NEHANDA HOUSING CO-OPERATIVE SOCIETY
and
NEVER KOWO
and
KERI MHUTE
and
ANDREW MARAUKA
and
CHARLES MATAPO
and
JOTAMU NKALA
versus
SIMBA MOYO
and
ENESIA GUTU
and
ELIZABETH MAPURISA
and
LLOYD HAMAMUTI
and
AUSTIN HOVE
and
FBC BANK LIMITED
and
CABS
and
CBZ BANK LIMITED
and
MINISTER OF SMALL TO MEDIUM ENTERPRISES
AND CO-OPERATIVE DVELOPMENT

HIGH COURT OF ZIMBABWE
MATANDA-MOYO J
HARARE, 2 & 4 May 2015

Urgent Chamber Application

C. Chinyama, for the applicants
1st to 5th respondents in person
No appearance for the 6th to the 9th respondents

MATANDA-MOYO J: Applicants sought the following relief;

"TERMS OF THE FINAL ORDER SOUGHT

1. That the 2nd to 6th Applicants are hereby declared to be the legitimate management committee members of the 1st applicant.
2. It is hereby confirmed that the 1st to 5th Respondents have ceased to be members of the 1st Applicant since the 31st day of December 2012.
3. The 1st to 5th Respondents be and are hereby ordered to pay costs of this application at an Attorney client scale, with the one paying the other to be absolved.

INTERIM RELIEF GRANTED

1. Pending the final determination of this application, and also the final determination of the applications currently pending in the High Court under HC 2867/15 and HC 98842/14 and also pending determination of a dispute referred to the Registrar of the 9th Respondents by the Applicants, the Respondents are hereby interdicted, barred and restrained from holding themselves out as members of the management committee of the 1st Applicant and/members of the 1st Applicant at all.

2. The 1st to 5th respondents be and are hereby interdicted from interfering in any way with the activities of the 1st Applicant inclusive, causing 1st Applicant's bank accounts to be closed and from collecting moneys from any member of the 1st Applicant.

3. The bank accounts maintained by the 1st Applicant with the 6th to 8th Respondents be and are hereby ordered to be forthwith reopened with the 1st to 6th Applicants being allowed to transact freely without hindrance from 1st to 5th Respondents…………………….."

The brief facts are that the first applicant is a Housing Co-operative duly registered in terms of the laws of this country. The second to the sixth applicants form the Management Committee of the first Applicant, which Management Committee was returned into office at an Annual General Meeting held on 27 September 2014 at Nehanda Homes. Following the second to the sixth applicants' re-appointments, the first respondent filed a court application challenging such re-appointment – case HC 9842/14 refers. Such application is still pending before this court. The respondents launched an urgent chamber application on 10 March 2015 seeking the first applicant to be interdicted from selling stands to any person and the first applicant from disposing of any asset of the first applicant. Such application was held not to be urgent by this court case HC 2215/15 refers. Another application calling for the holding of elections within 30 days of the order is also pending.

On 25 April 2015 a meeting of the first applicant members was called. At that meeting a vote of no confidence was passed on the second to the sixth applicants. The first to the fifth

respondents were voted as the new management of the first applicant. Aggrieved by such actions the applicants brought this urgent application.

The applicants have not been candid with this court in the present application. They distorted the facts. The applicants were aware that an emergency meeting was called for, on 24 April 2015 where a vote of no confidence was passed on the second to the sixth applicants but decided to mislead this court by submitting that the first to the fifth respondents "unlawfully declared themselves the new management committee for the first applicant." Such facts were not correct. In the hearing it also became apparent that the second to the sixth applicants were advised of the meeting but decided not to attend.

The withholding of such information by the applicants was a ploy to mislead this court and to keep this court in the dark and trying to make this court believe that the first to the fifth respondents simply woke up and declared themselves the new management committee of the first applicant through a newspaper article of 29 April 2015. It is settled law that a person who approaches the court for relief ought to be candid with the court. Such an applicant ought to disclose all the material or important facts and refrain from suppressing facts within his knowledge. Once found out such an applicant ought to be denied the relief sought. In the case of *R* v *Kensington Income Tax Commissioner* (1917) 1 KB 486 Chief Justice of the Divisional Court Observed;

> "Where an ex parte application has been made to this court for a rule *nisi* or other process, if the court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, the court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the court, but one which should only be used in cases which bring conviction to the mind of the court that it has been deceived……"

It is the duty of any applicant seeking a relief before the court to bring every material fact before the court.

It is trite that a party seeking a temporary interdict "must establish a *prima facie* right, even though open to some doubt, a well-grounded apprehension of injury and the absence of some other adequate and ordinary remedy" See *Chanima Blasting and Earthmoving Services P/L* v *Njainjai and Others* 2000 (I) ZLR 85(S). Let me deal with whether the applicants have managed to establish a *prima facie* right. The applicants base their application on the fact that they were on 27 September 2014 elected as the management committee of the applicant and that

unless lawfully removed from office, they hold such office for three years. They neglected to bring before the court's attention that on 25 April 2015 a Special General Meeting was held which passed a vote of no confident on the second to the sixth applicants and elected the first to the fifth respondents as the new management committee. Once there was that meeting it follows therefore that the applicants have no *prima facie* right to manage the affairs of the first applicant. Such right was taken away by the meeting of 25 April 2015. The applicants attempted to argue that such meeting was attended by 750 members and failed to constitute a quorum in terms of s 50 of the Co-operatives Act [*Chapter 24:05*]. Section 50 provides;

> "50. Quorum at general meetings
> (i) The quorum necessary for the transaction of business at any general meeting shall be at least
> (a) twenty members or delegates, as the case maybe, qualified to vote at the meeting; or
> (b) One-quarter of the members of the delegates, as the case maybe, qualified to vote at the meeting; whichever is the lesser number."

The applicants ignored (a) above and concentrated on
(b) when they argued there was no one-quarter of the members of the delegates. The section is clear that its either twenty members or delegates qualified to vote at the meeting or a quarter of members of the delegates qualified to vote at the meeting whichever is the lesser.

At this stage it is not possible for the court to hold that there was no quorum. Thus the argument by the applicants falls away. For an application for a temporary interdict to succeed, applicant must establish the following:

(1) That he has a *prima facie* right.
(2) That irreparable harm is likely to result should the remedy not be granted.
(3) That the balance of convenience favour the granting of the remedy sought.
(4) That there is no other satisfactory remedy available.

All the above requirements ought to be satisfied in an urgent application for interim interdict.

The applicants are complaining about the manner in which the first to the fifth respondents unilaterally took over the management of the first applicant. However the first to the fifth respondents unilaterally took over the management of the first applicant. However the first to the fifth respondents strongly opposed such averments and placed before the court evidence of a special meeting of 24 April 2015, which meeting elected the first to the fifth respondents into

office. Such evidence dealt a heavy blow on the averments that the five respondents unilaterally declared themselves the new management committee. On the contrary the five were elected at a meeting held on 24 April 2015.

In *Mudzengi & Ors* v *Hungwe and Another* 2001 (2) ZLR 179 the court held that all the requirements of interim interdict must be satisfied before granting such interdict. I am not convinced that there is no other remedy available to the applicants as they can always seek the nullifications of such elections.

Having observed the above I am of the view that the requirements for granting a temporary interdict have not been established and I accordingly dismiss the application.

Chinyama and Partners, applicant's legal practitioners