CHARLIEWELL, KAKWENI CHUNGA v CITY COUNCIL OF LUSAKA (1981) Z.R. 54 (H.C.)

HIGH COURT
SAKALA, E.L., J.
17TH SEPTEMBER, 1980
(1973/HP/928)

Flynote
Civil procedure - Rates - Levying of in areas where services not provided - Whether legal.
Civil Procedure - Rates - Meaning of.

Headnote
The plaintiff's claim is for a declaration that he is not entitled to pay any rates in respect of plot number 65 Buckley Township, Lusaka. In his oral evidence the plaintiff testified that he purchased subdivision 65 of Farm 1751, Buckley Estate, Lusaka, in 1970. At that time of the purchase the property was not within the city boundary of greater Lusaka. And thus he was not paying rates. But in 1972 after the boundary was extended to cover Buckley Estate the city of Lusaka started levying rates. The plaintiff further testified that he has his own water supply from his borehole; has no sewage disposal, but makes his own arrangements for this by digging pits in which it is buried; and that they have roads in Buckley but not maintained by the City Council but jointly maintained by the residents, and also that this applies to the cutting of the grass during the rain season.

The learned counsel for the plaintiff submitted inter alia, that it would be legally and morally wrong to allow the defendant to levy rates on an area to which it does not provide services. On behalf of the defendant the learned counsel argued that rates must not be construed as a charge for services rendered but a tax on all property with value situated within the boundary of a council the purpose being to raise revenue for the city stands, lights and for the maintenance of cemeteries, libraries, things which serve the public as a whole.

The issue before the court was whether the Lusaka City Council is lawfully entitled to levy rates in terms of the Municipal Corporations Act, Cap. 470 on subdivision 65 of farm 1751 belonging to the plaintiff.

Held:
(i) The council may, with the consent of the Minister and subject to the provisions of the Municipal Corporations Act, from time to time make and levy an ordinary rate upon all assessable land or upon all assessable improvements or upon all assessable property.
(ii) Rate is a sum of money collected by the council for purposes of services of a public nature as opposed to services to an individual.

Case referred to:
(1) Sithole v State Lotteries Board (1975) Z.R. 106.

Legislation referred to:

Municipal Corporation Act, cap. 470, ss. 18 (1), 19 (1), 30 (1)

For the plaintiff: D.M. Lewanika (Esq.), Shamwana & Co.
For the defendant: C. Banda (Esq.), Lisulo & Co.

Judgment

SAKALA, J.: The plaintiff's claim is for a declaration that he is not entitled to pay any rates in respect of plot number 65 Buckley Township, Lusaka.

The statement of claim reveals that at all material time the plaintiff was the owner of all the property known as subdivision 65 of Farm 1751 near Lusaka while the defendant was the council for the City of Lusaka. By half-yearly rate demands dated 11th January, 1973, 4th April, 1973, 8th June, 1973, 1st August, 1973, 23rd November, 1973, and 28th February, 1974, the defendant levied rates on the plaintiff's property. The plaintiff, according to the statement of claim, contends that the defendant had no legal or moral right to levy the rates on his property. And thus he seeks a declaration of this court that the defendant is not entitled to demand payment of any rates in respect of his property.

The defendant in its defence admits that the plaintiff is the owner of the property in question and levied rates on it. Paragraphs 2, 3, 4 and 5 of the defence read as follows:

"(2) The defendant council admits the contents of paragraph 2 of the statement of claim and adds that it was, and is, lawfully entitled to make and levy rates on the property described in paragraph 1 of the statement of claim in terms of sections 30 and 18 (1) of the Municipal Corporation Act, Chapter 470 of the Laws of Zambia;

(3) The defendant council denies the contents of paragraph 3 of the statement of claim and puts the plaintiff to the strict proof thereof;

(4) The defendant council maintains that, in terms of section 18 (1) of the Municipal Corporations Act, all land situated within the boundaries of the City of Lusaka is assessable properties within the meaning of the Act and it is for the plaintiff to prove that his above mentioned property which is situated within the City of Lusaka is specifically excluded or exempted as provided therein;

(5) The defendant council has legal right to make and levy the rates upon the plaintiff's above mentioned property and to demands the payment of and to recover the rates from the plaintiff."

In his oral evidence, the plaintiff testified that he purchased sub-division 65 of Farm 1751, Buckley Estate, Lusaka, in 1970. At that time of the purchase the property was not within the city boundary of Greater Lusaka. And thus he was not paying rates. But in 1972 after the boundary was extended to cover Buckley Estate the City of Lusaka started asking for rates. As residents of Buckley, on receipt of the notices for rates, they made representations through an association which was formed within the area to the Mayor through the Town Clerk. The

representations were subsequently forwarded to the Ministry of Local Government and Housing. Consequently each resident of Buckley including those of Makeni received letters in which the Ministry of Local Government and Housing approved 50 per cent remission in rates. According to the plaintiff this was done because they were not given services. But after these letters the City Council continued to make half-yearly demands of rates without any omission at all. The witness stated that even after 1973 when they received the letter for 50 per cent remission for rates, they still got no services from the City Council. The plaintiff testified that he has his own water supply from his borehole. He has no sewage disposal; but makes his own arrangement for this by digging pits in which it is buried. He said they have roads in Buckley but not maintained by the City Council but jointly maintained by the residents. This applies to the cutting of the grass during the rainy season.

The plaintiff told the court that he feels he should not pay rates because he derives no benefit from the City Council. This he said applies equally to the other residents.

In cross-examination, the plaintiff told the court that he was not informed when Buckley Estates became part of Greater City of Lusaka. He also said he did not know that rates are payable to the Council irrespective of whether services are rendered or not. He agreed that residents of Buckley use a tarred road branching off from the Great North Road going to Hill Top Hotel. But he said nobody fills the pot-holes on that road. He explained that his property has a value. He has a house, a borehole, a chicken run and fruit trees. He would not sell his property at less than K43,000.00. The plaintiff also stated that his property has not been exempted from paying rates to the Council.

In re-examination the plaintiff testified that the road that branches off from Great North Road leading to Hill Top was built before the Federation. It was in existence before they were asked to pay rates.

DW1, the Chief Valuation Officer with Lusaka City Council, testified that he passed the final examination of the Royal Institute of Chartered Surveyors. He is a Fellow of Rating and Valuation Association of London and a member of the Surveyors Institute of Zambia. He is responsible for the preparation of valuation rolls of all types of property situated within the City Limits of Lusaka. He explained that the jurisdiction of Lusaka City Council extends up to Zanimuone Hotel on the Great North Road close to Chilanga Cement Factory on the South. On the Great East Road it extends to the turn-off to the International Airport while on the west it is a point on Mumbwa Road, three kilometres from the town centre. The Chief Valuation Officer also testified that subdivision 65 of Farm 1751, Buckley Estates, is within the bounds of Lusaka City Council. He said this particular farm became part of Lusaka in July, 1970, when the Lusaka City boundary was extended. Following upon the extension a survey of the properties in 1971 was carried out by the City Council which included subdivision 65 of Farm 1751, which was

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also valued and included in the valuation roll. The City Council has since levied rates on all the properties in the extended area. The Chief Valuation Officer explained that rates are a tax levied on the owners of property situated within any local authority. The basis of levying the rates is the value of property on the assumption it is sold. With regards to Lusaka City Council he said it can levy

rates on all assessable property within its area. The Chief Valuation Officer also explained that rates, a form of tax, are not based on services or a charge for services rendered. He said that the City Council is empowered by the Municipal Corporations Act, Cap. 470 of the Laws of Zambia to levy rates on all assessable property within its area. He said the property in dispute was valued in 1977 at about K35,000.00. This would be the figure the Council would take into account in levying rates on the property in question.

The Chief Valuation Officer also testified that the Council water and sewage charges are separate charges from rates. With regards to the property in question the witness informed the court that the amount of K85.40 by way of rates has not yet been paid.

In cross-examination the Chief Valuation Officer told the court that prior to 1970 the plaintiff was not paying rates. He agreed that because the property was not within the City boundary prior to 1970 no services were rendered by the Council to the area. But said that after the area came in the city boundary, services were rendered by the Council which included the grading of roads. The Chief Valuation Officer also told the court in cross-examination that the money raised for rates is used to improve the city on providing services to the people, in maintaining cemeteries, libraries and running the general affairs of the Council and on capital expenditure. He said the money is not raised to provide services only but for other amenities like good roads, bus stops, bus stands, and lights and other things which will serve the public as a whole. He stated that he was aware that there are no water services provided in Buckley Township. But he was not aware that until 29th April, this year the roads were not being graded in Buckley Township. He was not aware that after the hearing of the case on 27th April, this year graders were seen on the roads the following day in Buckley.

The foregoing was the evidence in these proceedings. At the end of the defence evidence both learned counsel filed written submissions with the court. From the pleadings and the evidence the material and relevant facts are in my view not in dispute. These are-the plaintiff is the owner of property described as subdivision 65 of Farm 1751 Buckley Estates, Lusaka. He occupies this property and it has a value. He purchased it sometime in 1970. Before 1st July, 1970, the plaintiff did not pay any rates in respect of the property and the City Council did not demand any rates from him in respect of the same. It is common cause that at the time the plaintiff paid no rates before 1st July, 1970. Although the evidence is not very clear as to the criterion used by Lusaka City Council in extending its boundaries, the point appears not to be in dispute that

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sometime in July, 1970, Lusaka. City Council extended its boundaries covering the farm in issue. Following this extension the Council carried out a survey of the properties in 1971. The survey included subdivision 65 of Farm 1751.

On the evidence of the plaintiff which also appears not to be in dispute, I am satisfied that the plaintiff provides his own water and sewage disposal. It is conceded on behalf of the plaintiff that the defendant is under a mandatory obligation to value all assessable property situate within its boundaries. The plaintiff's contention is that the levying of rates is discretionary and the defendant must exercise the discretion properly. It was thus submitted on behalf of the plaintiff that it could be

legally and morally wrong to allow the defendant to levy rates on an area to which it does not provide any services. On this basis the plaintiff is asking this court to declare that the defendant is not entitled to demand payment of rates in respect of the said property.

The argument on behalf of the defendant is that rates are not a charge for services rendered but a tax on all property with value situate within a boundary of any council for purposes of raising revenue for the council. It was pointed out that the basis for levying the rates is the Municipal Corporations Act, Cap. 470 of the Laws of Zambia. It was submitted on behalf of the defendant that in terms of sections 18 (1) and 30 of Cap. 470 the defendant was and is lawfully entitled to make and levy rates on the plaintiff's property.

The remedy of declaration the plaintiff is seeking in this action is discretionary. This court has power to give a declaratory judgment particularly in cases where there is no adequate alternative remedy. The emphasis appears to be that the discretion must be exercised "with care and caution," and "judicially". (*Sithole v The State Lotteries Board* (1)). I have considered the question of whether this is a fit and proper case in which to entertain a request for a declaration. In the light of the practical value of the declaration being sought and particularly that the issue raised is of public interest and importance, I take the view that I must deal with the matter on its merit.

The question for the determination of the court is this: Is the Lusaka City Council lawfully entitled to levy rates in terms of the Municipal Corporations Act, Cap. 470 on subdivision 65 of Farm 1751 belonging to the plaintiff? It must be observed that I have deliberately avoided the word "morally" because I do not consider that this is a proper forum to discuss the morality of the acts of the Lusaka City Council as opposed to the legality of those acts.

The objects of the Municipal Corporations Act, Cap. 470 as set out in the preamble read as follows:

> "An Act to define certain functions of municipal councils relating to the control and care of streets and lands within municipalities, to make provision for the valuation of assessable property and the levying of rates; and to provide for matters incidental to or connected with the foregoing."

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The Act defines functions of municipal councils relating to the control and care of streets and lands within municipalities. In addition it makes provision for the valuation of assessable property and the levying of rates. Section 18 (1) defines assessable property as follows:

> "18 (1) All land within the Municipality, together with all improvements situated thereon, shall be assessable property within the meaning of this Act, save such property as the Minister may prescribe."

I have already observed that after 1st July, 1970, the property on Plot 65 of Farm 1751 came within the Municipality of the City of Lusaka. In terms of section 18 (1) that land together with all the improvements situated thereon became assessable property. The plaintiff concedes in his evidence that his property is not exempted. Thus by law the City Council has to cause a valuation of Plot 65

of Farm 1751 to be entered on the roll (section 19 (1)). For the purpose of this action, I find it unnecessary to deal with the provisions relating to the method of valuation of assessable property. Section 30 (1) which empowers Council to levy rates reads as follows:

> "30 (1) The Council may, with the consent of the Minister and subject to the provisions of this Act, from time to time make and levy an ordinary rate upon all assessable land or upon all assessable improvements or upon all assessable property."

The argument by Mr Lewanika on behalf of the plaintiff is that the levying of rates is discretionary and the discretion must be exercised properly. There is force in this argument and I certainly agree with it. Mr Lewanika goes further by submitting that it would be legally and morally wrong to allow the defendant to levy rates on an area to which it does not provide services. On behalf of the defendant, Mr Banda has argued that rates must not be construed as a charge for services rendered but a tax on all property with value situate within the boundary of a council the purpose being to raise revenue for the city which according to DW1 is used to improve amenities like good roads, bus stops and stands, lights and for the maintenance of cemeteries, libraries, things which again according to DW1 serve the public as a whole.

It would appear to me that at the end of the day the determination of this case will depend on the definition to be placed on the word *rate*. I must admit that after a very careful perusal of Cap. 470 I have been unable to find the word rate defined in the Act.

This court is greatly indebted to counsel for the defendant for the authorities on the point. After a perusal of the various authorities I have found that the clearest definition of the word rate is contained in Halsbury's laws of England, 3rd ed. Vol. 32, para. 11, para. 10 under the heading Meaning and Nature of rate which reads:

> "10. The expression "rate" means a rate the proceeds of which are applicable to local purposes of a public nature and which is leviable on the basis of an assessment in respect of the yearly

> value of property, it includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of a rate, but does not include any drainage, church, commons, water, or garden rate."

The definition seems to me to conform with the evidence of the Chief Valuation Officer for the defendant. My understanding of this definition is that rate is a sum of money collected by the Council for purposes of services of a *public nature* as opposed to services to an individual. As correctly submitted by Mr Banda, therefore, rates are a tax on all property with value situate within the boundary of the Council for purposes of raising revenue for the maintenance of facilities offered to all the residents. The concept may perhaps sound "morally wrong" to a rate payer who perhaps provides his own water and electricity services etc. But rates are not charged on the basis of these services.

While appreciating the plaintiffs sentiments in this matter, I cannot say that the City Council exercised its discretion improperly particularly considering that a 50 per cent remission was made on the early rate demands. In the result I have come to the conclusion that the defendant are legally and perhaps morally entitled to levy rates on all assessable proper within its boundary. In coming to this conclusion I have no doubt that the City Council of Lusaka in arriving at the rateable value of property in different areas on which the rates are based takes into account the non-availability or lack of facilities of a public nature in different areas.

In the exercise of my discretion therefore I refuse to grant the declaration sought. The action is accordingly dismissed. The matter raised in this action is such that in the interest of justice, I make no order as to costs.

Action dismissed