JOHN MUZUWA
versus
ALPHA LAND AFRICA INVESTMENTS (PVT) LTD
and
APEK FINANCIAL HOLDINGS
and
KUNDAI GOREDEMA
and
JANET MUTSVANGWA
and
REGISTRAR OF DEEDS

HIGH COURT OF ZIMBABWE
HUNGWE J
HARARE, 2 October 2018 & 30 January 2019

Opposed Application

Applicant in person
S Mamimine for the respondents

HUNGWE J: Applicant is a self-actor. He has been legally represented together with her wife fourth respondent in the reference cases concerning the immovable property in issue in this and previous proceedings. Presently, the applicant seeks an order:-

(a) restraining first to fourth respondents from evicting applicant and all those claiming through him from Stand No. 8004 Cold Comfort, Tynwald South, Harare;
(b) reversing the transfer of the immovable property from the names of the current registered title-holders into his name and that of his wife.

He makes this application on the following grounds. There is an application pending before this court in HC 8186/15. The property, he claims, was sold without his knowledge or consent. When the sale of the property was concluded he was out of the country. He had never granted anyone any power of attorney authorising anyone to act on his behalf nor did he authorise any legal practitioner to consent to any order of court being made in respect of the property. He avers that on this basis this court should grant an order in his favour in terms of the draft annexed to the application.

To begin with there is no draft order to the present papers. The index indicates that a draft order appears on p 5 of this record but what appears there is an order by my brother TAGU J (more of this later). The criteria for granting an interdict are well established and these are:-

(a) a clear right;

(b) an injury actually committed or reasonable apprehended; and

(c) absence of similar protection by any other ordinary remedy.

Where the right is not clear though *prima facie* established, the interdict will be granted only where the continuance of the thing against which the interdict is sought would cause irreparable harm to the applicant. Where the risk of harm is not apparent, there is no ground for granting an interdict, as the applicant can, if he does suffer harm as a result of the respondents actions and if those actions are unlawful, sue for damages.

The first and second respondents have strenuously opposed the confirmation of the rule. They point out that the applicant has not met any of the requirements for the grant of an interdict. For example, the applicant does not make any averment that he has a right which the respondents are infringing or in breach of. Nor does he claim that he faces any injury, actual or threatened, from the action of the first and second respondents. He cannot say any actions like the sale of the house and his subsequent eviction are unlawful because he took part in the due process, when he was legally represented throughout the legal process by which these were effected.

Consequently he cannot therefore claim that he has no other remedies available to him when he has filed several suits to protect his rights.

To illustrate the point, the respondents have attached the summons issued against applicant, third and fourth respondents; their joint appearance to defend filed by their legal practitioners; the writ of execution against them; and so on.

The first and second respondents give the chronology of events leading up to the sale of the immovable property and the subsequent eviction of the applicant. At some point before their eviction, the respondents and the applicant executed a deed of settlement. The respondents were evicted only after they defaulted on the terms of that deed of settlement. The respondents therefore state that this followed the failure by applicant, third and fourth respondent to honour that undertaking. The terms of the consent order which they had executed, had the effecting rescinding the default judgment by consent before ZHOU J. Second respondent had then attached the immovable property which it sold through the Sheriff of the High Court. First Respondent bought the property and had acquired all rights, title and interest transferred to him accordingly. First respondent sued for eviction against applicant and fourth respondent, his wife, successfully under HC 7997/16.

After the applicant and his wife were evicted out of the house, on 21 December 2016 the latter broke into the house and resettled themselves. In order to deal with the applicant's recalcitrance, first respondent then filed for contempt of court against applicant and his wife in HC 395/17. When attending court in respect of the contempt matter, first respondent became aware of the interim interdict granted by TAGU J against it in case No. HC 12932/16 on the basis that the judgment HC 12932/16 had been granted in error. This application was successful. The order by TAGU J was set aside in HC 10129/17 under Order 49 r 449 (1) of Rules of Court.

In light of the above it can hardly be argued that the applicant has come anywhere close to meeting the well-established requirements for an interdict. The basis of an interdict is the threat, actual or implied on the part of the defendant that he is about to do an act which is in violation of the plaintiff's rights and that actual infringement is merely evidence upon which the court implies an intention to continue in the same course.

On the facts of the case, the first respondent secured the eviction of the applicant through due process. It cannot be a basis for an interdict. Applicant has by his own actions demonstrated

that he has several remedies available to him. He consented to an order of court through the agency of his wife and well as his legal practitioners. He clearly cannot be heard to cry foul now. His application has no merit at all.

It is dismissed with costs.

Uriri Attorney At Law, 1st & 2nd respondents' legal practitioners