NOEL JACKSON
and
JAMIE JACKSON
versus
VONSPRING INVESTMENTS (PRIVATE) LIMITED
and
LEENGATE (PRIVATE) LIMITED
and

CITY OF HARARE

HIGH COURT OF ZIMBABWE
MAMBARA J
HARARE; 4 and 8 April 2025

Opposed Application

S Evans, for the applicants
T G Chigudugudze, for the 1st and 2nd respondents

MAMBARA J:

INTRODUCTION

This is an application that purports to seek a declaratory order in terms of s 14 of the High Court Act [*Chapter 7:06*], together with what is termed "consequential relief." The Applicants pray primarily for the setting aside of certain permits issued by the third Respondent (City of Harare) in favour of the 1st Respondent, Vonspring Investments (Pvt) Ltd.

The factual background, in broad outline, is this: The Applicants state that they offered to purchase a piece of land known as Stand 2957 in a development carried out by the first Respondent (through its associated entity, the second Respondent). They allege to have paid the purchase price in full but, crucially, no formal agreement of sale in writing was ever signed. It later emerged that Stand 2957 was actually part of a block of commercial stands that the first Respondent intended to consolidate and re-subdivide into a site for a shopping mall and other facilities. The Applicants contend that, by amending the original subdivision permit and obtaining subsequent permits from the third Respondent, the first Respondent unlawfully took away their "property" (Stand 2957), leaving them with no stand at all. They allege that they

were not consulted in the permit amendment process and thus claim that their constitutional rights under s 71 of the Constitution of Zimbabwe were infringed.

In light of these allegations, the Applicants now seek a court order setting aside the permits. They also seek restoration of the earlier permit of 2019, presumably so that Stand 2957 can revert to its original status. However, the Respondents raise several preliminary points which they contend are dispositive of this matter.

FACTUAL BACKGROUND

The first Respondent, Vonspring Investments (Private) Limited, was at all material times the owner or developer of Stand 2462 Arlington Township of Subdivision E of Arlington Estate. On or about 4 April 2019, the City of Harare (third Respondent) granted a permit (Permit No. SD/ER/94/17) authorising the subdivision of Stand 2462 into various stands for residential, commercial, and recreational use.

Pursuant to that permit, a number of stands were created, including commercial stands numbered 2949–2958. The third Respondent (together with the second Respondent, which acted as its marketing or sales agent) proceeded to advertise certain stands for sale. At some point, the Applicants answered an advertisement and purportedly entered into an "Offer and Acceptance" for the purchase of Stand 2957. They claim that they paid the entire purchase price of US$21,840.00.

It later emerged that the second Respondent's employee, who dealt with flighting the advertisement and concluding the "offer" with the Applicants, had made an error: Stand 2957 was earmarked for commercial use and fell within a block that the first Respondent intended to convert into a large-scale shopping mall development. On noticing this error—according to the first Respondent—no formal agreement of sale was ever signed.

The first Respondent then applied to the third Respondent for certain amendments to the original permit, culminating in (i) a consolidation permit (Permit No. C/ER/20/23) and (ii) a further subdivision permit (Permit No. SD/ER/71/24), both of which were granted on or around 15 July 2024. By these administrative acts, stands 2949–2958 were effectively consolidated and re-subdivided into new stands designated for a mall and a service station, among other purposes.

The Applicants, aggrieved by the disappearance of Stand 2957, commenced the present proceedings, insisting that they were not consulted before the first Respondent altered "their

stand" and that the newly issued permits must be set aside. They also rely on s 71(2) of the Constitution, alleging a violation of their property rights.

The first and second Respondents contend, on the other hand, that there was never any valid sale of Stand 2957, as no written agreement of sale was executed and the property was still in the first Respondent's name. They also raise multiple preliminary points including lack of *locus standi*, failure to exhaust domestic remedies (i.e. an appeal to the Administrative Court under the Regional, Town and Country Planning Act [*Chapter 29:12*]), and an assertion that the entire application is essentially a disguised application for review, which should have been brought under the review procedure, not under s 14 of the High Court Act.

POINTS *IN LIMINE*

(a) *Locus Standi*

It is trite law that a litigant who seeks relief must demonstrate a direct and substantial interest in the subject matter of the dispute. The courts in Zimbabwe have repeatedly underscored that locus standi requires the party to show that they hold or previously held a right that is directly affected. In *Zimbabwe Stock Exchange v Zimbabwe Revenue Authority 2006 (2) ZLR 489 (S)*, the Supreme Court emphasised that the applicant's interest must not be a mere indirect or contingent one.

The first and second Respondents argue that Applicants lack standing because, at no point, did they actually own Stand 2957. The uncontroverted fact is that title never passed to them. Indeed, the Applicants themselves are pursuing a separate summons action under HC 1407/23, wherein they seek to compel the 1st Respondent to effect transfer of the alleged stand. But that transfer was never effected.

The Applicants counter that they had a valid "offer and acceptance" which they say gave them the right to claim transfer. However, the law in Zimbabwe, consistent with section 8 of the Contractual Penalties Act [*Chapter 8:04*] or the general principle that sales of immovable property (especially by instalments) must be in writing and signed, underscores that an "offer and acceptance" alone does not constitute a valid sale if no final written agreement has been concluded. In *Makorovera* v *Grid Security (Pvt) Ltd 2002 (1) ZLR 577 (H)* the Court held that partial performance or mere payment did not cure the absence of a written instrument when the law specifically required it. It specifically wrote:

> "Mere payment, in the absence of compliance with mandatory formalities, cannot create a legally enforceable right in immovable property. Our law demands written agreements for transactions involving the alienation of land, failing which such transactions are void ab initio."

Therefore, the question arises: do the Applicants truly have a "direct and substantial interest" in the permitted land to the extent that they can challenge the local authority's issuance of permits to the first Respondent (the registered owner)? The evidence suggests that, because there was no written agreement of sale executed, no real right or even a binding personal right in the stand itself arose in the manner required by law.

Prima facie, therefore, the Applicants' *locus standi* is at best tenuous, if not non-existent.

(b) Failure to Exhaust Domestic Remedies

Section 44 of the Regional, Town and Country Planning Act [*Chapter 29:12*] provides that any person aggrieved by a decision of a local planning authority in respect of a permit may appeal to the Administrative Court within one month (or within such extended period as that court may allow). The first and second Respondents argue that, because the Applicants challenge the validity of the third Respondent's permits, the proper forum to mount such a challenge is the Administrative Court via an appeal in terms of s 44.

Numerous authorities hold that litigants must first exhaust the domestic remedies provided for by the enabling statute before approaching the High Court. In *Mhanyami Fishing & Transport Co-operative Society Ltd & Ors* v *General Parks & Wildlife Management Authority NO & Ors HH-292-11*, the Court explained that a litigant should exhaust his domestic remedies before approaching the court where such remedies can provide effective redress. The court wrote:

> "It has been laid down in a number of cases in our jurisdiction that where domestic remedies are capable of providing effective redress in respect of the complaint a litigant should exhaust his domestic remedies before approaching the court…"

Here, if the Applicants believe that the issuance of the consolidation permit C/ER/20/23 and the subsequent subdivision permit SD/ER/71/24 was irregular, they could have lodged an appeal before the Administrative Court, seeking an order setting them aside. That route would have directly addressed the alleged procedural infirmities in the third Respondent's conduct.

The Applicants have not furnished convincing reasons why they by-passed the appeal mechanism. Nor have they demonstrated that the remedy provided under s 44 of the Act would be inadequate in their circumstances. In the absence of good cause shown for circumventing this statutory mechanism, the principle of avoidance of parallel proceedings (and respect for the specialized tribunal) militates against the High Court entertaining a matter that properly belongs to the domain of the Administrative Court.

Consequently, the Applicants' failure to engage the appeal process in the Administrative Court is fatal, given that the relief they seek—namely setting aside these two permits—flows squarely within that tribunal's competence.

(c) Disguised Review Proceedings

The first and second Respondents further submit that this is not a genuine application for a declaratory order but effectively a challenge to the third Respondent's administrative decisions—a challenge that properly belongs under the umbrella of an application for review brought in terms of s 27 of the High Court Act [*Chapter 7:06*] or through an administrative appeal.

Our courts have routinely held that where a party's true grievance is that an administrative decision was taken without proper notice, or in violation of the rules of natural justice, or in contravention of law, such a party must proceed by way of review and not cloak the action in the garb of a declaratur. See, for example, *Mukanganise & Ors* v *Mwale & Ors HH-131-21*, where the Court stressed that the nature of the relief—and not the label assigned by the applicant—is what truly determines if a matter is a disguised review. The court remarked thus:

> "In considering whether this is a declaratur proper or a review disguised as a declaratur this Court looks at the substance of the application rather than what a litigant chooses to call his or her application… The fact that an applicant seeks a declaratory relief is not in itself proof that the application is not for review. Setting aside of a decision is a relief normally sought in an application for review."

In this case, the relief sought is: (i) setting aside the two amended permits; (ii) declaring any acts done pursuant to those permits as null and void; and (iii) restoring the original permit of 2019. Those are the classical hallmarks of a review application, i.e. the invalidation of administrative decisions. Even though the Applicants invoke s 14 of the High Court Act, the net effect of the relief sought is to overturn a local authority's administrative act. Had the

Applicants sought a purely declaratory pronouncement, the form and substance of their founding papers would be different. Instead, their founding affidavit focuses heavily on allegations of irregularity, lack of consultation, and alleged infringement of their property rights—an archetypal review premise.

In line with *Geddes* v *Tawonezvi 2002 (1) ZLR 479 (S)* and other authorities, such a disguised application must be struck off or dismissed unless it complies with the procedural requirements for reviews, including adherence to time limits under the High Court Act and the appropriate statutory review route.

This point, in tandem with the failure to exhaust domestic remedies, is plainly dispositive.

(d) No Valid Sale of the Stand in Question

Finally, the Respondents argue that even if the above preliminary points were not fatal, the Applicants' entire claim rests on the premise that they owned or had vested rights in Stand 2957. Yet the law on sales of immovable property is abundantly clear: a sale of land—especially if it is to be paid in instalments—must be in writing and signed by both parties (or their authorised representatives).

Section 8(1) of the Contractual Penalties Act [*Chapter 8:04*] (and, more generally, the principle restated in countless decisions of our courts) demands a written sale agreement for land transactions. Mere payment of the purchase price does not suffice. A valid sale with binding effect arises only if the parties have reduced their consensus to writing and appended their signatures.

In *Mudhara* v *Gwarada 1998 (1) ZLR 114 (H)*, the Court explained that:

> "Where the law requires that a contract relating to the sale of land be in writing and signed, part performance, no matter how extensive, will not render the agreement enforceable unless or until it is reduced to the statutorily prescribed form."

Consequently, the Applicants cannot claim to have been deprived of a legally enforceable right in Stand 2957 if they cannot demonstrate that a valid written agreement of sale existed. An "Offer and Acceptance" form signed by the Applicants and an employee of the second Respondent is, without more, insufficient to comply with the rigorous formalities required by the law.

The significance of this is that the very foundation of the Applicants' claim—that they were "owners" or at least had vested rights that required their consent before the local authority reconfigured the stands—crumbles for want of a legally cognizable sale.

THE MERITS

Notwithstanding that the points in limine, especially those pertaining to locus standi and the need to exhaust administrative remedies, are likely decisive, I briefly address the merits out of an abundance of caution.

Alleged Infringement of the Right to Property (Section 71 of the Constitution)
-The Applicants rely on s 71(2) of the Constitution of Zimbabwe, contending that the re-subdivision of the land effectively expropriated or extinguished their property rights in Stand 2957.
- However, section 71(2) is engaged when the party complaining can show that they actually hold or held a real right in the property. Here, the Applicants did not have their name on title, nor did they possess a signed agreement of sale.
- For property rights to vest in a prospective purchaser of immovable property, the law requires, at minimum, (i) a valid sale agreement, (ii) compliance with all formalities (including writing), and (iii) eventual transfer (conveyancing). None of these events took place.

Whether Applicants Needed to Be Consulted by the 1st Respondent Before the Amendments
- Applicants insist that, because they had an interest in Stand 2957, the third Respondent was obliged to notify or consult them prior to issuing the consolidation or re-subdivision permits. Section 40(10) of the Regional, Town and Country Planning Act does require the holder of the permit to consent in writing to an amendment if the local planning authority intends to alter that permit.
- However, the holder of the original subdivision permit in this instance was the 1st Respondent, not the Applicants. The relevant statutory obligations relating to permit amendments do not, on the facts, invest the Applicants with a right to be consulted as "permit holders," since they never held the original permit. If, indeed, they had held or co-held the permit, the situation might have been analogous to *Chikerema* v *City of Harare HH-47-23*, where the applicant was personally named as the permit holder and was not consulted and the

court ruled that, "Where a permit holder's rights are amended without the knowledge or consent of the holder, the holder is entitled to seek the invalidation of the subsequent permit. In that sense, the local authority's obligations of consultation run directly to the individual or entity in whose name the permit was originally issued." This is not the case here.

Nature of the Relief Sought

- As already noted, the relief sought is the nullification and setting aside of administrative decisions, plus the "restoration" of the 2019 permit. That is relief typical of judicial review.
- Section 14 of the High Court Act undoubtedly allows this Court to issue declaratory orders, but the Applicants have not phrased their prayer as a classical declaratur (for instance, a declaration that the two impugned permits are invalid on certain legal grounds). Instead, they have prayed for final orders that are tantamount to the exercise of a review or an administrative appeal.

CONCLUSION

Having duly considered the arguments, I find that the preliminary points raised by the Respondents are conclusive of the matter:

First, the Applicants lack locus standi. They have not established a lawful right to Stand 2957 that elevates them to the status of persons directly and substantially affected by the local authority's issuance of the permits. A mere offer and acceptance form, absent a written and signed agreement of sale, does not vest enforceable rights in immovable property.

Second, the Applicants ought to have pursued an appeal before the Administrative Court in terms of s 44 of the Regional, Town and Country Planning Act if they believed that the third Respondent's issuance of the amended permits was irregular or unlawful. The statutory appeal is a suitable, effective, and specialized remedy.

Third, the present matter is, in substance, a request to review and set aside an administrative decision made by the third Respondent, yet it is disguised as a declaratory application. This Court cannot entertain it in that form, particularly when the Domestic Remedies doctrine and the statutory route for appeals or reviews are both available.

Finally, the Applicants have not established that there was a valid sale of the immovable property from which legally cognizable rights could arise. The requirement that a sale of land be in writing is peremptory.

In the premises, these points in limine are upheld, and the matter falls to be dismissed on that basis alone. Even on the merits, there is no plausible ground for disturbing the third Respondent's administrative acts.

DISPOSITION

It is accordingly ordered that:

The preliminary points raised by the first, second and third Respondents are upheld.

The application is hereby dismissed.

The Applicants shall bear the costs of this application on the ordinary scale.

MAMBARA J:……..

Mabuye-Zvarevashe Evans, legal practitioners for the applicants
Madanhe & Chigudugudze, legal practitioners for the first and second respondents