

ENERST TSARUKANAYI MAUWA
versus
CARDIMIEL MHIKE
and
NORTHWAY REAL ESTATE
and
MR CHIMUZINGA
and
RM AFRICA PROPERTY CONSULTANCY (PVT) LTD
t/a RAWSON PROPERTIES
and
HAYES ZIMBABWE PVT LTD
and
THE SHERIFF OF ZIMBABWE (N.O)

HIGH COURT OF ZIMBABWE
KWENDA J
HARARE 24 February 2022.

Urgent Chamber Application

In chambers

KWENDA J: On 14 October 2021 I removed this matter from the roll for urgent chamber applications because I considered it not urgent. I gave my reasons *ex tempore* in the presence of all parties.

This court has been inundated by a glut of disputes arising from various complex competing claims to stands situated at Lot 12 Tynwald North owned by Mr & Mrs Sibindi. The Sibindis subdivided the property creating stands which they have sold to various persons. Unfortunately, there are numerous cases where the same stands have been sold many times over leaving claimants at each other's throats while Mr Sibindi watches gleefully.

The situation has been made worse by conflicting court orders which fly in the face of each other after being dubiously sought by claimants who very often do not disclose other interested parties and suppress material facts.

The complexity of the scenario exposes the shortcomings of section 39 of the Regional, Town and Country Planning Act [*Chapter 29:12*] which does not deal with the mischief of selling unserviced land not ready for transfer.

The Sibindis, successfully applied for and were issued with a permit to subdivide their property creating stands which they have sold off the diagram attached to the approved permit. They registered family trust to handle all transactions relating to that project and Mr Martin Sibindi was the trustee authorised to sell the stands. It appears the family trust did not have the financial capacity to service the land because Mr Sibindi has appointed several service providers to service the land at own cost. He has however engaged and fired service providers at will and that has also added to the problems. By way of illustration, Mr Sibindi has engaged say Service Provider A to do the servicing and offered the service provider land as payment for the services. Service Provider A sells the stands based on his agreement with Mr Sibindi without involving Mr Sibindi in the sale transactions owner. When a dispute arises between Martin Sibindi and Service Provider A, Mr Sibindi unilaterally cancels his agreement with Service Provider A and ‘repossesses’ the stands which he then offers to a new Service Provider B, entering into new agreements of sale. Service Provider B does not need idle land so he decides to liquidate the stands and also purports to sell the same stands without involving Mr Sibindi. Meanwhile those who ‘purchased’ the stands from Service Providers A and B have also ‘sold’ the stands to other innocent people. The various purchasers on realising that the area is afflicted by disputes try to outwit each other by suing in this court for declarators and somehow get orders, sometimes in default (stage managed) or even by consent declaring them holders of certain real rights and interests in the stands or even ‘owners’ of the controversial stands. That is the situation giving rise to this case as will more fully appear hereunder.

All this could be avoided if there was a law which prohibits sale of unserviced subdivisions of land before the issuance of a certificate confirming full compliance with the conditions of a subdivision permit. A standard subdivision permit prohibits registration of ‘transfer’ of title only but does not prohibit sale.

An administrative decision was therefore reached by this court to take steps to stop the abuse and protect the integrity of its processes. All pending matters emanating from Lot 12

Tynwald North have been placed before the Senior judge for the Civil Division of the High Court of Zimbabwe for transparent case management with the involvement all interested parties.

In this case the applicant avers that he bought stand no 17789 Tynwald Township of Lot 12 of Tynwald from second and third respondents and attaches an agreement of sale. The agreement is dated 14 June 2019 and identifies fourth and fifth respondents as the sellers. In the agreement the fourth and fifth respondents gave out that they were holders of rights and interests in the stand pursuant to what they claim to be an earlier agreement in terms of which the Sheriff of the High Court sold the property to them having been purportedly authorised by order of court under case number HC 5182/15 to do so on behalf of Martin Sibindi. It is not clear how the order which operates as a power of attorney came into existence. Meanwhile the first respondent is at the property and has erected some structures because he claims to have bought the same property from another source. The third respondent is also claiming the same property as his. There is litigation pending between the applicant and the third respondent under case no HC1521/21. The applicant claims that he has rights superior to all which derive the order of this is case no HC5182/15. It gets confusing because a declarator does not confer rights but merely confirms existing rights.

It is against this convoluted background that I ruled on 14 October 2021 that this matter could not be properly be dealt with on an urgent basis by way of a chamber application which does not tackle the underlying problem. I was mindful of the fact that any interim order could easily be flagged in the face of other interested parties, ostensibly, as conferring superior rights. I therefore removed the matter from the roll for urgent chamber applications.

The parties have now placed before me a deed of settlement under cover of a letter in terms of which they committed to keep peace towards each other and preserve the *status quo* pending the resolution of their court cases. They would like me to issue an order in terms of what they have agreed on.

I decline to do so. A settlement is recognized at law an effective way of resolving a dispute. It is a contract. The court should be a party to a contract entered into by litigants who find common ground after the court the court has pronounced itself and has become *functus officio*.

The dated 15 November 2021 does not qualify as a new application. In any event the applicant would have no cause of action now in circumstances where the parties undertake to keep

peace and preserve the subject matter of their dispute. The parties have maintained peace from October 2021, continue to do so and are willing to maintain that peace among themselves.

In the result I decline to issue the order sought in the letter.

V.S Nyagulu & Associates, applicant's legal practitioners
Mutuso Taruvinga & Mhiribidi Attorneys, 3rd respondent legal practitioners
Chinawa Law Chambers, 1st respondent legal practitioners
Mabuye Zvarevashe-Evans, 4th, 5th respondent legal practitioners