

THE HIGH COURT OF SWAZILAND

EDWARD AUSTIN MAPHUMZANE DLAMINI

Applicant

And

MANZINI CITY COUNCIL

1st Respondent

SWAZILAND GOVERNMENT

2nd Respondent

Civil case No. 1670/2003

Coram S.B. MAPHALALA - J

For the Applicant MR. DUNSEITH

For the Respondents S.M. KUBHEKA

JUDGMENT

(20/11/2003)

Serving before court is an application directing and ordering the 1st Respondent to process and consider the Applicant's application for a building permit (reference no. 30/2003) dated 7th March, 2003 in the normal manner and to determine such application within 14 days and costs.

The founding affidavit of the Applicant is filed in support of the application. Various annexures form part of the Applicant's founding affidavit from annexure "A" to "G".

The 1st Respondent opposes the application and the answering affidavit of one Churchill Fakudze its Executive Officer is filed thereto.

The brief facts which give rise to this dispute are that the Applicant has paid and purchased a property from the Government being Lot No. 1253, Extension 12, Manzihi Town, Manzini District. The terms of the agreement of sale (annexure "A") is subject to the Manzini Township Extension Regulations. In terms of paragraphs 6 (a) of the Regulations, no Crown Grant shall be issued to the purchaser unless:

7.1. The purchaser has paid and/or secured the purchase price and all costs of transfer;

7.2. The purchaser has lodged with the Ministry of Housing and Urban Development plans and specifications of building which he proposes to erect on the property and the Ministry has approved the said plans and specifications.

It is common cause that the building plans and specifications are to be lodged with the 1st Respondent, the Manzini City Council, for approval, together with an application for a building permit.

The Applicant lodged his plans and application on the 7th March 2003, but the 1st Respondent has refused to consider such plans and application "following a directive from the Principal Secretary of the Ministry of Housing and Urban Development that Council should not process your building plan pending the finalization of the land transfer process" (per annexure "D" being a letter from the Acting Town Clerk of the 1st Respondent to Edward and Bessie Investments dated the 8th May 2003).

The Applicant contends that the alleged directive from the Government is illegal and constitutes a breach of contract, particularly since lodgement and approval of building

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plans is a condition precedent to the transfer of the property into the name of the Applicant. When the matter came before me Mr. Dunseith appeared for the Applicant and there was no appearance for the 1st Respondent despite the fact that the matter was set down for hearing in the contested roll of the 26th September 2003. The 1st Respondent through its attorneys S.M. Kubheka and Associates had received notification on the 17th September 2003. In view of the foregoing I allowed Mr. Dunseith to proceed in this matter.

The 1st Respondent defence is found in paragraphs 4 (ad paragraph 8 and 9) and reads in extenso as follows:

"AD PARAGRAPH 8 AND 9.

Contents hereof are not denied, but 1st Respondent submits that, for this Honourable Court to grasp this matter, it begs to give a brief background to the same.

The fact of the matter is that Applicant purchased the land from Government. Later it was discovered that the land allocated to Applicant had Government institutional housing for the Fire and Emergency Services. By this time Applicant had only paid a quarter of the purchase price and the Agreement of Sale signed. The 1st Respondent informed the Ministry on the situation of the plot and a number of meetings were initiated with the Applicant to solve this matter amicably.

In 2002, Applicant brought a bond from Swaziland Building Society as complete payment of the purchase price. The 1st Respondent refused to accept the bond, as it was aware of the on-going negotiations in the matter and the Ministry also advised against accepting the bond in this circumstance. Applicant also instructed his lawyers to have the Crown grant issued in this regard.

On seeing that the bond was not being accepted, Applicant circumvented the negotiations and went and paid cash in the 1st Respondent's Rates Hall the balance for the property. This was in bad faith as Applicant was aware of the negotiations and problems surrounding the property. The 1st Respondent's Rates Hall was not made aware not to receive Applicant's payment. On discovery of this development, the Ministry was accordingly informed. Later a meeting with the Applicant was held at the Ministry to try and resolve this impasse and nothing was finalised. Applicant then submitted building for the plot and as 1st Respondent was aware of the status then requested the Ministry's advice on the matter.

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The Ministry advised that the 1st Respondent could not process the applications before the finalisation of the land transfer. 1st Respondent therefore did not consider the plans for approval on those grounds and held the matter in abeyance. 1st Respondent will process and approve plans as soon as the property matter is finalized and as an agency of the Ministry in the land matter. 1st Respondent has to rely on their advice.

The bone of contention in the matter is between Applicant and the Ministry and Applicant has to sort the land transfer matter with the Ministry after which 1st Respondent will process the building plans.

In the premise, we submit that, metaphorically speaking, the Applicant is putting the cart before the horse in that he seeks to have the building plans and specification considered for approval when the dispute involving the land he seeks to build on is sorted out. It is 1st Respondent's submission that to approve the said plans before the Applicant and the 2nd Respondent resolve the land dispute would not be proper because currently the property has not been transferred to the Applicant and the 2nd Respondent may exercise its right to cancel the agreement of sale".

Having considered the issues in this case in toto, it is my considered view that the 1st Respondent has no right in law to refuse to fulfil its statutory duty, and is in fact obliged in terms of Section 12 of the Building Act No. 34/1968 to either issue the permit or refuse the application within 6 weeks from the date the application was lodged. Approval of a plans or an application for a permit conveys no title to land or to any terms in a lease or licence. (per Section 12 (3) of the Building Act).

The relevant Section reads as follows:

"Issue of permit.

12. (1) The local authority shall either issue a permit or refuse the application therefore within six weeks from the date the application is received by it.

(2) The local authority shall issue a permit:

a) in the case of a permit for the construction of a building, it is satisfied that the operations involved will be conducted in accordance with this Act and that nothing in any plan, specification or other information submitted with the application shows that the building, when constructed, will fail to conform with this Act; or,

b) in the case of a permit for demolition, it is satisfied that the operations involved will be conducted in accordance with this Act.

(3) Approval of a drawing or application for a permit conveys no title to land or to any term in a lease or licence ..."

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I agree with Mr. Dunseith that if the 2nd Respondent has any basis in law to cancel the sale agreement and/or interdict the Applicant from exercising his right in terms of the agreement, it should come to court. The 2nd Respondent is not entitled to obstruct the Applicant through the agency of the 1st Respondent. It is also noteworthy that the 2nd Respondent has not opposed this application.

In the result the application is granted in terms of prayers a) and b) of the notice of application.

S.B. MAPHALALA

JUDGE