

DUMISANI MPOFU

Versus

ROBERT JUTA MOYO

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 29 NOVEMBER 2002 & 1 APRIL 2004

Ms W P Moyo for applicant
N Ndlovu for the respondent

Opposed Application

NDOU J: This is an application for summary judgment to be entered against the respondent (as defendant in the main action) instituted against him by the applicant (as plaintiff in the main action in HC 3343/01).

The respondent entered an appearance to defend the action. On 25 February 2002 the respondent filed a plea. In his initial correspondence dated 7 September 2001, through his legal practitioners of record the respondent clearly admitted that he had entered into an agreement of sale with the applicant. He admitted that the sale was for the sale of stand 387 Nkulumane, Bulawayo for the price of \$160 000,00 of which a deposit of \$150 000,00 had been paid to him leaving a balance of \$10 000,00. In fact he was demanding, from the applicant, the said balance of \$10 000,00 together with accrued interest of \$6 156,16. From his opposing affidavit it is clear that the respondent seeks to withdraw this clear admission. The agreement of sale itself stipulates *inter alia* –

“The agreement of selling a house at \$160 000,00 and the balance of \$10 000,00. It was the agreement of Mr R J Moyo and Dumisani Mpfu. The

witnesses Bert Mpofu and Peter Lunga”. The respondent admits having received the \$150 000,00.

The respondent seeks now to dispute this clear admission saying that the admission was erroneously made. He, however, does not explain how such an error occurred. All he says is that he gave his legal practitioner inadequate instructions regarding the exact nature of the transaction. The evidence on papers before me clearly show that the agreement was between the applicant and the respondent. The respondent also alleges that, in any event the agreement was cancelled by the letter I alluded to above addressed to the applicant. This is mere letter of demand of the \$10 000,00 plus the accrued interest. The letter did not cancel the agreement.

Summary judgment is an unusual and drastic remedy accorded only where a plaintiff could establish his case clearly. However, the legal process should not be abused simply in order to delay just claims – *Jena v Nechipota* SC-15-86; *Mbayiwa v Eastern Highlands Motel (Pty) Ltd* SC-139-86; *In Vogue (Pvt) Ltd v E L Bulle* HH-82-93; *Faust Products (Pvt) Ltd v Continental Fashions (Pvt) Ltd* 1987 (1) ZLR 45 (HC) and *Omarshah v Kasara* 1996 (1) ZLR 584 (H).

In *casu*, the respondent seeks to create valid triable issues by withdrawing written positions. As alluded to above, he has not advanced an understandable explanation his alleged error. The respondent’s actions in this matter were *mala fide* and consistent with abuse of court process. He has no bona fide defence to the claim.

Accordingly, I hereby order that:

1. The respondent be and is hereby compelled to transfer all his rights, title and interest in stand number 387 Nkulumane, Bulawayo into applicant;s name.

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2. In the event that the respondent fails to comply with the terms of the above order in (1) within 14 days of service upon him, the Deputy Sheriff of Bulawayo be and is hereby directed to attend to the signing of all documents necessary for the transfer of the property described in paragraph (1) above, from the names of the respondent to those of the applicant.
3. The respondent and all those claiming through him be and are hereby evicted from stand 387 Nkulumane, Bulawayo.
4. The respondent be and is hereby ordered to received the cheque of \$150 000,00 and \$20 000,00, in trust of the applicant's legal practitioners.
5. The respondent bears costs of this application.

Messrs Sibusiso Ndlovu, applicant's legal practitioners
Lazarus & Sarif, respondent's legal practitioners