

TATENDA CRIS IRVINE MTUNGWAZI

APPLICANT

Versus

RANCH METRO (PVT) LTD

1ST RESPONDENT

And

ENERST TSHABANGU

2ND RESPONDENT

And

SIMBARASHE SAIDI

3RD RESPONDENT

And

GEORGE TSHABANGU

4TH RESPONDENT

And

CITY OF BULAWAYO

5TH RESPONDENT

And

COMMERCIAL BANK OF ZIMBABWE

6TH RESPONDENT

IN THE HIGH COURT OF ZIMBABWE
CHEDA AJ
BULAWAYO 24 AUGUST & 20 SEPTEMBER 2012

J Tsvangirai for applicant
S S Mazibisa for respondents

Judgment

CHEDA AJ: The applicant filed an urgent chamber application for a provisional order against the respondents.

In his founding affidavit the applicant stated that he entered into a business venture of developing residential stands and selling them to prospective seekers in Bulawayo. The shareholding of the venture was agreed at 20% for each party and 40% was to be used to service the

stands to each of the members. They formed a company in which he was one of the directors. The company got 97 stands and each shareholder was to get 20 stands while the balance of the stands went towards servicing the whole area. He contributed \$1 600 towards the purchase of the stands. After selling 10 stands his name was removed from the Directorship of the company. A bank account was opened with the Commercial Bank of Zimbabwe to which he is not a signatory to the account. All company transactions have now been diverted from Agri-bank to CBZ without his knowledge and consent. The respondents obtained a loan from CBZ bank without his knowledge and are now planning to dispose of 10 stands to which he is entitled. He stated that he would be prejudiced by these dealings.

A legal practitioner issued a certificate of urgency on the basis that the applicant was removed unlawfully and that some stands would be disposed of without him getting any revenue. He feared that applicant would suffer irreparable harm if the stands were disposed of before the matter was finalized.

It is clear from the above that having been granted a right to purchase and service stands using funds in a new account then disposing of the stands without the knowledge and consent of the applicant he might be prejudiced.

A provisional order is issued in order to put a hold on any transactions that may prejudice a party who has interests in a matter. The Rules provide a way of dealing with the matter urgently if the restrained party considers that it may suffer any harm as a result of the interdict. The balance of prejudice is weighed between the parties and the court takes into account what it considers to be appropriate measures to protect the interest of the parties.

In this case I consider that the applicant would suffer more harm than the respondents if the respondents are not interdicted from what they were doing.

The respondents can arrange for the matter to be heard urgently and be resolved if they consider that any prejudice will result from the interdict.

It is for the above reasons that the provisional order is granted.

Dube-Tachiona & Tsvangirai applicant's legal practitioners

Cheda & Partners respondents' legal practitioners