

STANBIC BANK ZIMBABWE LIMITED
versus
AARON RASHAMA
and
REGISTRAR OF DEEDS N.O.

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 13 November and 13 December 2017

Opposed Matter

N Chamisa, for the applicant
E Ndlovu, for the 1st respondent
No appearance for the 2nd respondent

TAGU J: This is a simple application for an anti-dissipation interdict barring the first respondent from selling or in any way disposing of his property known as certain piece of land situate in the district of Salisbury called Stand Number 5428 Budiro Township of Willowvale Estate held under Deed of Transfer 2686/98, pending finalization of applicant's suit against the first respondent under Case Number HC 3320/17. The basis of the application is that the first respondent is a former employee of the applicant. He was employed as the Chief Teller at applicant's Minerva Banking Suite. As part of his day to day duties the first respondent would handle cash, which he would either take out of, or deposit into an 'Under Counter Safe' and 'Vault Room' in bundles comprising of the same denominations.

Sometime in May 2016 the applicant discovered that monies amounting to USD164 389.00 were missing from the Under Cover Safe and the Vault Room which the first respondent had sole access to. The applicant conducted its internal investigations which pointed at the first respondent being the cause of the loss in that he either stole the monies or his negligence resulted in loss of the said monies. The matter was subsequently reported to the police and the first respondent was charged with theft under CR 1853/5/201. The first respondent has since been acquitted of the said charge by the criminal court. The applicant then instituted a civil claim under Case Number HC 3320/17 against the first respondent for the recovery of the sums

which were either stolen by the first respondent or lost as a result of the first respondent's negligence.

To the best of the applicant's knowledge the first respondent owns only one immovable property which the applicant found through a deeds search. That is the property the applicant wants the first respondent stopped from disposing of pending the finalisation of the civil suit because if he disposes of the property the applicant may not be able to recover its money in the event it wins its civil suit against the first respondent in case HC 3320/17. The applicant has taken this step because it has gathered that the first respondent is taking steps to dispose of the said property with the intention of prejudicing his creditors such as the applicant.

The first respondent opposed the application on the basis that the said property has already been sold by the first respondent to Caston Takawira and Judith Marufu in a process the applicant took part and facilitated. He said the property in question has been pledged as security to the applicant for a loan which had an amount of approximately USD 5 147.96 outstanding. He further said the applicant is yet to pay the first respondent his terminal benefits of 25 years hence has other security to cling to.

In its answering affidavit the applicant submitted that the sale referred to by the first respondent is not yet complete. The property has not been transferred from first respondent to the purchaser as confirmed by the email from Messrs Mugomeza and Mandizha to applicant's legal practitioners where it is stated that the purchase price is still being held by the conveyancers in trust. The applicant further denied that it owes the first respondent any terminal benefits and no proof has been furnished to substantiate this bare allegation and no amount of the so called terminal benefits have been stated.

At law for an application of this nature to succeed the following requirements must be satisfied:

- a) A *prima facie* right, though open to doubt;
- b) A well-grounded apprehension of irreparable harm if the relief is not granted;
- c) That the balance of convenience favours the granting of an interim interdict, and
- d) That there is no other satisfactory remedy. See *Coverlink Insurance Brokers (Pvt) Ltd v Kudzurunga & Ors* HH 150/16.

In *casu* it is not in dispute that the applicant's civil suit in case HC 3320/17 against the first respondent is yet to be finalized. It is not in dispute that the applicant is trying to recover substantial amount of money from the first respondent, hence has established a *prima facie* right. It is also not in dispute that the first respondent is in the process of disposing of his only

immovable property. Though an agreement of sale was entered between first respondent and the purchasers the title deeds have not changed from first respondent to purchasers and the purchase price is still held in trust by the conveyancers. In the event that this property is sold and the applicant wins its civil suit the applicant will have no other property to attach. The applicant denied that it owes the first respondent any terminal benefits. It is therefore clear that the balance of convenience favours the granting of the application.

In the result I grant the following relief:

IT IS ORDERED THAT

Pending the finalization of litigation under Case Number HC 3320/17;

1. The 1st Respondent be and is hereby interdicted from selling, transferring or in any other way encumbering the immovable property namely certain piece of land situate in the district of Salisbury called Stand Number 5428 Budiro Township of Willowvale Estate held under Deed of Transfer 2686/98.
2. The 2nd Respondent is hereby interdicted from registering any transfer or mortgage bond or any encumbrance of any nature whatsoever in respect of the immovable property namely certain piece of land situate in the district of Salisbury called Stand Number 5428 Budiro Township of Willowvale Estate held under Deed of Transfer 2686/98 without leave of the court.
3. The 2nd Respondent be and is hereby ordered to place a caveat on Deed of Transfer 2686/98.
4. The first respondent to bear the costs of suit on the ordinary scale.

Mawere Sibanda, applicant's legal practitioners
Mabundu & Ndlovu, 1st respondent's legal practitioners