ENITTA MAFUSIRE
versus
MELUSI CHIKOWERO
and
BINDURA MUNICIPALITY

IN THE HIGH COURT OF ZIMBABWE
DUBE-BANDA J
HARARE 13 March 2025 & 10 June 2025

Court application

W Madzimbamuto, for the applicant
E Chibondo, for the 1st respondent

DUBE-BANDA J:

[1] This is an application to demolish a structure erected on stand 6860, Chiwaridzo 3, Garikai, Bindura. The application is premised on an order in case number HC 1355/20, which provides thus:

i. Application be and is hereby granted.
ii. The applicant be and is hereby declared the rightful allottee and owner of rights and interests in stand number 6860 Chiwaridzo 3, operation Garikai / Hlalani Kuhle, Bindura.
iii. The applicant be registered against the register of stand owners in records of 2nd respondent against stand number 6860 Chiwaridzo 3, operation Garikai / Hlalani Kuhle, Bindura.
iv. The first respondent shall pay the applicant's costs of suit.

[2] The applicant is opposed by the first respondent.

[3] The applicant contends that before the finalization of HC 1355/20, the first respondent erected a sub-standard structure comprising a seven roomed shelter at window level. She complains that the structure has no approved building plan, is in a sorry state, the foundation is sinking, and the walls are falling apart. The applicant further averred that she cannot start any development on the stand before the structure is demolished. In his answering affidavit,

the applicant stressed that no application to rescind the order in HC 1355/20 is pending and the order is extant.

[4] In his opposition, the first respondent contends that the order in HC 1355/20 has superannuated and cannot be relied upon to anchor the demolition of the structure on the stand. He avers further that he is in the process of mounting litigation seeking to rescind the order relied on by the applicant. The rest of the opposing affidavit deals with his alleged prospects of success in the yet to be filed application for rescission of judgment.

[5] First, I deal with the argument that the order in HC 1355/20 has superannuated, and if so, the effect thereof. Rule 69 (3) of the High Court Rules, 2021 says:

> (3) "no writ of execution shall be issued after the judgment has become superannuated, unless the said judgment has first been revived, but a writ of execution once issued shall remain in force until such time as the judgment has been satisfied."

[6] According to the case of *Nzara & Ors* v *Kashumba N.O. & Ors* HH 151/16 at p 19-20, the common law position on the superannuation of judgments prevails in Zimbabwe, that is, a judgment superannuates after three years. The order in HC 1355/20 was granted on 28 June 2022, and this application was filed on 25 September 2024. At the time this application was filed, the order was just over two years old. It had not superannuated. In any event, even if the order had been more than three years in existence, I would still have rejected this argument premised on superannuation. I say so because the rule prohibits issuance of a writ after the judgment has superannuated. In this application, the applicant has not sought to issue a writ. Therefore, the question of superannuation does not arise in this matter.

[7] The submission that the first respondent is in the process of filing an application for rescission of judgment, which has prospects of success inconsequential. The position is that there is no application for rescission of judgment that is pending. In any event, even if there was such an application, I would have still rejected this argument for the simple and elementary position of the law that an application for rescission of judgment does not stay the order sought to be rescinded.

[8] The opposition is as thoughtless as the application itself. There is an extant order of this court, and the order is clear that the applicant was declared the rightful allottee and owner of rights and interests on the stand. In addition, the local authority was ordered to register the applicant in its records as the owner of the stand. By judicial pronouncement, the stand belongs to the applicant. She has no business coming to court to seek an order to demolish a structure inside her property.

[9] The applicant sought to justify this application by relying on s 74 of the Constitution, which says:

> "No person may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances."

[10] This constitutional provision has no relevancy to this matter. I say so because the applicant is not seeking an eviction of the first respondent from the stand. In addition, the applicant is seeking an order to demolish a structure on her stand, which is said to be at window level. There is no evidence that the first respondent resides at this uncompleted structure sought to be demolished. In other words, there is no evidence that this uncompleted structure is first respondent's home. Therefore, the facts of this matter are such that s 74 of the constitution cannot be engaged.

[11] In my view, as long as the order in HC 1353/20 is extant, there is no basis for this application. In fact, much of what both parties have devoted voluminous amount of paper, time and arguments amounts to simply nothing. This court cannot grant the order sought by the applicant. It has no basis in law. It is for these reasons that this application must fail.

[12] There remains to be considered the question of costs. On one hand, the first respondent is not entitled to costs, because he mounted a thoughtless opposition in the face of an extant order of this court, and on the other hand, the applicant filed a frivolous and vexatious application. In the circumstances of this case, a no costs order would be the most appropriate. In the result, I order as follows:

The application be and is hereby dismissed with no order as to costs.

DUBE-BANDA J:…….

Kajokoto and Company, applicant's legal practitioners
Gumbo & Associates, first respondent's legal practitioners