MORGAN AND COMPANY (PRIVATE) LIMITED
versus
KUDAKWASHE SAIMON VUKOMBA
and
THEOPHILUS MAPFURIRA
and
RUTENDO CHORUWA
and
PRINCE MUPANGAVANHU
and
SHENETERAI DZARUMA
and
ELIZABETH GUMUNYU
and
REGISTRAR OR DEEDS N.O
and
THE CITY OF HARARE N.O

HIGH COURT OF ZIMBABWE
MUSITHU J
HARARE, 23 February 2024 & 11 September 2024

Opposed Application-Anti-Dissipation Interdict

Mr G. Sithole, for the applicant
Mr P. Mahembe, for the first respondent
Mr S. Chipomho, for the second, third, fourth and sixth respondents

MUSITHU J: This is an application for an anti-dissipation interdict in which the applicant wants the respondents prohibited from disposing of certain immovable properties pending the finalisation of the applicant's pending summons claim under HC 2397/23. The relief sought is set out in the draft order as follows:

"IT IS ORDERED THAT:

1. The application for an anti-dissipation interdict be and is hereby granted.
2. Pending the finalization of the Applicant's case under Case No 2397/23, the first, second, third, fourth, fifth and sixth Respondents are interdicted from alienating, encumbering and/ or permitted to transfer their rights, tittle and interest in or in whatsoever manner, diminishing the value of the following immovable properties:

2.1 Stand No. 18139, Mabvuku Township (which is beneficially owned by the 1st respondent),

2.2 Stand No 18143, Mabvuku Township (which is beneficially owned by the 1st respondent)
2.3 Stand No 19464, Mabvuku Township (which is beneficially owned by the 1st respondent)
2.4 CERTAIN: Piece of land situated in the District of SALISBURY
CALLED: Stand 2629 Aspindale Park Township of Stand 50 Aspindale Park Township
MEASURING: 199 square meters (which is owned by the 2nd Respondent in terms of Deed of Transfer No. 599/19)
2.5 CERTAIN: Piece of land measuring one hundred and fifty (150) square meters
CALLED: 2251 Vengere Township (which is owned by the 4th Respondent in terms of Deed of Transfer No. 6338/19)

2.6 CERTAIN: Piece of land in the District of Salisbury

CALLED: Stand 76 Greencroft Township 2 of Ascot of Subdivision A of Subdivision A and B of MALBEREIGN (Which is owned by the 6th Defendant in terms of the Deed of Transfer No. 8833/89

3. The eighth Respondent be and is hereby directed to ensure that the first Respondent shall not diminish, dispose or transfer his rights, tittle and interest by way of cession or encumbrance of the properties listed in paragraph 2.1 to 2.3 above.
4. The seventh Respondent be and is hereby directed to ensure that the second to sixth Respondent shall not diminish, dispose or transfer their rights, tittle and interest in the properties listed in paragraph 2.4 to 2.6 above.
5. The first to sixth Respondents shall pay the costs of this Application on a higher scale should they oppose same".

The application was opposed by the first, second, third, fourth and sixth respondents. The fifth respondent did not oppose the application despite being served. The seventh and eighth respondents were cited in their official capacities for the purpose of giving effect to the order sought.

Background and applicant's case

The first respondent was employed by the applicant as its finance manager and was responsible for, *inter alia*, managing applicant's financial affairs to ensure compliance with its license and processing and effecting the applicant's outstanding payments to various statutory bodies, suppliers and other third parties. The applicant avers that during the period between March 2020 and December 2022, the first respondent in cahoots with the second to the sixth respondents devised an illegal scheme to misappropriate and/ or steal money from the applicant. The first respondent would unlawfully make alterations to the proper bank details of the statutory bodies and other third parties and would either insert his bank account and/ or for the second to the sixth

respondents. Oblivious to the unlawful conduct of the respondents, the applicant would process the payments into the altered bank accounts to its prejudice.

Consequently, the applicant suffered prejudice in the total sum of ZWL 294 285 705.89 (two hundred and ninety-four million, two hundred and eighty-five thousand, seven hundred and five Zimbabwe dollars and eighty-nine cents) which was the cumulative total amount unlawfully transferred to the respondents. Further according to the applicant, during that same material period, the respondents utilized some of the misappropriated funds to acquire, *inter alia*, immovable properties listed in the applicant's founding affidavit. The first respondent was said to have admitted that he used the proceeds to purchase the properties and offered to sign an acknowledgement of debt in respect of part of the amount. However, he later changed his mind and disappeared and started offering the said properties to third parties.

The applicant avers that it caused summons for payment of the amount together with interest thereon to be issued against the respondents under HC 2397/23, and it also sought an order declaring the respondents' immovable properties specially executable. The applicant averred that the assets owned by the first respondent did not have title deeds and could only be transferred to third parties by way of a cession of the rights, title and interest by the first respondent in terms of the operative agreement of sale with the City of Harare. It was for that reason that the eighth respondent had been cited in the present application. The applicant also averred that it had established the respondents' intention to dispose of their properties. There was, therefore, a real risk that the properties would be dissipated before the finalization of the main matter. On that basis, the applicant had thus made this present application.

The applicant averred that it had satisfied the requirements of an application of this nature. It had established a *prima facie* right and that it had prospects of success in the main matter given the overwhelming evidence placed before the court as per the audit report. The applicant claimed that it had a well-grounded apprehension of irreparable harm as the first respondent had disclosed to it his intention to dispose of his assets before the matter under HC 2397/23 was finalized. The applicant averred that it had no other ordinary remedy save to approach this court for the relief sought herein. The applicant also averred that it was just and equitable for the court to allow this application as the balance of convenience favoured the granting of the relief sought. Further

according to the applicant, no perceptible irreparable prejudice would occur to the respondents if relief sought was granted, and if the applicant failed in its pending action, the respondents would then be at liberty to sell their properties in question in the future.

The first respondent's case

The first respondent raised a preliminary point that the application had been overtaken by events in that some of the properties against which the applicant sought an order interdicting their alienation and transfer had already been disposed of through cession. Therefore, the application had been made belatedly and would just be an academic exercise. The first respondent further averred that stand 18139 Star Shine Old Mabvuku was disposed of sometime in December 2021 and all rights, tittle and interests were ceded. Stand 19464 Starshine Mabvuku was previously owned by his wife, one Precious Magdalene Vukomba (Nee Santana) who disposed of the same through an agreement of cession consequently ceding her rights and interest in the property. Stand 18143 Mabvuku was owned by his brother, one Tinashe Blessing Vukomba thus incapable of being placed under judicial attachment. Consequently, applicant was attempting to close the stable when the horse had already bolted and could not therefore be granted the relief it sought.

As regards the merits, the first respondent submitted that he had alienated his rights to stand 18139 Mabvuku as far back as December 2021 therefore registration of a caveat or judicial attachment of a property which now belonged to a third party would not be in accordance with real and substantial justice. He restated that he was not the owner of stand 18143 and 19464 Mabvuku. The first respondent averred that stand 19464 was owned by his wife who alienated her rights and interests therein sometime in 2022. He further averred that the duties he executed on behalf of the applicant were either done at the specific instruction of his superiors or after authorization.

The first respondent denied acting in common purpose or devising an unlawful scheme with the second to the sixth respondent to misappropriate money from the applicant. He averred that all transactions he handled in his capacity as an employee had direct authority, approval and sanction of his superiors. He therefore challenged the applicant to prove that all the work he had undertaken constituted an unlawful scheme to misappropriate the sum of ZWL $294 285 705.89. He further denied purchasing properties using proceeds from the misappropriated funds and

averred that he had only one property (stand 18139 Mabvuku) registered in his name which he had acquired through his sports betting activities done outside the confines of work.

The first respondent also denied that he admitted purchasing properties using applicant's funds. He also denied having knowledge of the purported acknowledgement of debt. He averred that he did not offer to sign the same as he had no reason to do so. The first respondent also denied offering the applicant any of his properties as security. He averred that his only property had already been disposed of and could not have offered such property as security for the alleged debt. The first respondent also averred that he had no intention of signing agreements and disposing of his property, as this had already been done. The draft documents placed before the court by the applicant were of no consequence as they had been overtaken by events.

The first respondent further averred that the applicant had failed to establish a *prima facie* case, as its case was full of conjecture and surmise. The applicant was pursuing property owned by a third party. The first respondent averred that any alleged apprehension of irreparable harm was not well grounded as the properties purported to be owned by the first respondent and his wife had been disposed of. The first respondent averred that the purported intention no longer existed as the assets had already been disposed. The first respondent further averred that the applicant had several remedies at its disposal. It had already sued the respondents under HC 2397/23 and therein, also sought a declaration that the properties be declared specially executable.

The applicant could use other methods of enforcing judgement if it obtained judgement in its favour in HC 2397/23. The first respondent further averred that the balance of convenience favoured him. He averred that it was not convenient for the court to grant an interdict and place caveat on properties which now belonged to third parties in circumstances that the said parties were not before the court and not given a chance to make representations. Further according to the first respondent there was no irreparable harm to befall the applicant on the basis that the said properties were in the names of third parties. The present application was therefore misplaced as it related to properties whose ownership now vested in third parties who were not cited herein. The first respondent claimed that the application was made with undue haste and lacked merit therefore, it ought to be dismissed with costs.

Second, third, fourth and sixth respondent's case

The second, third, fourth and sixth respondents opposing affidavit was deposed to by one Prince Mupangavanhu who is the fourth respondent herein. The second, third and the sixth respondents filed supporting affidavits and associated themselves with the averments made by the fourth respondent. The fourth respondent averred that the order being sought by the applicant against them was not warranted as they were not guilty of any unlawful conduct. Therefore, the applicant's claim against them was unsustainable. The fourth and sixth respondents denied owning the properties listed in the applicant's founding affidavit. The second respondent admitted that he was the owner of the property stated in the applicant's founding affidavit but denied acquiring it through proceeds of unlawful conduct. The fourth respondent further denied the claim by the applicant that they had worked in cahoots with the first respondent to misappropriate or steal money from the applicant.

The fourth respondent averred that his relationship with the first respondent dated back to their high school days. He claimed that sometime in March 2020 the first respondent approached him and informed him that his employer (the applicant) intended to advance him a loan and the arrangement was that the money would be deposited into his account at different intervals for a period of at least two years until a certain amount was reached. The first respondent then requested for his bank details such that part of his loan would then be deposited into the same to enable him to overcome the issue of withdrawal limits thereby enabling him to use his money before it could get eroded by inflation. The fourth respondent further stated that he gave the first respondent his account information together with his pin to enable him to transact as per his request and the first respondent used the account from time to time without issues.

The fourth respondent further averred that during the beginning of the year 2022 the first respondent requested to extend the use of his account indicating that his employer had intended to advance him with another loan. The first respondent requested some bank details for three more people to avoid erosion of the value of his money through inflation. The fourth respondent averred that he provided the bank details of the second, third and sixth respondents to the first respondent. The fourth respondent also averred that he supplied the bank details to the first respondent on the basis of their friendship and on the basis that there was no way any amount would be released

without proper procedures having been followed and as well as payment having been authorised. He also averred that the first respondent had used his account since 2020, and nothing was found to be irregular about the payments made into his account. He further averred that he gave the first respondent the account information and pin numbers for his use, but they were not involved in any scheme to misappropriate or steal money from the applicant and that they did not benefit anything from the alleged scheme.

The fourth respondent averred that if the applicant suffered any prejudice, it was not attributable to their conduct. He also averred that the third, fourth and sixth respondents did not own any property listed in the applicant's founding affidavit. The second respondent owned the property listed in the applicant's founding affidavit which he purchased in March 2018 and received transfer in 2019, a period before his account was used by the first respondent. The fourth respondent further averred that a reading of the purported acknowledgement of debt placed before the court brought out one important fact material to the resolution of the dispute. This was that the first respondent was said to have acknowledged total liability for the full amount and offered his properties as security for the due payment of the debt.

The fourth respondent further averred that he could not fathom the applicant's claim against them when the first respondent had admitted liability for the full amount and had offered his properties as security for the due payment of his debt. Thus, there was no basis for declaring the second respondent's property specifically executable when it was clear from the applicant's founding papers that the first respondent had acknowledged the full extent of liability for the amounts alleged to have been misappropriated culminating in the preparation of the acknowledgement of debt by the first respondent. The fourth respondent averred that the applicant's case had no prospects of success against them as it failed to satisfy the requirements of an application of this nature.

The fourth respondent averred that the applicant would not suffer any prejudice if the application was not granted against them. The applicant had failed to establish a *prima facie* right to recover any amount of money from them and that they would be unnecessarily prejudiced if the application was granted. The said respondents prayed for the dismissal of the application with costs.

Applicant's answering affidavit to the first respondent's opposing affidavit

In its answering affidavit the applicant averred that it was worth noting that the first respondent in his opposing affidavit did not deny the allegations levelled against him. Apart from bare denials, the first respondent had failed to show that he did not steal the money or defraud the applicant and had also failed to show why the applicant should not recover the money stolen from him. The first respondent had not made an effort to corroborate the other respondents' narrative or explain why he had used their bank accounts if he was not involved in unlawful money laundering. The first respondent had failed to establish a basis on why the applicant should not be granted the relief sought.

The applicant denied that the application had been overtaken by events. It averred that the properties listed in its founding affidavit remained beneficially owned by the first respondent. The eighth respondent would have notified the applicant on record if the properties had been already sold or transferred to third parties when the applicant wrote to it (the eighth respondent) requesting its office to ensure that pending the resolution of the dispute between the parties, the first respondent's properties would not be alienated and /or transferred to third parties without the court's approval. The applicant averred that the alleged cession agreements were simulated agreements that were only meant to frustrate the present application and justified the applicant's fears of perverse conduct. The respondent did not deny that he prepared the draft agreements of sale and handed them to the applicant as an out of court settlement offer.

Therefore, the first respondent would not have offered the properties if he had already sold them. In any event, if the properties were indeed sold to the first respondent's relatives, one of whom filed a supporting affidavit, these parties would have applied to be joined to the proceedings in order to protect their interests. The applicant denied authorizing the first respondent to make the transfers that resulted in the loss. The applicant also averred that it would not authorize payments that were meant for statutory bodies to be effected on the respondents as this would be illogical. There was no cause for the huge payments to the respondents as the applicant had no business dealings with them.

The applicant averred that it never authorized the first respondent to divert payments for statutory bodies to his personal use. The first respondent deliberately and unlawfully changed the

bank details of the statutory bodies who were the intended recipients of the payments to those of himself and the other respondents. The applicant further averred that the evidence placed before the court in the form of sports betting winning slips was insignificant and just a red herring. The first respondent neither attached proof of losses at the sports betting nor a full listing of all bets placed in the period under consideration. The applicant further averred that sometime in January 2023 some two representative of the sports betting company visited the applicant's premises in the hope of locating the first respondent. They hoped to recover bad debts from the first respondent relating to his gambling losses. Therefore, the first respondent's purported success at betting was at odds with the applicant's first-hand experience.

According to the applicant, sometime in March 2023 the first respondent visited its offices and met with the applicant and it was at that meeting that the first respondent acknowledged liability and presented properties (listed in the applicant's founding affidavit) to the applicant and expressed his intention to sell the properties to offset the stolen funds in an effort to prevent the applicant from commencing civil and criminal legal proceedings against him. The first respondent did not deny that the second to the sixth respondents received money that was meant for statutory bodies and *prima facie*, the applicant was entitled to recover the said money from them. The first respondent did not also deny that the listed properties were the only assets known to the applicant such that if they were transferred to third parties the applicant's ability to recover the stolen money would be negated.

Applicant's answering affidavit to the second, third, fourth and sixth respondents' opposing affidavit

The applicant averred that it had managed to establish a *prima facie* case against the second to the sixth respondents. It averred that the second to the sixth respondents had admitted that they gave the first respondent their bank details so that the money from the applicant could be laundered from there. The second to the sixth respondents had no lawful cause or right to receive the funds transferred into their respective accounts and they had no reasonable explanation as to why they kept receiving money from the applicant referenced as money due to governmental and regulatory bodies if they genuinely believed the funds were for the first respondent's loans. There would have been no reason why the reason for the transfers had to be disguised as funds due to statutory bodies.

The applicant also averred that there was no cogent reason as to why the first respondent could not receive the purported loans into his own account and thereafter disburse to the respondents if such was a true transaction. It maintained that the respondents acted in common purpose and benefitted from the unlawful conduct, therefore the applicant was entitled to disgorgement of all the funds received by the respondents, jointly and severally, the one paying the other to be absolved.

According to the applicant, if the second to the sixth respondents had no intention of disposing their properties, then clearly, they had no reason to oppose the relief sought by the applicant as there would be no harm to them. The applicant maintained that the properties listed in its founding affidavit were owned by the second to the sixth respondents and were the only ones known to the applicant and if dissipated the applicant would irrevocably lose any chance of recovery of the stolen money from the respondents. The applicant's apprehension of irreparable prejudice was therefore real. The applicant averred that the claim by the second respondent that he purchased the property in 2018, and that the property was not purchased using stolen proceeds did not make it insusceptible from the anti-dissipation interdict.

Submissions

Mr Mahembe for the first respondent persisted with the preliminary point that the application had been overtaken by events. The applicant sought to stop the respondent from dissipating Mabvuku stand that had already been disposed of in 2021. The special power of attorney placed before the court related to the sale of the said property. Counsel averred that the first respondent's rights in stand 18139 Mabvuku no longer existed. *Mr Mahembe* conceded that in the absence of a cession agreement or confirmation from the eighth respondent, then the point was not sustainable. He abandoned the submission in connection with that property.

As regards stand 19464 Mabvuku, Mr *Mahembe* submitted that the property was owned by first respondent's wife, one Precious Magdalene Vukomba (nee Santana) and had already been disposed of as evidenced by the agreement of cession placed before the court. Precious ceded rights to one Nomfundo Jairosi. The property was not in the first respondent's name, and therefore its disposal could not be interdicted. Mr *Mahembe* also averred that stand 18143 Mabvuku was owned by one Tinashe Blessing Vukomba as confirmed by his supporting affidavit on record and utility

bills in his name. Tinashe had acquired it through his housing cooperative. Counsel further averred that an anti-dissipation interdict served to preserve assets, and the applicant had no interest at all in those assets.

In response to the averments made in respect of stand 18139 Mr. *Sithole* averred that the first respondent conceded that the property had not been disposed to a third party. The eighth respondent had not confirmed that position when it was approached for confirmation. The position of the law was that what was not refuted was taken to be admitted. The agreements of sale that were placed before the court were clearly simulated.

As regards Stand 18143, the first respondent had told the applicant that he owned the property. He had offered the property to the applicant, and the applicant prepared an acknowledgment of debt based on that undertaking. The only reason why the acknowledgment of debt had not been signed was because the figures had not yet been finalized through the forensic audit. The same could also be said of Stand 19464 which was allegedly registered in the name of the first respondent's wife, and the first respondent's brother. These interested parties would have asked to be joined in the proceedings. The preliminary point lacked merit. The application had not been overtaken by events.

In his brief response, Mr *Mahembe* insisted that the first respondent had produced positive evidence which showed that he no longer had interest in the properties. The acknowledgment of debt was not signed.

On the merits, counsels by and large abided by their heads of argument as well as the submissions made on the preliminary point. Mr *Sithole* submitted that the first respondent was employed as a Finance Manager, responsible for generating payments. Between March 2020 and December 2022, the first respondent completed payment requisition forms for payments due to statutory bodies. He then altered the banking details and replaced them with those belonging to the second to sixth respondents herein. The second to sixth respondents did not deny receiving payments into their bank accounts from the first respondent. The applicant had therefore established a *prima faci*e case against the respondents.

In response, Mr *Mahembe* averred that the applicant ought to have shown that the respondents intended to dispose of their properties. The application was anticipatory in nature.

Therefore, there was no application before the court. Counsel further averred that the applicant had full knowledge of all the payments made by the first respondent. He conceded that the applicant had indeed established a *prima facie* right, however, had failed to establish well-grounded fear of irreparable harm.

Mr *Chipomho* for the second, third, fourth and sixth respondents submitted that the said respondents did not own any property listed in the applicant's founding affidavit. The property owned by the second respondent was acquired before the alleged fraud. There was no basis for the granting of an interdict against the second to the sixth respondents, since the first respondent had allegedly admitted liability. There was no legal basis to impute liability on the second, third, fourth and sixth respondents. There was no evidence to show that the said respondents intended to dissipate their assets, and consequently, there was no case against them.

Analysis

The preliminary point

In his opposing affidavit the first respondent raised a preliminary point that the application had been overtaken by events. The basis for saying so was that the property that the applicant sought an anti-dissipation order for had already been disposed. He averred that some of the properties against which the applicant sought an order interdicting their alienation and transfer had already been disposed of through cession thus the application had been made belatedly and would just be an academic exercise. The first respondent placed before the court an agreement of sale in respect of stand 18139 Star Shine Heights Mabvuku. His argument was that the property had already been disposed of through an agreement of sale and the applicant could not seek an anti-dissipation interdict on a property whose ownership now vested in a third party. The property was purported to have been sold to one Tinashe Mike Zakaria sometime in December 2021.

However, no cession of rights, title and interest attached to the first respondent in respect of the property took place. The registration of the cession had not been effected. During hearing the court asked counsel for the first respondent to address it on the issue of cession in respect of the property in question. *Mr Mahembe* conceded that in the absence of a cession agreement, that submission was not sustainable. In my view a registered deed or documents confirming cession

involving the eighth respondent are *prima facie* proof of ownership or cession of rights, title and interest in the property, though subject to challenge.

Thus, *in casu* in the absence of a cession of rights through the eighth respondent, ownership of the property remained vested in the first respondent. It is pertinent to note that there was no affidavit from Tinashe Mike Zakaria, the purported purchaser of the property nor an application for joinder made by the said Tinashe Mike Zacharia to protect his rights in the property as an innocent purchaser. The agreements of sale placed before the court by the first respondent were controverted by the applicant. The applicant regarded them as "simulated agreements meant to frustrate the present application". I am persuaded to agree with the applicant's submissions. The first respondent ought to have placed before the court evidence that leaves the court in no doubt as regards the ownership of the property in question.

In respect of stand 19464, the first respondent averred that the property belonged to Precious Magdalene Vukomba who ceded her rights to one Nomfundo Jairos through a cession that was entered into sometime in November 2022. The property did not belong to the first respondent. Precious Magadalene Vukomba filed an affidavit to confirm the position that she was indeed the owner of the property and had already disposed of the same. Therefore, the applicant could not seek an anti-dissipation interdict on a property that is owned by a third party and property that had been dissipated already. The right of ownership of the property now vested in a third party. In *Airfield Investiments (Pvt) Ltd v Minister of Lands & Ors* 2004 (1) ZLR 511 (S) the court held that:

> "An interim interdict is not a remedy for past invasions of rights and will not be granted to a person whose rights in a thing have already been taken from him by operation of law at the time he makes an application for interim relief".

It was submitted in respect of stand 18143 that the property did not belong to the first respondent. The first respondent averred that the property was owned by his brother one Tinashe Blessing Vukomba. Tinashe Blessing Vukomba filed an affidavit to confirm that he was the registered owner of rights, title and interest in the property. He placed before the court an invoice from City of Harare bearing his name. The applicant cannot seek an order restraining the dissipation of a property that belongs to a third party. Therefore, the court determines that the

preliminary point that the application had been overtaken by events in respect or stand 19464 and 18143 is meritorious.

On the merits

The application before the court is one for an anti-dissipation order wherein the applicant wants an order restraining the respondents from disposing of their properties pending the finalisation of the main matter under HC 2379/23. What the applicant sought in the present matter was simply a prohibitory interdict. Authors *Herbstein and Van Winsen* in their book The Civil Practice of the High Courts of South Africa[1], explain an anti-dissipation interdict as follows:

> "A special type of interdict may be granted where a respondent is believed to be deliberately arranging his affairs in such a way as to ensure that by the time the applicant is in a position to execute judgment he will be without assets or sufficient assets on which the applicant expects to execute. It is not a claim to substitute the applicant's claim for the loss suffered, but to enforce it in the event of success in the pending action so that he will not be left with a hollow judgment."

The authors further state as follows:

> "The purpose of the interdict is to prevent a person (the intended defendant) who can be shown to have assets and who is about to defeat the plaintiff's claim, or to render it hollow, by secreting or dissipating assets before judgment can be obtained or executed, and thereby successfully defeating the ends of justice from doing so."[2]

From my reading of the above *dictum*, the purpose of the interdict sought hereunder is simply to prevent a respondent from disposing his or her assets to defeat a claim that may be made against the said respondent by the applicant, so that by the time the applicant obtains judgment against the said respondent, there would be nothing to execute upon. The requirements of an anti-dissipation interdict have been held to be similar to those of a prohibitory interdict, and these are a *prima facie* right, a well-grounded apprehension of irreparable harm if the relief is not granted, the absence of any other remedy and that the balance of convenience favours the granting of an interim interdict.[3]

The evidence placed before the court showed that some money was misappropriated from the applicant and transferred to the second, third, fourth and sixth respondents' bank accounts. The first respondent himself admitted using part of the funds to purchase the immovable properties

[1] Fifth Edition Vol 2 at p 1490
[2] At p 1491
[3] *Mine Mills Trading (Private) Limited v NJZ Resources (HK) Limited* SC 40/14

listed in the applicant's founding affidavit. While the first respondent denied stealing the money, he and the second, third, fourth and sixth respondents did not deny that funds were transferred into the bank accounts of these named respondents. While the said respondents admitted to receiving money in their respective accounts, they however denied that they benefitted from the money. From an analysis of the evidence and the submissions by counsel, this court is satisfied that the applicant managed to establish a connection between the lost funds and the first, second, third, fourth and sixth respondents. Even counsel for the first respondent admitted as much that the applicant had managed to establish a *prima facie* right. The respondents will have an opportunity to explain fully in the main proceedings why those deposits were made into their names.

The applicant averred that it had a well-grounded apprehension of irreparable harm as the first respondent had disclosed to it his intention to dispose of his assets before its matter under HC 2397/23 was finalized. The first respondent argued that properties purportedly owned by him and his wife had been disposed of, and for that reason the applicant had failed to establish a well-grounded fear of irreparable harm. In his heads of argument, the first respondent averred that the applicant had produced no proof that the first respondent intended to dispose its properties. He averred that the evidence placed before the court in the form of unsigned draft agreements was insufficient proof of the applicant's alleged fear. The first respondent averred that there was no threat actual or implied made by him with regards to the properties in question. In his heads of argument, the fourth respondent averred that the applicant had not established that the second, third, fourth and sixth respondents were acting in a way calculated either to dissipate or hide assets from the reach of the applicant. The applicant averred that the properties listed in its founding papers are the only assets known to it and the respondents might be coordinating amongst themselves to dissipate their assets as they had worked together in defrauding it.

In his oral submissions *Mr Sithole* submitted that the fear of irreparable harm arose from engagements done with the first respondent when he expressed his intention to sell the properties to offset the debt. The first respondent later refused to sign the acknowledgement of debt. The conduct of the first respondent was clearly a cause for concern. The first respondent did not deny engaging the applicant prior to the commencement of these present proceedings. Though he dismissed the acknowledgment of debt as being unsigned, it is clear to me that some discussions

between the applicant and the first respondent took place culminating in the drafting of the acknowledgment of debt. The applicant would not have guessed that the first respondent owned some properties in Mabvuku unless that information had been volunteered. It is conceivable that the applicant will suffer irreparable harm if the property stand 18139 Mabvuku is transferred to a third party. The applicant will not have a cause of action against the third party. In my view, the applicant has a well-grounded apprehension of irreparable harm.

The first respondent averred that there were several remedies at the applicant's disposal. The applicant had already sued the respondents under HC 3297/23. In its opposing affidavit, the fourth respondent averred that the applicant could still execute against the property of the respondents, if any, in the event of obtaining in its favour. The intricate way the applicant was defrauded its funds which found their way into the second, third, fourth and sixth respondents' accounts showed there was a lot of planning and collusion amongst the respondents. The fact that the deposits were referenced as payments to governmental and regulatory bodies but found their way into the respondents' accounts should surely have raised alarm. The court is satisfied that should the respondents not be restrained from disposing of the property, considering the way the fraud was committed, the applicant will be left with nothing to execute upon should judgment be granted in its favour in the main claim. The balance of convenience clearly favours the granting of the relief sought.

The next issue is to determine which of the properties should be subject to the anti-dissipation interdict. The first respondent did not deny that he held rights title and interest in Stand 18139 Star Shine Old Mabvuku. He claimed that it was disposed of to one Tinashe Mike Zakaria. Nothing was placed before the court to confirm that rights, title and interest were ceded to the purchaser with the approval of the eighth respondent as the authority that holds ownership rights in such properties.

The court has already resolved the fate Stand 19464 Starshine Heights Mabvuku, and Stand 18143 Mabvuku Township, when it disposed of the preliminary point above.

The third, fourth and sixth respondents denied owning any property listed in the applicant's founding affidavit. The fourth respondent allegedly owned a property known as Stand No 2251 Vengere Township held under Deed of Grant No. 6338/19. The sixth respondent allegedly owned

a property known as Stand 76 Greencroft Township 2 of Ascot of Subdivision A of Subdivision A and B of Mabelreign, held under Deed of Transfer No. 8833/89. Nothing was said about the third respondent owning any property at all. In its answering affidavit, the applicant responded to the averments as follows:

> "This is denied. To the Applicant's knowledge, the said properties are beneficially owned by the second, third, fourth and sixth respondents."[4]

Nothing was attached that connects the third, fourth and sixth respondents to any property they allegedly owned. If the properties are held under a registered title deed, then it would have been the easiest thing to obtain a copy from the offices of the seventh respondent. Failure to attach evidence of ownership of any property in respect of the third, fourth and sixth respondents clearly shows that the applicant was not certain about the source of its information.

The second respondent admitted owning the property described as stand 2629 Aspindale Park Township of Stand 50 Aspindale Park Township, but averred that he purchased it in 2018, and took transfer of ownership in 2019. The forensic audit report attached to the applicant's founding affidavit shows that the second respondent received substantial amounts of money into his account. None of the respondents challenged the forensic audit report. As noted already, the purpose of the anti-dissipation interdict is to prevent the disposal of assets by a defendant in order to defeat the applicant's claim. From my reading of the law, the property for which the interdict is sought does not necessarily need to have any connection to the prejudice suffered by the plaintiff. So, the mere fact that the second respondent may have acquired the property prior to the fraudulent transactions which found their way into his bank account does not save the second respondent.

As regards costs of suit, I find it befitting to make an order that each party bears its own costs of suit. The applicant appeared uncertain about the statuses of some of the properties that it wanted secured by the anti-dissipation interdict. The third, fourth and sixth respondents were therefore unnecessarily dragged into these proceedings.

I also note that although the fifth respondent was properly served with the application, no property was attributable to the said respondent amongst the properties listed in the applicant's

[4] Paragraph 11. 4 of the answering affidavit on p 176 of the record.

founding affidavit. Nothing was said about this party even in oral submissions. Consequently, no order can competently be made against her.

Disposition

Resultantly, it is ordered that:

1. The application for an anti-dissipation interdict be and is dismissed as against the third, fourth and sixth respondents with no order as to costs.
2. The application for an anti-dissipation interdict is hereby granted in respect of Stand 18139 Mabvuku Township, Harare and Stand 2629 Aspindale Park, Harare.
3. Pending the finalization of the applicant's case under case number HC 2397/23 the first and second respondents be and are hereby interdicted from alienating, encumbering and/or permitted to transfer their rights, title and interest in or in whatsoever manner, diminishing the values of the following immovable properties:
   a) Stand No. 18139, Mabvuku Township, Harare. (which is beneficially owned by the 1st respondent).
   b) CERTAIN: Piece of land situated in the District of SALISBURY
      CALLED: Stand 2629 Aspindale Park Township of Stand 50 Aspindale Park Township
      MEASURING: 199 square meters (which is owned by the 2nd Respondent in terms of Deed of Transfer No. 599/19)
4. The 8th respondent be and is hereby directed to ensure that the 1st respondent shall not diminish, dispose or transfer his rights, title and interest by way of cession or encumbrance of the property listed in paragraph 3(a) above.
5. The 7th respondent be and is hereby directed to ensure that the 2nd respondent shall not diminish, dispose or transfer his rights, title and interest in the property listed in paragraph 3 (b) above.
6. Each party shall bear its own costs of suit.

MUSITHU J: …….

Kantor and Immerman, applicant's legal practitioners.
Gurira and Associates, first respondent's legal practitioners.
Nyama Law Chambers, second, third, fourth, and six respondents' legal practitioners.