TICHAONA MUZANENHAMO
versus
MANYAME RURAL DISTRICT COUNCIL
and
THE REGISTRAR OF DEEDS, COMPANIES
AND INTELLECTUAL PROPERTIES

HIGH COURT OF ZIMBABWE
TAKUVA J
HARARE, 26 July 2024 and 1 November 2024

Court application for a compelling order

P Tsimba, for the applicant
G Madzoka, for the first respondent
No appearance for the second respondent

TAKUVA J:

INTRODUCTION

[1] This is a court application to compel the first respondent to issue a rates clearance certificate to the applicant. The application is opposed by the first respondent.

[2] The factual conspectus leading to the current application is that on 9 January 2023, the applicant entered into an agreement of sale with Tinashe Muchivete Zenda, who was acting in his capacity as the Executor Dative of the Estate Late Sydney Kundishona. The agreement was for the sale of an immovable property, known as stand number 1090 Dema Township, situate in the District of Goromonzi measuring 1554 square metres, held under Deed of Grant 10722/2000 in the name of Sydney Kundishora (the stand).

[3] The stand was valued at USD$65 000. The terms of the agreement were that the applicant would pay USD$40 000 upon signing of the agreement of sale and the balance would be paid after three months from the date of the signing of the agreement. It fell upon the purchaser to meet half the costs of the preparation of the agreement of sale, stamp duty to Deeds Registry as well as transfer costs and any costs incidental to the transfer.

[4] The seller would in turn pay arrear rates, water bills and electricity bills. The seller was also liable to meet any tax obligations arising and the sale's agent's commission.

[5] The purchaser would take occupation only upon the stand being transferred into his name and confirmation of the estate account by the Master of the High Court. The estate account was confirmed on 29 September 2023, and on 28 October 2023, the application for the rates clearance certificate was launched.

[6] That application triggered a series of letters, among which it emerged that the deceased's estate did not own stand number 1090 Dema Township. What it owned were stand numbers 27, 28 and 29 of Dema Township. It also emerged that according to the first respondent's record, stand number 1090 Dema Township is registered in another entity's name and measures 26 000 square metres in extent, as opposed to the 1554 square metres stated in the agreement of sale between the applicant and the deceased estate. The first respondent even questioned the authenticity of the stand's Deed of Grant. Given the incongruities between the documents presented to the first respondent and what it had in its records, the first respondent refused to issue the rates clearance certificate as requested.

THE APPLICATION BEFORE THE COURT

[7] This court is now seized with an application to compel the first respondent to issue a rates clearance certificate for transfer of stand number 1090 Dema Township held under Deed of Grant 10722/ 2000 from the late Sydney Kundishora to Tichaona Muzanenhamo within two days of service of the court order.

[8] Should the first respondent fail and or neglect to comply with the directive to issue the rates clearance certificate, the applicant seeks that the second respondent be directed to effect transfer of the property without the rates clearance certificate.

[9] Finally, the applicant seeks that the first respondent pay costs on an attorney-client scale.

PRELIMINARY POINTS

MATERIAL DISPUTES OF FACTS

[10] The first respondent contends, in *limine*, that the applicant has adopted the wrong procedure, given the time-honoured principle that where there are material disputes of facts which cannot be resolved on the papers and would require the leading of evidence, a litigant ought to proceed by way of an action and not an application.

[11] Both the applicant's and the first respondent's counsel are agreed that there is a material dispute of fact on the actual piece of land that the applicant purchased. While the stand is identified as stand number 1090 Dema Township, the argument is that the

stand is actually a consolidation of stands numbers 27, 28 and 29. While the first respondent contends that stand 1090 measures 26 000 square metres, the applicant, the agreement of sale and the Deed of Grant point to the stand measuring 1554 square metres. Applicant's counsel has conceded that there is need to conduct an inspection in *loco* for physical indications of the stand sold to the applicant, and for a proper assessment to be made on the variances between the two stands if need be. The applicant's counsel has further conceded that the factual issue is so material that it cannot be resolved on the papers, and it was only proper for the matter to proceed by way of action. The concession was well made and puts the first point in *limine* to rest.

LOCUS STANDI

[12] The second point in *limine* taken by the first respondent related to the *locus standi* of the applicant to seek an order for the first respondent to be compelled to issue a rates clearance certificate.

[13] A finding on this point would be dispositive of the matter and it is therefore necessary to deal with it even if the applicant has conceded that there are material disputes of facts and this application ought to be converted to a trial.

SUBMISSIONS BEFORE THIS COURT ON LOCUS STANDI

In summary, the first respondent's argument is as follows: -

[14] The applicant is neither the owner nor the executor dative of the estate late Sydney Kundishona. He therefore does not have the requisite *locus standi* to seek to compel the first respondent to issue him with a rates clearance certificate.

[15] The first respondent contends that rates are only paid by a person who has a relationship with the local authority by virtue of being an owner of a rateable property. The issuance of a rates clearance certificate is therefore based on that relationship. The first respondent relies on s99 as read with s109 of the Rural District Councils Act [*Chapter 29:13*] (the Act) which regulate the issuance of a rates clearance certificate to support his argument.

[16] That relationship, first respondent further argues, is contractual in nature and cannot be delineated to another by virtue of an agreement of sale.

[17] The first respondent further contends that the requirement that a rates clearance certificate looks back into a five-year period supports their position that this can only be sought by someone who was liable to pay rates for that period.

[18] The applicant, on the other hand, insists that because he is the purchaser of the stand with a valid agreement of sale, he has a substantial interest in the matter, and is therefore clothed with the requisite standing.

THE ISSUE

The sole issue that falls for determination is whether or not the applicant has *locus standi* to compel the first respondent to issue him with a rates clearance certificate.

THE LAW

[19] The factors to take into account in considering whether or not a person has *locus standi* have been traversed in various authorities in this jurisdiction. To establish *locus standi*, a party must show that they have a direct and substantial interest in the matter- (*Sibanda & Ors* v *Apostolic Faith Mission of Portland Oregon (Southern African Headquarters) Inc* 2018 (2) ZLR 80 (S))

[20] What constitutes a direct and substantial interest had also been considered in an earlier case of *Zimbabwe Teachers Association & Ors* v *Minister of Education* 1990 (2) ZLR 48 (HC) and the court came to the conclusion that it connotes an interest in the right which is the subject-matter of the litigation. A financial interest which is only an indirect interest in such litigation does not meet the threshold of what constitutes a direct and substantial interest.

[21] In a more recent decision by MALABA DCJ (as he then was) in *Allied Bank Ltd* v *Dengu & Anor* 2016 (2) ZLR 373 (S) the court elaborated on the issue further in the following terms: -

> "The principle of *locus standi* is concerned with the relationship between the cause of action and the relief sought. Once a party establishes that there is a cause of action and that he/she is entitled to the relief sought, he or she has *locus standi*. The plaintiff or applicant only has to show that he or she has direct and substantial interest in the right which is the subject-matter of the cause of action. In the case of *Ndlovu* v *Marufu* HH-480-15, the court had the following to say concerning the concept of *locus standi*:
>
> "It is trite that *locus standi* exists when there is direct and substantial interest in the right which is the subject matter of the litigation and the outcome thereof. A person who has *locus standi* has a right to sue which is derived from the legal interest recognised by the law. In the case *of Stevenson* v *Minister of Local Government and National Housing and Ors* SC 38-02, the court in outlining *locus standi in judicio* stated that in many cases the requisite interest or special reason entitling a party to bring legal proceedings has been described as "a real and substantial interest" or as a direct and substantial interest."

[22] The present case involves a deceased estate. The issue of *locus standi* in deceased estates has also been settled in this jurisdiction. In the case of *Nyandoro* v *Nyandoro & Ors* 2008 (2) ZLR 219 (H) it was held that: -

> "In *Clarke* v *Barnacle NO & Ors* 1958 R&N 358 (SR) at 349B-350A MORTON J stated the legal position that still obtains to this day in Zimbabwe. It is that "whether testate or intestate, an executor, either testamentary or dative, must be appointed…..so that the executor and he alone is looked upon as the person to represent the estate of the deceased person." He left no doubt that towards the rest of the world the executor occupies the position of legal representative of the deceased with all the rights and obligations attaching to that position and that because a deceased's estate is vested in the executor, he is the only person who has *locus standi* to bring a vindicatory action relative to property alleged to form part of the estate" (at 222H-223B)

[23] In *Sibanda* v *Moyo & 5 Ors* HB 51/21, the court commented that: -

> "The position in our law is settled. In terms of section 25 of the Administration of Estates Act a deceased estate is represented by an executor or executrix duly appointed by the Master." (at p3 of the cyclostyled judgment)

[24] In *Dongo* v *Naik & Ors* 2020 (1) ZLR 647 (S) the Supreme Court observed that in a matter involving the administration of a deceased estate and the property thereunder, the condition precedent is that a party must be an interested person in the sense of having a direct and substantial interest in the subject matter of the litigation, namely the property or the administration of the estate as a whole, which interest could be prejudicially affected by a court's judgment[1].

[25] For completeness, it is also necessary to look at the provisions of the Act which the first respondent is relying on to motivate this court to make a finding that the applicant does not have *locus standi*. S99 of the Act which the first respondent is relying on provides that: -

> (1) "Subject to section *eighty-nine* and this Part, a council may impose a rate upon all *owners* of rateable property within the council area…." [emphasis added]

[26] S109 of the Act provides that:

> (1) No transfer of land shall be registered in, and no certificate of consolidated or registered title to any land shall be issued by, a Deeds Registry if the land concerned is in a council area, unless there is produced to a Registrar of Deeds a valid certificate issued in terms of this section by the council concerned stating—
> (*a*) that all charges made and imposed in respect of the land during the period of five years immediately preceding the date on which the certificate, in terms of subsection (3), ceases to be valid have been paid; or
> (*b*) where all or any of the charges imposed in respect of the land during the period of five years immediately preceding the date of issue of the certificate have not been paid,

[1] At p651E

> that such charges have not been paid and that they are, in the opinion of the council, irrecoverable;
> as the case may be:….."

[27] What emerges from the foregoing sections, is that the transfer of a property can only be done upon the production of a rates clearance certificate. Liability to pay rates falls on an owner of a rateable property. S95 of the Act defines an 'owner' for the purposes of levies, rates and other charges as the person in whose name private land is registered in a Deeds Registry; or a person who is party to an agreement which, on the fulfilment by him of the conditions prescribed by such agreement, entitles him to obtain transfer of private land, among others.

APPLICATION OF THE LAW TO THE FACTS

[28] In *casu*, it is common cause that the applicant does not yet hold title to the land. Looking at the provisions of the Act, he would not qualify as an owner whose ownership is by virtue of registration of the stand in his name. The second rung of ownership in terms of the Act is brought about by the terms and conditions of the agreement of sale. The agreement of sale in this case does not prescribe any certain conditions upon whose fulfilment the applicant would be entitled to obtain title. The applicant avers in his founding affidavit that the estate is lawfully up and he is now supposed to take title of the property. A reading of the agreement and the application shows that title would be obtained by way of a transfer of the stand from the deceased estate to the applicant. In light of the above observations, I am persuaded by the first respondent's position that the applicant does not qualify as an 'owner' as envisaged by the Act.

[29] The stand in *casu* is part of a deceased estate. An executor dative has been appointed to administer that estate. It is an established principle of our law that a deceased estate is properly represented by the executor dative. My finding is that in the present matter, it would have only been proper for the executor to seek the order being sought by the applicant. But that is not the end of the matter. There is another dimension which is brought about by the agreement of sale which would support that it was not the applicant's call to seek the rate clearance certificate. It is this. The executor is the one who sold the stand to the applicant. The agreement of sale depicts the executor as the seller. It was a condition of the agreement of sale that the obligation to clear arrear rates, water bills and electricity bill to local authority fell on the seller.

[30] From a reading of s109 of the Act, the purpose of a rates clearance certificate is to facilitate the transfer of title to land. A further reading of s109 shows that the certificate can only be issued after all charges made and imposed on rateable property have been made. In terms of the agreement of sale

[31] In my view, and as the name implies, a rates clearance certificate serves the purpose of proving that all rates have been cleared. It is the *prima facie* proof that the rates have been paid for. For the reason that in terms of the agreement of sale the obligation to clear rates fell on the seller, it follows that he had the corresponding obligation to obtain the rates clearance certificate to prove that he had made met his side of the bargain. He is the one who was supposed to apply for the certificate and upon an unsuccessful attempt to do so, petition the court to compel the first respondent to issue the certificate. The applicant had no business applying for the rates clearance certificate. He equally had no business approaching the court in the manner he did. It was not his fight.

[32] If anything, the executor is conspicuous by his absence in the present proceedings. He is not a party to these proceedings. On the face of it, it would appear that the executor has washed his hands off this matter. However, a closer look at the pleadings will reveal otherwise. It would appear that the executor's firm has become entangled in this transaction in a manner that betrays a conflict of interest. My reasons are that- at the time of the execution of the agreement of sale, the executor dative's address was *Hungwe and Partners*. According to the agreement of sale, the same law firm would handle the transfer of the stand. The same law firm is now appearing in this matter as the applicant's legal practitioners. It is not clear at which point the law firm crossed floors to become the purchaser's legal practitioners. This state of affairs is not only undesirable but also raises a question on whose interests the law firm is actually protecting. My view finds support in the applicant's argument in his heads to the effect that 'transfer must be done so that estate funds can be distributed to beneficiaries, inflation is sky rocketing and the purchase price is being erode daily much to the prejudice of the beneficiaries.' The applicant does not explain on what basis he is makes this submission and fighting from the estates' beneficiaries' corner. He is not the executor. The estate has a duly appointed executor who is supposed to represent the interests of the estate and its beneficiaries.

[33] This brings me to the applicant's position. He argues that because he has an agreement of sale, that entitles him to enforce his rights to the property against the first respondent or against anyone else for that matter. That argument does not find support in the law. The applicant's right to the stand arises from a contract. It is a personal right. It cannot be enforced against anyone else with whom the applicant did not contract. The applicant can only enforce his rights against the seller of the stand and not against anyone else. The applicant can therefore not argue that he has *locus standi* to sue the first respondent on the basis of the agreement of sale. His personal right does not clothe him with the requisite legally recognised interest which would entitle him to seek the relief he is seeking against the first respondent.

[34] For the foregoing reasons, the applicant cannot successfully argue that he has a direct and substantial interest in the matter. He is not yet the owner of the property. He is not a beneficiary to the estate. He is not a creditor to the estate. He is not the executor to the estate. At best, he only has a financial interest in the matter flowing from his transaction post the administration of the estate.

DISPOSITION

[35] In conclusion, the applicant has not shown the court that he has *locus standi* in the present matter.

[36] With respect to costs, it is my opinion costs on an ordinary scale are reasonably sufficient to meet the expenses incurred by the first respondent in defending this matter.

[37] In the result, it is ordered that the preliminary points are upheld, the application be and is hereby dismissed with costs.

TAKUVA J: …….

Hungwe and Partners, applicant's legal practitioners
Coghlan, Welsh and Guest, first respondent's legal practitioners