondent is City of Mutare. First respondent was formed as a splinter entity from the former members of the applicant's trading name and benefited from the project.

### **The Agreement of Sale**

On 27 May 2004 at Mutare, applicant entered into an agreement of sale where the City of Mutare sold 25 hectares of un-surveyed, undeveloped, unserviced piece of land consisting of 1200 stands in Dangamvura. At that time second to fifth respondents were members of applicant and incidentally were also allocated residential stands which were eventually developed and ready for construction. Sometime in 2009 second to fifth respondents branched off from applicant to form first respondent and created a new constitution.

### **The dispute**

Applicant alleges that after the formation of first respondent, second to fifth respondents started to interfere with applicant's management, administration and allocation of applicant's 1200 stands to first respondent's members without applicant's involvement, consent or approval causing unnecessary chaos hence the application seeking relief framed in the draft order.

In opposing the application respondents raise two points *in limine*.

- (a) That this matter is incapable of resolution on papers as there are material dispute of facts. On this aspect respondents contend that the stands were allocated to members after the agreement was signed by sixth respondent. It is not clear as to what criterion applicant wishes to nullify the allocation of stands to which people or beneficiaries. Those people who have already occupied the stands belong to applicant's members and there is no basis to evict them. The members started to contribute long back in between 1999 to 2002 leading to the signing of the 2004 agreement of sale. First respondent was formed years after its members had taken occupation of the stands and first respondent denies allocating stands via its management committee.

(b) Respondents impugn the consequential relief sought by the applicant on the basis of lack of particularity and specificity. Applicant urges the court to set aside the allocation of the stands without citing names of the allocatees nor the stand numbers and dates of allocation. The prayer sought is indefinite, ambiguous and imprecise and the relief amounts to a *declaratur* in anticipation of an order of eviction. Further applicant intends to evict beneficiaries of the stands without affording them an opportunity to be heard by the court, respondents added.

On the merits respondents deny all averments made by and on behalf of the applicant. They all deny interfering with applicant on its management of the 1200 stands. Most of the stands have since been occupied and applicant does not specify which stands remain unoccupied which respondents should not interfere with. Respondents overally prays for the dismissal of applicant's application with costs.

Determination of the points *in limine*

Respondents submitted that the application is replete with material dispute of facts. It is not clear as to how many stands out of 1200 stands were allocated and how many were allocated "*illegally*" by second to fifth respondents and how many of them are to be protected by an order to interdict respondents not to interfere with. Among the beneficiaries of the stands already under occupation, who should be ejected? What are the full names of those people whose allocation should be declared null and void? Further why did not applicant cite them and serve them with copies of the application in order for those people to be afforded an opportunity to be heard by the court before evicting them from the stands.

Respondents also attacked the consequential relief sought by applicant. They highlighted lack of specificity and particularity on the applicant's entire application.

When applicant was asked to clarify the identity of the applicant, whether it was *Zimbabwe Homeless People's Federation t/a Mutare Federation Housing Association*, or *Mutare Federation Housing Association*, applicant's Counsel submitted and admitted there was an error in the citation of applicant. No application for amendment was sought by the applicant. Applicant had also difficulties in explaining a number of problems relating to the two identical "*Mutare Federation Housing Associations*" and as to how many stands were allocated by the two respective associations. Applicant eventually conceded that its papers were in disarray and because of the preliminary points, it subsequently conceded that there was no proper application before the court. The concession was proper.

On the question of costs respondents prayed for punitive costs of legal practitioner client scale. However in their opposing papers respondents asked for costs at an ordinary scale. Applicant urged the court to order costs as prayed by the respondents. I am persuaded by the applicant's submission on the aspect of costs. However I need to comment that the manner applicant's papers were prepared. It exhibits a classical example of poor pleadings, hurriedly done and full "of I do not care" attitude which is a disservice to the client. More was needed to be done.

The following order is returned:

- (a) Application is struck off the roll.*
- (b) Applicant to pay costs.*

*Bere Brothers*, applicant's legal practitioners.  
*Chibaya & Partners*, respondent's legal practitioners.