INDEPENDENCE HOUSING CO-OPERATIVE
versus
CITY OF HARARE

HIGH COURT OF ZIMBABWE
NDEWERE J
HARARE, 6 May 2014 and 28 May 2014

Opposed Matter

Ms M. Tshuma, for the applicant
D. Kanokanga, for the respondents

NDEWERE J: The applicant is a Housing Co-operative which required certain stands from the respondent.

On 2 June, 1999, the High Court in Case No HC 15574/98 granted the following order:

IT IS ORDERED:

"1. That subject to the provisions of section 152 of the Urban Councils Act [*Cap 29:15*], the respondent is ordered to sell 303 residential stands in Mabvuku as depicted on plans TPF 1932, TPF 1916 and TPF 1885/1.

2. That the respondent pays the costs of the application."

The court order did not give any price.

On 25 September, 2000, the respondent wrote to applicant as follows:

"Please be advised that on 9 August, 2000, council resolved as follows:

1. That council's decision to sell the land as recorded under item 10 of the Finance Committee minutes dated 24 June, 1999 be affirmed. (refer to our letter to you dated 7 July, 1999)

2. That when council eventually agrees to sell land the co-operative will be given the first option and the price shall remain at ZW$7.50 per square metre.

3. That the housing co-operative be advised should they decide to continue with the development of infrastructure, they will be doing so at their own risk and that the superstructures will not be permitted until the council resumes the Mabvuku/Tafara sewer project.

May you please be guided accordingly."

On 16 October, 2000, the applicant through its lawyers sent a cheque for ZW$100 000 to the City as part payment for the residential stands. The letter said "please advise us on the balance……"

On 30 November, 2000 respondent returned the cheque to applicants, "since no contract document has been signed as yet between your client and us. As such we maintain our earlier stance that negotiations on the disposal of these stands can only be concluded upon completion of the Mabvuku/Tafara sewer project, currently under construction."

So as far as respondent was concerned, discussions with applicant were mere negotiations. No contract had been concluded although the price of ZW$7.50 had been set by respondent.

On 31 May, 2001 there is yet another letter setting out respondent's pre-conditions.

> "That subject to the provisions of section 152 of the Urban Councils Act [*Cap 29:15*] the 303 unserviced residential stands in Mabvuku and Tafara Township as depicted on Plan Nos TPF 1916, TPF 1932 and TPF 1885/1 be sold to Independence Housing Co-operative at an intrinsic land value of ZW$7.50 per square metre and subject to the following conditions;"
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> Conditions a,b,c,d,e and f are then given.

On 22 May, 2009, more conditions were given in a letter. The last condition said "no transfer of the stands shall be accepted by council until the roads have been satisfactorily completed within 5 years after completion of the standard core house construction." It took time for the pre-conditions to the sale to be met but finally they were satisfied and the sale could now be concluded. In January, 2013, council approved the sale.

A dispute then arose between the parties on what applicant should pay for the stands. Applicant argued that they were offered the stands at ZW$7.50 per square metre and this is what they should pay, after conversion to United States dollars. Applicant had checked in 2011 the US equivalent of ZW$7.50 at the relevant time and was told that it was 14 United States cents. Thereafter applicant conceded, as indicated in para 9 of its founding affidavit, that the agreed selling price was no longer tenable in view of the change in currency. In para

11 of its founding affidavit applicant then offered US$1 per square metre which is what it considered a reasonable price. The respondent countered that and said the price would be US$2.00 a square metre in line with the intrinsic value of land.

From the above summary, it is common cause that respondent offered to sell at ZW$7.50 in 2000. It is common cause that although a price had been indicated, the actual contracts of sale of the land had not been concluded. It is also common cause that the sale was subject to s 152 of the Urban Councils Act [*Cap 29:15*] which required council to advertise any proposed sale of urban land to the public and invite objections. This means that even the US$2 being suggested by Council, is a mere proposal of a price, in terms of s 152 of the Urban Councils Act. That section means no price is final until the public have seen the advert and accepted the price.

It is also common cause that both parties have shifted from the proposed price of ZW$7.50 in 2000. None of the parties is asking the court to enforce the sale at ZW$7.50. This is because both parties have recognised that such a price is no longer tenable. Applicant concedes this fact in its founding affidavit. So both parties have shifted; applicant to US$1 and respondent to US$2. The applicant is then asking the court, in its draft order to endorse its proposed price of US$1.00 per square metre. Unfortunately, the applicant could not point to the court any legal basis for the court to intervene and conclude a new price for the parties. Section 152 does not allow such intervention by the court because s 152 subjects whatever council does in relation to urban land to public scrutiny and public approval. In this regard, the parties should note that even the 1999 High Court Order was subject to the provisions of s 152.

In the absence of a legal basis for the court to fix a price, the applicant's prayer cannot be granted.

The application is therefore dismissed with costs.

Munangati & Associates, Applicant's Legal Practitioners
Kanokanga and Partners, Respondent's Legal Practitioners