MARTIN POTSEKAYI
versus
GODFREY NYAMUTAMBO
and
ESTATE LATE TIMOTHY ZAKEYO
Represented by Mercy Zakeyo
and
VOLTON (PRIVATE) LIMITED

HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 29 JUNE AND 14 JULY 2016

Urgent Chamber Application

V Mutatu with *A Madzima* for the applicant
V Masvaya for the 2nd respondent
S Zingano for the 1st & 3rd respondent

MOYO J: This is an urgent application where in the applicant seeks an interdict barring the disposal through a sale of a building owned by third respondent wherein he claims to have a financial interest and particularly the building as he contributed funds towards its acquisition. First respondent is a shareholder in third respondent together with second respondent which is a deceased estate. At the hearing of this matter, I granted the interdict and stated that my reasons would follow. Here are they:

The allegations are that about three potential buyers came alleging that first respondent is selling the building which is owned by third respondent. I will hasten to point out that third respondent is not opposed to the application as first respondent who purported to file an opposition on behalf of third respondent was not duly authorized in that regard by virtue of a resolution from the shareholders of the company. In fact second respondent who is the only other shareholder, concedes that for the protection of all parties concerned the provisional order should be granted.

It is therefore only first respondent who is opposed to the granting of the provisional order. First respondent's counsel has sought to challenge the application on the basis of lack of

urgency and on the fact that the certificate of urgency is defective. It would appear first respondent's counsel expected the certificate of service to be drafted in a manner that he himself would personally approve as I do not find anything wrong with the certificate of urgency. It might not be of the standard that first respondent's counsel wants it to be, but it is my considered view that it does lay a foundation for the matter to be dealt with as urgent.

First respondent also denies ever advertising the property and submits that applicants should have provided the proof of adverts. I will note that this submission is unfounded for applicant never alleged that he was aware of the mode of advertising used, all applicant knows as per his founding affidavit is that people came to the property claiming that they are interested buyers and having been advised that the property is on sale by first respondent.

The background of the matter would also show that way back in 2004 the late shareholder had to seek an interdict against first respondent when he sought to dispose of the property.

It is my considered view that in such a case the applicant must show that:

1) he has *prima facie* right
2) that there is a reasonable apprehension of injury
3) that he has no alternative remedy
4) and that the balance of convenience favours the granting of an interdict.

Refer to the case of *Zesa Staff Pension Fund* v *Mushambadzi* SC 57/02. It is my considered view that applicant has successfully shown and established that he has an interest in the building owned by third respondent, this evidence is from the annexures attached to the founding affidavit.

Again, applicant has shown that he has a well-grounded fear of harm in that potential buyers have come to the building. He also has no alternative remedy except to seek an interdict to the effect that pending the determination of his claims against third respondent in HC 104/16, an interdict be granted securing the availability of that building until when his case is finalized. The balance of convenience also favours the granting of the interdict in that already third respondent did not oppose the granting of the interdict and second respondent, a shareholder in third respondent has actually consented to the order as being sought by applicant.

I take note of the fact that the building is owned by third respondent and since there is no opposition from third respondent, it follows that no one else can be prejudiced by the granting of the interdict. In fact first respondent did not show that he will be prejudiced if the interdict is granted. Again, pending the determination of the issues troubling the parties, in HC 104/16 it would be in the interests of all the parties that the main assets of the company remain intact, so that when the court deliberates on the respective shares of the parties, its judgment is not rendered a *brutum fulmen* or an academic exercise with no practical effect.

It is for these reasons that I held the view that the applicant did make a good case for the relief sought and I accordingly as a result granted the provisional order.

Mutatu & Partners C/o Dube-Tachiona & Tsvangirai, applicant's legal practitioners
Chitsa & Masvaya Law Chambers, C/o Dube Mguni & Dube, 2nd respondent's legal practitioners
Wilmot & Bennett C/o Danziger & Partners, 1st & 3rd respondent's legal practitioners