

SHEPHERD MURAHWI	1 ST APPLICANT
and	
DEBORAH MURAHWI	2 ND APPLICANT
and	
PETER SIGAUKE	3 RD APPLICANT
and	
OZWELL C. MASARA	4 TH APPLICANT
and	
GRACE MASARA	5 TH APPLICANT
and	
EDMORE MUKAKAVARI	6 TH APPLICANT
and	
TAPIWA T. MUKAKAVARI	7 TH APPLICANT
versus	
MS MAGWENZI	1 ST RESPONDENT
and	
ARROSUM CONSTRUCTION (PVT) LTD	2 ND RESPONDENT
and	
DIVINE HOMES (PVT) LTD	3 RD RESPONDENT
and	
NICANOR ENTERPRISES (PVT) LTD	4 TH RESPONDENT
and	
THE SEPTEMBER TRUST	5 TH RESPONDENT

HIGH COURT OF ZIMBABWE
BERE J
HARARE, 13, 23, 24 and 25 August 2010

J. Mabulala, for the applicant
R.F. Mushoriwa, for the first and second respondents
G. Chikumbirike, for the third to fifth respondent

BERE J: I have had the privilege of hearing counsel in this matter both on the question of law and the facts relating to this case. I propose to adopt a wholistic approach.

The question of law

It is the settled legal position that in order to be granted interim interdict the applicant must satisfy the following requirements:

- a) that the right which has prompted the applicant to make the application and which right they seek to protect is clear or if not clear is *prima facie* established though open to some doubt;
- b) that if the right is only *prima facie* established, there is a well grounded apprehension of irreparable harm to the applicant if the interim relief is not granted and ultimately succeeds in establishing his right;
- c) that the balance of convenience favours the granting of interim relief;

d) that the applicant has no other satisfactory remedy.

See *Airfield Investments (Private) Limited* case.¹

The facts established in this case

The position of the first respondent and second respondent has been clarified to the satisfaction of the applicants so no order should be made against them.

The applicants have satisfied what is expected of them in terms of the law as I perceive it. They allege in their founding papers that they purchased the stands in question and that those stands are being interfered with.

The third respondent is alleged to have already advertised for the sale of the fourth and fifth applicant stands. It is not like the third respondent is a stranger to the issue of the stands concerned.

The fourth respondent is key player in this transaction and it has been correctly accepted by their counsel that an interdict be granted against it.

Until this matter was brought to court for argument the applicants did not know of the existence of the fifth respondent and its interest in the property. By applying for joinder the fifth respondent has advertised its interest in the property to the whole world and I do not see how this temporary interdict could be of any force or effect without it having to affect the fifth respondent who even in its application for joinder at one stage expressed the desire to be joined in the main matter HC 2097/10 although it was subsequently suggested by their counsel that that was an error.

It is significant that Edward Jambaya the first respondent's Managing Director in the main action HC 2097/10 did not in his opposing affidavit in that matter proffer meaningful defence to the main claim, neither did he in that case explain the interest of the fifth respondent who has just been joined in.

The first respondent's main defence in the main matter as can be gleaned from Jambaya's affidavit was merely to plead with the applicant to grant it more time to fulfill its part of the bargain and not that the property was subject of a prior sale agreement by the fifth respondent as what fifth respondent is now claiming.

Taking a wholistic approach to this matter it is clear that the applicants, the third, fourth and fifth respondents have an interest in the properties involved and it is only logical that the interim interdict be couched in such a way that it binds all the three respondents.

¹ *Airfield Investment (Private) Ltd v The Minister of Lands, Agriculture and Rural Resettlement and 4 others* Judgment No. SC 36/04 at pp 8 – 9

Accordingly the interim interdict sought is granted against the third respondents viz, third, fourth and fifth respondents.

TERMS OF FINAL ORDER SOUGHT

That you show cause why a final order should not be made in the following terms:

1. The respondents and or their agents shall not sell, donate and or otherwise dispose the applicants' Stand Nos 713, 714, 715 and the remainder of stand No 279 Helensvale Township, of Helensvale Harare.
2. The respondents and all those claiming through them shall vacate from and give vacant possession of Stand No. 713, 714, 715 and the remainder of 279 Helensvale Township Borrowdale, Harare to the applicants' upon service of this order.
3. The respondents' shall jointly and severally the one paying the other to be absolved, pay the costs of this application on a legal practitioner client scale.

INTERIM RELIEF GRANTED

Pending the determination of matter HC 2097/10

1. The third, fourth and fifth respondent, their employees or agents be and are hereby interdicted from developing, disposing or alienating all or any of Stand Nos. 713, 714, 715 and the remainder of Stand 279 Helensvale Township of Helensvale, Borrowdale, Harare.

SERVICE OF THE PROVISIONAL ORDER

The order shall be served by the applicants' legal practitioners to the respondents.

Mabulala & Motsi, applicants' legal practitioners
Mawere & Sibanda, first and second respondents' legal practitioners
Chikumbirike & Associates, third to fifth respondents' legal practitioners