ZIMCOR TRUSTEES (PRIVATE) LIMITED
versus
ZIMBABWE REVENUE AUTHORITY

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 18 January 2012

Urgent Chamber Application

J Chikuku, for the applicant
C Parirehwa, for the respondent

      MATHONSI J: The applicant is the registered owner of a property known as stand number 35 Vainona Township of Vainona Harare. The said property was purchased from one Tonderai Tarima who, at some point, tried to litigate to reverse the sale and transfer of the property to the applicant.

      Tarima was not successful in his endeavours as his action in case number HC 4827/10 was dismissed by PATEL J as appears in judgment number HH 163-11.

      The applicant has sold the property to a third party but transfer has been delayed by the refusal of the respondent to issue a capital gains tax certificate in accordance with the law. Surprisingly the said tax was assessed and paid by the applicant. That being the case, the respondent is obliged to issue the certificate.

      Ms *Parirehwa* appearing for the respondent submitted that the respondent is apprehensive that issuing the certificate would expose the respondent to litigation as there is an application for condonation of the late filing of an appeal against the judgment of PATEL J, which was lodged by Tarima in the Supreme Court. It is common cause that the application has not been granted and that there is no appeal that has been lodged. For that reason the judgment of PATEL J remains operational.

      In my view, there is no basis upon which the respondent can withhold the certificate especially as it has received the assessed tax. I have already stated that the respondent is obliged to issue the certificate because tax has been paid. If Tarima has a meritable case, there is nothing stopping him from seeking an interdict against registration of transfer.

Meanwhile the applicant is entitled to the relief sought. In the result, I grant the provisional order in terms of the amended draft order filed of record.

Nyika Legal Practitioners, applicant's legal practitioners