

HB 57/17
HC 2258/15
X REF: HC 2267/15; 1051/14;
2011/14; 553/14; 2227/13

POSIWE DUBE

Versus

SELINA THEBE

And

LEONARD MABALEKA

And

MUNICIPALITY OF BULAWAYO

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 20 FEBRUARY & 16 MARCH 2017

E. Mlalazi for applicant
T. Masiye-Moyo for 1st respondent
No appearance from 2nd and 3rd respondents

Court Application for Joinder

KAMOCHA J: The order that the applicant sought was couched in the following terms:-

“It is hereby ordered that:-

- (1) the applicant be and is hereby joined in the court application for rescission of judgment pending before this court under cover of case number HC 1951/14 as the 3rd respondent.
- (2) Applicant be and is hereby ordered to file her notice of opposition in case number HC 1951/14 within ten (10) (*sic*) of this order being granted.
- (3) The respondents pay costs of this application, on attorney-client scale, jointly and severally the one paying the others to be absolved, only if they opposes (*sic*) this application.”

HB 57/17
HC 2258/15
X REF: HC 2267/15; 1051/14;
2011/14; 553/14; 2227/13

The applicant averred in her founding affidavit that her application for joinder was based on the fact that she had a vested interest in the application for rescission filed by the third respondent under case number HC 1951/14.

She explained that the second respondent had obtained an order of this court under cover of case number HC 2627/13 authorising the sale of the property namely stand number 61218 Pelandaba, Bulawayo by private treaty. She bought the property while the said court order was extant and had not been challenged in any form.

Before she bought the property she had satisfied herself that the property was being sold as a result of the court order and for value. She paid the full purchase price and the property had been transferred into her name.

In the light of the above explanation she held the view that she had a vested interest in the matter under cover of case number HC 1951/14. She went on to allege that the first respondent was quite aware of her vested interest which was the reason why she cited the applicant as the third respondent in an urgent chamber application filed on 28 August, 2014 under case number HC 2011/14. To her surprise the first respondent chose not to cite her in the said application for rescission of judgment just because she did not want her to know about the application.

She then concluded that she had made a good case entitling her to be joined as the third respondent in case number HC 2627/13.

The first respondent's case was that on 1 September, 2014 she was granted a provisional order wherein the Municipality of Bulawayo was ordered not to proceed to sign the agreement of cession/sale between itself and third respondent (i.e. Posiwe Dube the present applicant) in respect of the right, title and interest in and to stand 61218 Pelandaba, Bulawayo.

HB 57/17
HC 2258/15
X REF: HC 2267/15; 1051/14;
2011/14; 553/14; 2227/13

Proper service of the urgent chamber application and the provisional order was effected on Posiwe Dube by handing it to her niece one Thakazelo Ndlovu a responsible person found present at number 4071 Spirtzkop North, Gwanda.

Posiwe Dube denied having been served with the court papers but was unable to file an affidavit from her niece to support her story and alleged that she no longer knew her whereabouts.

That is difficult to accept and must be rejected. This court finds that proper service was effected on her.

Similarly proper service of the urgent chamber application and court order was effected on the Municipality of Bulawayo on 4 September 2014.

Despite the above court's prohibition, the Municipality of Bulawayo purported to cede, transfer and assign all its right, title and interest to and within stand 61218 Pelandaba to Posiwe Dube on 7 October 2014. This is in complete defiance of the court.

The purported cession is illegal and a nullity and nothing can stand on it. I agree.

The first respondent further submitted that the applicant does not have a direct legal interest in the application for rescission. It was not enough for her to have to claim that she had financial interest.

The applicant's legal representative properly conceded, in my view, that she has no real right in the property as it was not transferred to her in terms of section 14 of the Deeds Registration Act.

The applicant has no direct legal interest in the matter. All she has is financial interest which is not enough. She must have a right which is a legal obligation that can be held and

HB 57/17
HC 2258/15
X REF: HC 2267/15; 1051/14;
2011/14; 553/14; 2227/13

enforced against all parties in litigation in which joinder is sought. See *Burdock Investments (Pvt) Ltd vs Time Bank of Zimbabwe Limited* HH-194-03.

Further, in the application for rescission of judgment wherein she seeks to be joined she is unable to say whether or not the applicant Selina Thebe was in willful default. Neither is she able to say whether or not Selina Thebe the applicant in that case has a good and *bona fide* defence.

The applicant *in casu* was not a party to the proceedings which are sought to be rescinded. She has no cause of her own but seeks to be joined in the proceedings so that she can rely on the cause of another. That is improper.

In the light of all the findings in this judgment I would dismiss this application with costs.

Dube-Banda, Nzarayapenga & Partners, applicant's legal practitioners
Messrs Masiye-Moyo & Associates, 1st respondent's legal practitioners