TEURAI ROPA MUJURU 2 HOUSING
CO-OPERATIVE SOCIETY LIMITED
versus
FBC BUILDING SOCIETY
and
CITY OF HARARE

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 1 & 2 September 2021

Urgent Chamber Application

T. Zhuwarara with him *R. Zhuwarara,* for the applicant
O. Kondongwe, for the 1st respondent
A.Moyo, for the 2nd respondent

ZHOU J: This is an urgent chamber application for an order interdicting the first and second respondents from carrying on construction of roads or other infrastructure at Stand 21510 Kuwadzana Township of Fauntainbleu. This is also the same relief which is being sought on the return date save that in the terms of the final order sought the relief is being sought pending the finalisation of proceedings instituted separately under Case Numbers HC 1179/20, HC 2149/21 and HC 3425/21.

The application is opposed by both respondents who raised two objections *in limine* The objections *in limine* merit consideration first. The first ground of objection is that the matter is not urgent. The second ground is that no *prima facie* right is established on the papers. This latter point pertains to the merits of the matter. It cannot be raised as an objection *in limine,* it being one of the requirements for the interdict sought to be granted that a *prima facie* right must be established.

On the question of urgency, it is necessary to set out the factual context of the dispute which is relevant to the determination of the issue of urgency. The applicant, a cooperative society incorporated in terms of the law, approached the second respondent through a letter dated 5 May 2017. It advised that it had identified a vacant piece of land, which is the property

now in dispute, and which it asked to be allowed to subdivide into residential stands for its members. It indicated that it had the capacity to undertake infrastructural development of the property. A second letter was written on behalf of the applicant dated 22 August 2017 applying to be allocated the property referred to earlier on. In the meantime, the second respondent put up an advertisement in the Business Herald of Thursday 12 October 2017 giving notice of the proposed partnership over the same piece of land with the first respondent and inviting any persons wishing to object to the proposed partnership to lodge their objection on or before 1st November 2017. The applicant did lodge its objection on 30 October 2017. The basis of the objection was, *inter alia*, that the applicant was the first entity to identify the property and had applied for allocation and authority to subdivide it.

The applicant's letter of August 2017 was responded to by the second respondent through a letter dated 15 November 2017. In that letter second respondent advised the applicant that it had partnered the first respondent for the development of the infrastructure and other superstructures. The applicant was advised that the second respondent no longer used the Housing Cooperative Model in Housing delivery. It was advised that the members of the applicant would therefore be considered individually in the allocation of stands. The concerned individuals would be vetted in accordance with the second respondent's criteria. The applicant acknowledged receipt of the letter of 15 November 2017 through its letter of 4 June 2018. Through a letter dated 12 November 2018 the second respondent advised the applicant that Council was yet to meet to resolve the modalities, terms and conditions for allocating stands to applicant's members in line with its partnership agreement with the first respondent. It also invited members of the applicant, who were on the housing waiting list to present themselves for interviews. A letter of 21 November 2018 written on behalf of the second respondent repeated the contents of the letter of 12 November 2018, with an additional statement that applicant's members who did not qualify for allocation would be considered for an alternative site. After this letter there appears, not to have been written communication for about ten months.

It is common cause that the partnership agreement between the first and second respondents was signed in November 2017. The letter of 17 November 2017 referred to above advised the applicant that the first respondent was the one that would carry on infrastructure development on the property, and that any occupation would only take place after the infrastructure had been put in place. It is apparent that in defiance of that clear instruction the

applicant or some of its members occupied the property and started to carry on developments or construction work. On 12 September 2019 the second respondent instructed the applicant to stop illegal construction which was taking place at the property. It advised that the first respondent intended to commence work at the site soon. In its response dated 20 September 2019 the applicant acknowledged these concerns and stated that it would comply with the instruction. It stated that the temporary structures which had been put up were "meant to provide security against land barrons."

Leaving aside the question of where the applicant derived its authority to provide security at the property, what is clear is that as long ago as September 2019 and even earlier the applicant was aware that the first respondent was the one that was authorised to construct roads on the property and that it would commence that work at any time.

A matter is urgent if it cannot wait to be dealt with as an ordinary court application. It has been held in many judgments of this court that what constitutes urgency is not the arrival of the day of reckoning. A party who deliberately waits for the arrival of the day of reckoning cannot seek relief on an urgent basis.

In this case the need to act arose in 2017 when the applicant was informed that the land in question would be developed by the first respondent. If the applicant entertained any doubts about who would develop the land, the letter of 12 September 2019 put that issue beyond doubt. The road construction which the applicant seeks to stop *in casu* is part of the developments by the first respondent which were communicated to the applicant on 12 September 2019 and earlier. Waiting for the actual work to commence is the classic case of waiting for the arrival of the day of reckoning. The first respondent's right to carry on the developments was never challenged by the applicant, and is not the subject of the cases cited in the proposed terms of the final order sought.

In all the circumstances, the application has failed to meet the requirements of urgency.

In the result, the matter is struck off the roll of urgent matters with costs to be paid by the applicant.

Zuze Law Chambers, applicant's legal practitioners
Dube, Manikai and Hwacha, 1st respondent's legal practitioners
Gambe Law Group, 2nd respondent's legal practitioners