PANGOULA FARMS (PVT) LTD
versus
CITY OF HARARE

HIGH COURT OF ZIMBABWE
FOROMA J
HARARE,31 October 2017 & 8 November 2017

Opposed Matter

T. Biti, for the applicant
C. Kwaramba, for the respondent

FOROMA J: This is an opposed application in terms of which applicant Pangoula Farm P/L seeks the following declaratory orders against the City of Harare that

1) Applicant is exempt from payment of rates in respect of its property Pangoulia Farm of Stembrick in terms of s 8 (2) of Statutory Instrument 199 of 1985.
2) The purported demand of rates by the respondent in the sum of $171 299.91 is a nullity.
3) The respondent's attempt to collect and levy sales from applicant, is therefore null and void.

Applicant also prays for the costs of suit. The respondent opposes the application. The factual background to the dispute is largely common cause and the material facts are outlined below.

The applicant is the owner of Pangoula Farm of Starbrick which measures the 120 hectares held under deed of transfer no. 642/66 which in 1985 was delimited as part of Goromonzi Rural District Council. By reason of the promulgation of the Urban Councils (Harare) Alterations Boundaries and Related Matters (Amendment Notice 1985 No. 6 Pagoula farm became part of the City of Harare with the result that City of Harare became responsible for the assessment and collection of rates due in respect of the said Pangoula Farm which prior to the incorporation of the farm under the City of Harare used to pay Unit tax to Goromonzi Rural District Council.

In terms of s 8(2) of the Urban Councils (Harare) Alterations, Boundaries and Related Matters (Amendment) Notice 1985 (No. 6) aforesaid City of Harare (herein referred to as the respondent) was required to waive the collection of any rates assessed on the valuation of any improvements used exclusively for agricultural purposes on land referred to in paragraph 1 of the third schedule which is 8 hectares or more in extent. As a result of disagreement between applicant and respondent on the correct interpretation of s 8 (2) of the Urban Councils Harare Alterations Boundaries and Related matters Amendment Notice 1985 (hereinafter referred to as Statutory Instrument 199 of 1985) there have been running battles between them with applicant arguing that respondent was not supposed to levy any rates on the farm and respondent contending that it was obliged only to waive rates in respect of the improvements on the farm used exclusively for agricultural purposes.

As a result of the disagreement applicant found itself faced with a whooping arrear rates bill of $171 299.91 as at November 2016. Respondent however accepted that applicant was a farming entity entitled to a waiver of rates in terms of SI 199 of 1985.

The respondent's position has however not been consistent. Respondent has at times accepted that no rates could be collected in respect of both land and improvements in respect of Pangoula farm. On other occasions respondent has insisted that waiver of collection of rates was only in respect of improvements and not the land.

Despite numerous correspondence from applicant seeking an explanation on how the sum of $171 299.91 was arrived at respondent did not explain its billing. Frustrated by the demands for arrear rates by respondent which applicant considered as harassment applicant then instituted this application in the hope this would put an end to the harassment. As indicated above respondent resisted the said application.

Applicant's contention that since its incorporation within the respondent it has not received any service from respondent has not been disputed.

At the hearing the court requested the parties to address specifically the issue as to what was the correct interpretation of s 8 (2) of SI 199 of 1985 as it appeared that both their clients and themselves, disagreed on the correct interpretation to be attributed to s 8 (2) aforesaid.

Mr Biti who appeared for the applicants considered that a proper reading of the definition of non-residential property as provided in s 268 of the Urban Councils act justified the conclusion that a reference to land includes a reference to improvements thus a reference to improvements also includes a reference to land.

Section 268 (1) reads as follows "non-residential property" means any property that is not residential property; "property" means land and includes improvements thereon and any portion of such land or such improvements." A literal rendition of the definition as given shows that Mr Biti cannot possibly be correct in his interpretation of s 8 (2) of SI 199/85 that improvements include land. This interpretation does not derive any support from s 268 (1) of the Urban Councils Act [*Chapter 29:15*]. Section 268 unambiguously says that property means land and includes improvements thereon and any portion of such land or such improvements and not vice versa.

Mr Kwaramba who appeared on behalf of the respondent in the respondent's heads of argument submits that in terms of s 269 of the Urban Councils Act "All property within a Council area shall be rateable by the Council except those that are expressly exempted and are listed in s 270 of the Urban Councils Act. This much does not admit of any doubt. He goes on to argue that because applicant's farm (property) falls within Council area it is rateable. Mr Kwaramba also submitted under para 15 of the respondent's heads of argument that it is also clear that land used for agricultural purposes is not exempted from rates but admits under paragraph 17 of the heads of argument that in terms of the law where one is using land for agricultural purposes he or she is entitled to a waiver of sales. This sounds contradictory and yet not. It should be observed that exemption from rates and waiver do not quiet mean the same things. Mr *Kwaramba* further submitted that in terms of applicant's application applicant claims that it is entitled to waivers in terms of s 8 (2) of Statutory Instrument 199/19/85 as quoted. After quoting s 8 (2) counsel then makes the following submission under para 20 of his heads of argument – "It is submitted that the applicant has deliberately omitted to state that the waiver is effected in respect of rates assessed on the valuation of improvements on the property. The gravamen of respondent's case is clear. It is that no waiver is due on land used for agricultural purposes but only on improvements on the land where such land is 8 hectares or more in extent. This submission is also incorrect as I demonstrate below.

Both counsels made a common but fundamental error in that they both read s 8 (2) in isolation and therefore out of its full context. Section 8 (2) makes reference to improvements used exclusively for agricultural purposes <u>on land referred to in para 1 of the third schedule which is eight hectares or more in extent.</u> (The underlining is mine and for emphasis)

A reference to the third schedule reveals that para 1 refers to land in Borrowdale Unitax and town council areas zoned for agricultural purposes in terms of a town planning scheme <u>or land used for agricultural purposes</u> (again the underlining is mine for emphasis).

Clearly therefore in terms of s 8 (2) council shall waive the collection of any rate assessed on the valuation of any improvements on land used for agricultural purposes. The authority to waive collection of rates on land used for agricultural purposes does not derive from s 8 (2). It derives instead from s 8 (1).

Section 8 (1) categorically authorises the waiving of collection of rates on land used for agricultural purposes.

It reads as follows:-

> Section 8 (1) "subject to the provisions of this section and s 10 the council shall in respect of property specified in the first column of the Third Schedule waive collection of any rate to the extent that it exceeds an amount commencing at that specified in the second column of that schedule and increasing annually by the amount specified in the 3rd column of that schedule."

The property specified in the first column of the Third Schedule includes land used for agricultural purposes. Applicant's land is such land. In terms of s 8 (1) council is obliged to waive collection of rates in respect of property specified in the first column of the third schedule.

The property specified in the first column of the 3rd schedule includes land used for agricultural purposes and improvements. This proves beyond any doubt that although land may include improvements it does not follow that improvement include land.

In the circumstances it is clear that none of the interpretations rendered by the respective counsels in respect of s 8 (2) is sustainable. The correct interpretation of s 8 (2) clearly supports the meaning that the mention or reference to improvements does not include reference to land and yet the reference to waiver in respect of improvements does not therefore exclude waiver in respect of land used for agricultural purposes as same is authorised under s 8 (1), 9 and 8.3. Section 8 (3) reads as follows

- No waiver shall be granted by the council in terms of subs (1) in respect of a--- (b)--- (c) any agricultural land or improvements unless the occupier of the property has produced proof of possession of a valid farmer's licence issued in terms of the Farmers Licencing and Levy Act [*Chapter 109*].

This section further lends support to the finding that improvements do not include land as does reference to the first column of the Third Schedule and also reference in the first column of the Third Schedule to two separate types of property namely land and improvements.

There is no doubt that applicant has established that respondent is obliged to waive the collection of any rate in terms of s 8 (1). In fact this position is buttressed by letter dated 21 April 2015 written by one Tigere of the respondent to Pangoula Farm which is Annexure E to applicant's founding affidavit. The first para of the said letter reads as follows:-

> "My records indicate that your property is used for agricultural activities and therefore entitled to agricultural waiver according to Statutory Instrument 199 of 1985 --- You are required in terms of Statutory Instrument 199 of 1985 to submit a valid farmer's licence annually in order for you to be granted waiver of rates for your property."

It is pertinent to note that s 8 (3) of S.I. 199 of 1985 provides that no waiver (of rates) shall be granted by council in terms of subs (1) in respect of any agricultural land or improvements unless the occupier of the property has produced proof of possession of a valid farmer's licence.

Applicant argues that it has produced farmer's licences for the period under dispute as confirmed by farmer's licences per annexures B1 – B4 of the applicant's founding affidavit covering the period 1996 to 2016. That applicant's farmer's licences have been produced to respondent was also conceded by the respondent – this is clear from the opposing affidavit of Josephine Ncube which under para 3 addressing paras 1 – 10 avers that no issues arise. It is clear therefore that applicant is entitled to a declaratur in para 1 of the draft order subject to the amendment made. It also follows that respondent is not entitled to recover $171 299.91 as arrear rates as respondent ought to have waived these.

In the circumstances I make the following order.

It is ordered that

1. The respondent is obliged to waive the collection of rates on applicant's property called Pangoula Farm of Sternblick in terms of s 8 of Statutory Instrument.
2. The respondent's demand of rates arrears in the sum of $171 299.91 is unlawful.
3. The respondent pay the costs of suit.

Tendai Biti Law, applicant's legal practitioners
Messrs Mbidzo Muchadehama & Makoni, respondent's legal practitioners