

SHUNGU DZINGWE
versus
GEORGE MAKONI
and
MINISTER OF LOCAL GOVERNMENT,
PUBLIC WORKS AND NATIONAL HOUSING N.O

HIGH COURT OF ZIMBABWE
KATIYO J
HARARE, 12 January 2022 & 15 June 2022

Opposed Application - Declaratory Order

E Dondo, for the applicant
F Chiwashira, for the 1st respondent

KATIYO J: The applicant approached this court seeking the following order.

IT IS ORDERED THAT:

1. An application for a Declaratory Order be and is hereby granted in favour of the Applicant in the following terms;
 - a) Applicant be and is hereby declared the lawful holder of rights ,title and interests in property known as stand number 6407 Retreat Waterfalls .
 - b) First Respondent and all those in occupation through her at property known as No.6407 Retreat Waterfalls be and hereby are ordered to forthwith vacate the property and give vacant possession to the applicant within 10 days from the date of this order
 - c) First Respondent be and is hereby ordered to bear costs of this suit on a higher scale.

Brief background

The applicant joined Joseph Chinotimba Housing cooperative in 2009 and was allocated a residential stand number 6407 Retreat Waterfalls on 15 August 2013. In 2014 the first Respondent took occupation of stand number 6407 Retreat Waterfalls and indicated that the stand belongs to him and had been allocated to him through Samora Machel housing cooperative where he is a member.

Declaratory Order

A Declaratory Order is governed by the provisions of section 14 of the High Court Act [Chapter 7:06] which states that the *High Court may determine future or contingent rights* *The High Court may, in its discretion, at the instance of any interested person, inquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon such determination.. In the case of Recoy investments (Pvt) Ltd v Tarcon 2011(2) ZLR 65(H) the court held that for a declaratory order to succeed there a certain conditions that need to be met.* The applicant should be an interested party and inquire into and determine any existing, future or contingent right or obligation. More so in the case of *RK Footware Manufacturers Pvt Ltd v Boka Book Sales 1986 (2) ZRL 209 Sandura JP* as he was then stated that the court has to identify two considerations that the court has to look at when determining whether or not to issue a declaratory order. He stated that the court had to consider whether the applicant was an interested person in an existing future of contingent right of obligation and secondly whether the case was a proper one for the court to exercise its discretion. The applicant in this matter satisfies the requirements of the declaratory order therefore he qualifies to make this application before this court.

In the case of *Sibonile Dube v Paul Murehwa and Another SC68/21* the court held that *the first Respondent in that matter who was a member of the Joseph Chinotimba Housing Co-operative Society was the Lawful holder of rights and interests in the property in Retreat Waterfalls* .The court ordered the appellant and all those in occupation through her to vacate the property. The facts of the above matter and the matter we are dealing with are very similar and the court sees no reason why the Samora Machel Housing Co-operative members are still occupying the said block of stands. According to the affidavit by the Permanent Secretary of the second Respondent indicated that according to the records at the Ministry showed that the Minister allocated blocks of stands to about 28 housing co-operatives at Retreat farm in Waterfalls and the block of stands 6392-6414 was allocated to the Joseph Chinotimba Cooperative Society. Therefore the said block was never allocated to the Samora Machel Housing Co-operative and anyone claiming occupation through the housing cooperative does not have *locus standi*. The first respondent is an illegal occupier of stand number 6407 Retreat Waterfalls who happens to occupy through the virtue of unlawful distribution of land by Samora Machel Housing Co-operative. There is no basis on the respondent's defense as he

does not have *locus standi*. Having perused the papers and listening to both counsels the court orders as follows:-

IT IS ORDERED THAT

1. An application for a Declaratory Order be and is hereby granted in favour of the Applicant in the following terms;
 - a) Applicant be and is hereby declared the lawful holder of rights ,title and interests in property known as stand number 6407 Retreat Waterfalls .
 - b) First Respondent and all those in occupation through her at property known as No.6407 Retreat Waterfalls be and hereby are ordered to forthwith vacate the property and give vacant possession to the applicant within 10 days from the date of this order
 - c) The first respondent to pay costs of the application at ordinary scale.

Saunyama Dondo applicant's legal practitioners

Macharaga Law Chambers respondent legal practitioners