

ANNA MAPENZAUSWA

Versus

KUDZAI MUNYIKA

And

KUDAI MUNYIKA

And

THE REGISTRAR OF DEEDS

And

THE DEPUTY SHERIFF

IN THE HIGH COURT OF ZIMBABWE
CHIWESHE J
BULAWAYO 23 JULY & 10, 30 OCTOBER 2003

Miss P Rusike for the applicant
E Maronedze for 1st respondent

Opposed Matter

CHIWESHE J: The first and second respondents were married in terms of the Marriages Act Chapter 5:11. The first and second respondents were granted a divorce order under case number HC-2514/00. Under that order the parties' matrimonial home was to be sold and the proceeds shared equally between the first and second respondents.

Under case number HC-2960/01 the first respondent obtained an order authorising Rodor Properties to carry out an evaluation of the matrimonial home (stand 3087 Emakhandeni Township of stand 1 Emakhandeni Township situate in the district of Bulawayo), advertise the property and sell it for the best price offered. Thereafter Rodor Properties was to pay the first respondent a half share of the net

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proceeds of the sale. There was also an order regarding the share of rentals calculated from 4 June 2001 to the date that the property is transferred to the would be purchaser.

The property was sold to the applicant by the Deputy Sheriff acting on the instructions of Rodor Properties. The purchase price was pegged at \$1,5 million. The applicant paid the full purchase price plus transfer fees. However transfer has not been effected as the second respondent has refused to surrender the title deeds on the grounds *inter alia* that an arrangement had been entered into wherein he would pay his ex-wife the equivalent of her half share and retain the house. He also avers that the purchase price of \$1,5 million is far below the market price of the house and that the house has not been properly valued in terms of an order of this court under case number 2960/01.

The applicant has conceded that only a general evaluation of the property was done. There was not a detailed evaluation of the house particularly the interior thereof and its fixtures. It is contended that such a detailed evaluation would be expensive to do and that such expenses would have to be met by the party seeking such a service. It is obvious that the property was not properly and fully evaluated. The argument that the court order did not specifically require that a detailed evaluation be carried out cannot be sustained. The purpose of evaluation in such cases is to ensure that the property is disposed of at its true market value. To do otherwise would be to defeat the whole object of the court order to the prejudice of the parties. It is clear that the court order has not been complied with. The property should not have been offered for sale without a full valuation. The court order also

directed that the property be advertised and offered to the highest bidder. That too was not done.

The applicant argues that she is an innocent third party. She had no knowledge of the court order in question nor specifically of the requirement therein that the property be evaluated prior to the transaction. On that basis she contends that as a *bona fide* third party she is entitled to take transfer of the property.

The position of innocent purchasers of immovable property has been the subject matter of considerable litigation. It is now settled that in cases such as the present where the applicant is an innocent and *bona fide* purchaser, the purchaser is entitled to enforce her contractual rights and to demand delivery. The fact that the seller, his nominee or agent failed to comply with a court order with regards the manner and pre-conditions of the sale cannot be visited upon the purchaser.

Clearly the 1st respondent's remedy lies not against the applicant but against the party that failed to comply with the terms of the court order in question.

Accordingly the application is granted upon the following terms:

1. The 1st respondent be and is hereby ordered to surrender the title deeds for stand 3087 Emakhandeni, Bulawayo to the Deputy Sheriff within 7 days of the service of this order upon him.
2. The Deputy Sheriff be and is hereby directed to sign all the necessary documents to effect transfer of the property in question to the applicant.
3. The 1st respondent and all those claiming through him be and are hereby ordered to vacate the said property within one month of the date of registration of transfer to the applicant.

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4. The 1st respondent be and is hereby ordered to pay the costs of this application.

Makonese & Partners applicant's legal practitioners

Messrs Sibusiso Ndlovu first respondent's legal practitioners