PARKS AND WILDLIFE MANAGEMENT AUTHORITY

Versus

H J VORSTER (PVT) LTD

AND

MINISTER OF LANDS AGRICULTURE AND RURAL RESETTLEMENT N.O

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 2 MARCH 2020 & 11 MAY 2020

Opposed Application

V Bhebe, for the applicant
B Dube, for *the* 1st respondent
Ms B T Nyoni, for the 2nd respondent

MAKONESE J: It is trite law that when a court has handed down a judgment it becomes *functus officio*. This court may not therefore revisit its own judgment and seek to vary it. The court is not held *functus officio* only in instances where the provisions of Rule 449 of the High Court (Civil) Rules, 1971 are invoked. The residual right retained by this court to vary or rescind its own judgment may only be exercised where a judgment has been erroneously sought or granted.

In this application, the applicant seeks an order in the following terms:

"1. The Court Order granted in Chambers in case number HC 2031/18 on the 24th July 2018 be and is hereby set aside and rescinded.

2. The 1st respondent shall bear the costs of this application on a legal practitioner and client scale."

Factual Background

In case number HC 3183/17, MATHONSI J (as he then was) granted an order in favour of the 1st respondent. The parties in that case where the 1st respondent (as applicant) and the 2nd respondent as the only respondent. On the 24th July 2018, and in chambers I granted an application to amend the order issued under case number HC 3183/17. The basis for the amendment was that the prior order had captured a wrong Title Deed number. The Title Deed was incorrectly captured as 4152/92 instead of 5251/92. The application was made on the basis that a genuine error had occurred. The substantive order itself was not in issue save the Title Deed number. I proceeded to grant the application for an amendment as prayed for by the 1st respondent. In a surprising turn of events more than a year later, and on the 2nd September 2019, the applicant in this present application who was not cited and was not a party in case number HC 3183/17 filed an application purporting to seek a rescission of the order dated 24th July 2018 on the grounds that it was erroneously sought and granted. Although the applicant was not a party in case number HC 3183/17, a startling allegation is made in the Founding Affidavit that when the 1st respondent obtained the order in HC 3183/17, the applicant was not moved because this order is a nullity and cannot be enforced since the property described in the order does not exist. It is contended further, that the property description and the Title Deed number is in respect of a property unknown to the applicant. The averments by the applicant indicate that the applicant had been aware of the order of the 24th July 2018 for more than a year before this application was filed. In other words the applicant was watching the events in case number HC 3183/17, on the sidelines, as a bystander with no real interest. The applicant did not seek to be joined in the proceedings in terms of the Rules inspite of their alleged interest in the matter. It should be observed that this court issued two orders under case number HC 3183/17 and HC 2031/18. Following the granting of these orders the 2nd respondent approached this court seeking condonation for the late filing of an application for rescission of judgment under case number HC 2615/18. The matter was argued before MOYO J. The application was dismissed with costs on the 7th June 2019. Curiously, the applicant has sought to conceal these facts from the court. Realising that the door for rescission of judgment had been closed, the applicant devised a scheme to bring the same matter as an application for rescission of judgment erroneously sought and granted. The intention of the applicant is to smuggle the application under the guise of Rule 449. The 2nd respondent who is the acquiring

authority responsible for all State land in this jurisdiction opted to use the applicant as a way of bringing the application into the ambit of Rule 449. This, in my view, is a clear abuse of court process. The applicant and 2nd respondent clearly connived to bring this application in a bid to wood wink the court. This conduct is not only clear misrepresentation, but is unethical. These courts cannot adjudicate upon the same matter over and over with different parties seeking essentially the same relief. It is trite that a party who seeks to misrepresent material facts is not entitled to be heard by reason of the material non-disclosure. See: *Graspeak Investments (Pvt) v Delta Operations (Pvt) Ltd and Another* 2001 (2) ZLR 551 (H).

WHETHER APPLICANT HAS *LOCUS STANDI IN JUDICO*

In terms of our law, all rights in the acquisition and allocation of State land vests with the 2nd respondent. The applicant is a Parks and Management Authority whose rights and obligations are regulated by statute. Applicant does not have any legal or residual rights in the allocation and distribution of land belonging to the State. The matter between the 1st and 2nd respondent has been dealt with by this court. There are extant orders of this court under case numbers HC 3183/17, HC 2031/18 and HC 2105/19. If indeed, this application is a genuine application being brought in terms of Rule 449, no explanation has been placed before the court to explain why the 2nd respondent did not institute such proceedings. The applicant in these proceedings clearly has no *locus standi in judico* to institute legal action in this matter. The applicant has come up with a bizarre and legally untenable argument that it has *locus standi* by virtue of a Cabinet Resolution on the management of Save Conservancy. That Resolution which sought to direct the applicant the authority to manage properties in the Save Conservancy does not grant applicant the *locus standi* to act as the Acquiring Authority in relation to State land. The applicant is clearly making an attempt to meddle in affairs where it has no *locus standi*. See: *Van Niekerle v Van Nierkerk and Others* 1999 (1) ZLR 421 (S) and *Matambanadzo v G*oven 2004 (1) ZLR 339 (S).

I am satisfied that the point *in limine* relating to the *locus standi* regarding the applicant is merited. I have already alluded to the fact that the 2nd respondent and applicant have clearly colluded in bringing this application under the guise of Rule 449. I am fortified in that conclusion in that in the previous court orders, the applicant concedes that it was aware of such orders and took no positive action because in its view, the orders could not be enforced because of the errors in the property description and Title Deed Number. The 2nd respondent did in fact

apply for condonation for the late filing of an application for rescission of judgment of the same order. The application was dismissed by MOYO J on the 7th June 2019. A year later, after the grant of the order in issue, the applicant suddenly and curiously invokes the provisions of Rule 449 and claims to have an interest in the matter. This approach cannot be allowed. This court should not be abused by the filing of dubious applications over and over again, over the same subject matter. There must be finality to litigation.

In the result, the application is hereby dismissed with costs.

Chinogwenya and Zhangazha c/o Coghlan and Welsh, applicant's legal practitioners
Mabundu, Ndlovu Law Chambers, 1st respondent's legal practitioners
Civil Division, 2nd respondent's legal practitioners