

TIMOTHY GWASHERO ZAKEYO

Versus

GODFREY NYAMUTAMBO

And

CITY OF KWEKWE

And

**ZIMBABWE ELECTRICITY TRANSMISSION
AND DISTRIBUTION COMPANY**

And

VOLTCON (PVT) LTD

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 13 JULY 2015

Opposed Court Application

Mrs H. Moyo for applicant
T. Zishiri for 1st respondent

KAMOCHA J: On 1 June 2012 applicant applied for and was granted a provisional order which he now seeks to be confirmed with costs. The terms of the final order sought are as follows:

- “(1) It be and is hereby declared that 1st respondent has no lawful authority to act for and on behalf of 4th respondent to sell stand number 2798 Light Industrial Sites, Kwekwe;
- (2) 1st respondent be and is hereby ordered to remove the sale advertisement bill board erected at stand number 2798 Light Industrial Sites, Kwekwe;
- (3) should 1st respondent fail, refuse or neglect to act as ordered in paragraph (2) above, the Deputy Sheriff, Kwekwe be and is hereby ordered to remove the sale advertisement bill board and levy costs associated with such removal upon 1st respondent.
- (4) 1st respondent be and is hereby ordered to pay costs of suit.”

The facts in this matter are common cause. The 4th respondent Voltcon (Pvt) Ltd is a company capable of suing or being sued in its own right. Its directors and only shareholders are the applicant Timothy Gweshero Zakeyo and first respondent Godfrey Nyamutambo.

On 3 June, 2011 stand number 2798 Light Industrial Sites Kwekwe was registered in the name of Voltcon (Pvt) Ltd and it happened to be the only property that the company had.

About a year later the two directors who were the only shareholders began to have irreconcilable differences. They decided to dispose of the said company's stand as a way forward. They held a meeting on 2 June, 2012 with a view to draw up a resolution to the effect that they had agreed to sell the property. After the deliberations of 2 June, 2012 the meeting was postponed to 4 June, 2012 for finalization. Disappointingly, a final agreement floundered as the applicant refused to sign it. Consequently, there was no agreement by the parties to dispose of the said property.

Out of frustration the 1st respondent put up the property for sale irrespective of the fact that there was no agreement to sell the company's property. The first respondent also ignored the fact that the applicant as a shareholder had a direct interest in the property. The applicant had *locus standi* in view of the direct interest he had in the property as a shareholder. See *Zimbabwe Teachers Association & Ors vs Minister of Education and Culture* 1990 (2) ZLR 48

The 1st respondent still contended that the applicant had filed this application on behalf of the company. That contention was clearly erroneous. Applicant filed the application on his own behalf to stop 1st respondent who is a director of the said company from disposing of company's property without the approval of the company in a general meeting. See section 183 (1) (b) of the Companies Act [Chapter 24:03]

HB 153-15
HC 1785-12
X REF HC 3422/12

Mr Zishiri while conceding the impropriety of what the 1st respondent had done, was not prepared to further concede that the order sought by applicant should be granted. This court granted the order and confirmed the provisional order granted to applicant on 1 June 2012 with costs.

The above were the brief reasons for so doing.

Sibanda & Partners, applicant's legal practitioners
Garikayi & Company 1st respondent's legal practitioners