

JACK BEAN (PRIVATE) LIMITED  
versus  
JOHN BUKUTU  
and  
CONTACT REAL ESTATE & INVESTMENTS (PRIVATE) LIMITED  
and  
THE REGISTRAR OF DEEDS N.O.

HIGH COURT OF ZIMBABWE  
TAGU J  
HARARE, 8 November 2021 and 16 February 2022

**Urgent chamber application**

*S Muzondiwa*, for applicant  
*M T N Chingore*, for respondents

TAGU J: This is an urgent chamber application to interdict the first and second respondents from selling a certain piece of land situated in the District of Harare known as No. 34 Arcturus Road, Highlands, Harare held under Deed of transfer No. 3496/09, measuring 4334 square metres (herein after referred to as the property) to any other person without offering the said property to the applicant first.

The undisputed facts in this case are that on the 19<sup>th</sup> of February 2021, the applicant and first respondent entered into a lease agreement in terms of which the latter leased the aforesaid property to the Applicant. A copy of the agreement of lease is attached hereto marked as Annexure B. It is further not in dispute that in or around the 16<sup>th</sup> of August 2021 the first respondent indicated his intention to sale the leased property to the Applicant pursuant to which a right of first refusal was then awarded to the applicant in the event that the first respondent's intended sale came to fruition. A copy of the communication is attached as Annexure C. It is further not in dispute that pursuant to the right of first refusal and on the 21<sup>st</sup> October 2021, the applicant presented an offer to purchase the leased property for the sum of USD\$280 000.00. A copy of the said offer presented to first respondent through the second respondent is attached hereto marked Annexure D. It further not in dispute that on the 21<sup>st</sup> of October 2021, the applicant received a communication from the

second respondent's Mr. Godwin Mushari to the effect that the applicant's offer had been accepted on condition that the Applicant provides a proof of funds by Friday 22 October 2021. See Annexure E. Proof of funds was then presented to the second respondent on 22 October 2021. See Annexure F. however, by email Annexure G the second respondent registered the first respondent's intention to consider other buyers instead of the applicant, who is a holder of a right of first refusal which right the Applicant intends to exercise. This prompted the applicant to file the present application for an interdict.

At the hearing of this matter the first and second respondent raised three points *in limine*. The first one being that the applicant entered into agreement with *N Kagande* who was representing the company. First respondent therefore raised the issue of *locus standi*. The second point *in limine* was that third parties should have been cited. The third and last point *in limine* was that the matter was not urgent.

Having considered the submissions by the parties, and taking into account the history of the matter as outlined above, the points *in limine* have no merit. I dismiss them.

In my view the applicant is a holder of a valid right of first refusal in respect of the sale of the property. The Applicant has exercised the said right and has presented an offer to purchase the property, which offer was accepted. The applicant further satisfied the first respondent's request to be furnished with proof of funds in the form of a letter from applicant's legal practitioners of record. as such, the Applicant's right to the property is clear and unassailable. The applicant is now entitled to execution of an agreement of sale between itself and the first respondent in terms of the accepted offer. The first and second respondents' purported cancellation of the offer through an email is dated the 22<sup>nd</sup> of October 2021 is without just or legal cause. Their intimation to sell the property to other buyers without following due process is without foundation. If allowed to sell the property to other buyers, the applicant will suffer irreparable harm. The only way to protect applicant's right is to grant an interdict.

**“TERMS OF FINAL ORDER SOUGHT**

That you show cause why a final order should not be made in the following terms-

1. The first and second respondents' cancellation of the applicant's right of first refusal to purchase a property known as No. 34 Arcturus Road Highlands, Harare, be and is hereby declared unlawful and therefore null and void.

2. Any agreement/s of sale the second and third respondents may have executed with third parties in respect of No. 34 Arcturus Road, Highlands, Harare, be and are hereby declared null and void.
3. The applicant be and is hereby declared a holder of a valid right of first refusal to purchase a property known as No. 34 Arcturus Road, Highlands, Harare.
4. It is further confirmed that the Applicant has properly exercised the right of first refusal and is now entitled to execution of an agreement of sale between the applicant and the first respondent in terms of the accepted offer.
5. The first and second respondents shall pay costs of suit.

#### **INTERIM RELIEF SOUGHT**

Pending confirmation or discharge of the Provisional Order, the applicant is granted the following interim relief that:

1. First and second respondents be and are hereby interdicted from selling a property known as No. 34 Arcturus Road, Highlands, Harare to any other person pending the return date.
2. The third respondent be and is hereby interdicted from registering any transfers of a property known as No. 34 Arcturus Road, Highlands, Harare, held under Deed of Transfer No. 3496/09 measuring 4334 square meters to any other person pending the return date.

#### **SERVICE OF PROVISIONAL ORDER**

Applicant's legal practitioners are hereby authorized to serve the provisional order on the respondents."

*Samukange Hungwe Attorneys, applicant's legal practitioners*  
*Chingore & Associates, first and second respondents' legal practitioners*