TIMOTHY NKOMO **APPLICANT**

Versus

CITY OF BULAWAYO **1ST RESPONDENT**

And

FRONT HUNK MARKETING (PVT) LTD **2ND RESPONDENT**

IN THE HIGH COURT OF ZIMBABWE
CHEDA AJ
BULAWAYO 6 FEBRUARY & 14 MARCH 2013

Miss L. Chipateni for the applicant
N. Mangena for 1st respondent
No appearance from 2nd respondent

Opposed Review Application

CHEDA AJ: This is an application for review of the decision made by the City of Bulawayo (the respondent) against the applicant.

The applicant applied for, and was allocated an industrial stand by the respondent on 27 January 2011. The stand was number 15357, Kelvin North, Bulawayo.

The respondent spelt out the terms and conditions attaching to the allocation of the stand. The relevant conditions can be summarized as follows.

1. The purchase price was $85 000,00 (eighty five thousand dollars).
2. The deposit of $21 250,00 had been paid.
3. The balance and interest was to be paid in three equal instalments payable, four, eight and twelve months from the date of the agreement.
4. The purchaser was to comply with the building conditions, that is building in the value of $425 000 to be commenced within 6 months and completed within 24 months of the date of sale.
5. Plans were to be submitted to the respondent prior to any work being commenced.
6. The building was to be used solely for the warehousing of building materials.
7. During the period of the lease, or five year period, leasing or selling any part of the property was prohibited.

8. No persons whatsoever were allowed to reside on the premises without the written consent of the respondent.

The agreement also provided that if the purchaser breached any conditions the respondent could demand the full balance of the purchase price if it elected to compel performance, or cancel the sale.

In his founding affidavit the applicant says he entered into the agreement with the respondent on 27 April 1998. He carried out certain developments, that is, constructed a durawall, in 2002, connected water in 2005, cleared land while building plans were processed. He said at some stage it appeared the respondent repossessed the stand from him without advising him. In 2011 he noticed that there were people on the stand. They claimed to have bought the stand from a Mr Khumalo for $45 000,00. He was told that a resolution of the respondent would be made on the stand and a letter would be sent to him. He kept on enquiring when the respondent's council would sit, and in November 2011 the respondent resolved that the repossession of the stand was irregular and was set aside. He was advised by letter dated 9th January 2012 that it was allocated back to him.

He said he was now approaching the court because the respondent has rescinded its resolution and repossessed the stand for the second time.

The applicant gave the following as his grounds for review of the respondent's decision;

(1) That he should have been given an opportunity to defend his title to the stand;
(2) That he would persuade the respondent that he had complied with the agreement; and
(3) That he had a right to be heard before the drastic decision was made.

The respondent opposed the application on the basis that the applicant had not complied with the building clause of the agreement, that is, building the structures within the stipulated period and that applicant has not shown that any plans were approved. Respondent contends that a letter was sent to the applicant at the address he provided but he took no heed of the notice letter. Applicant had previously been given an extension of 12 months from June 2006 to 31 May 2007.

A report was submitted to the respondent in July 2009 showing that there was no development on the property. Applicant was advised by yet another letter to the same address. Respondent says after the cancellation of 7th June 1998 the stand was allocated to another person. This other person started developments on the stand. The respondent says the applicant has failed to develop the stand for a period of 14 years.

Respondent says the resolution of 2nd November 2011 to cancel the repossession of the stand was erroneous. A point was raised, that once the repossession was cancelled, the

allocation was validated. The respondent met and rescinded its resolution to cancel repossession in January 2012. This it said, was done in terms of section 89(1)(b) of the Urban Councils Act Chapter 29:15 which empowers it to make such a decision where necessary. The respondent submitted that what was not proper was the respondent's resolution of 2nd November cancelling the repossession, hence its correction.

It persisted in the submission that its decision was proper as the applicant failed to comply with the provisions of the agreement. The applicant's failure to comply with the above agreement is not disputed. The applicant, having failed to comply, the stand was allocated to someone who started construction on the property. The applicant's argument that he was not afforded an opportunity to defend his entitlement to the stand cannot succeed because there is proof of correspondence sent to him as notices to the address provided by himself at the time of signing the agreement. He admits seeing the letters about the resolutions sent to the same address. Nowhere in his papers or submissions does he even suggest that he complied with the agreement. If he had tried to comply he does not say how someone else purchased the stand and started developments on it in his absence and without seeing that someone else was developing the stand.

It is not disputed that for the 14 year period referred to by the respondent the applicant failed to develop the stand, although he had been given only 24 months. There was nothing wrong with the respondent reversing its decision as this is permitted by section 89(1)(b) of the urban Councils Act. The applicant, having failed to comply for so long has no good reason to complain about the cancellation.

He was the author of his problems and cannot now blame the respondent for the loss of the stand. The respondent's decision was in terms of the conditions set in the agreement and there is no basis for alleging any irregularity that would justify setting the decision aside on review.

The application for review is dismissed with costs at attorney and client scale.

Messrs Dube-Banda Nzarayapenga, applicant's legal practitioners
Messrs Coghlan & Welsh, 1st respondent's legal practitioners