

**MERJURY CHIGWIZA**

**Versus**

**LEVERSON TARUVINGA**

**And**

**REGISTRAR OF DEEDS**

**And**

**DEPUTY SHERIFF – GWERU**

IN THE HIGH COURT OF ZIMBABWE  
KAMOCHA J  
BULAWAYO 18 OCTOBER 2006

*N Mazibuko*, for applicant  
*H Shenje*, for 1<sup>st</sup> respondent

Opposed Application

**KAMOCHA J:** The property at the centre of this dispute is known as 4897 Mkoba 15 Gweru which belonged to the 1<sup>st</sup> respondent Leverson Taruvinga – “Taruvinga” who on 20 October 2005 entered into an agreement of sale with the applicant. The purchase price, according to the agreement, was in the sum of \$500 000 000,00 payable by cash into the seller’s ZABG bank account number 19501020921200 upon the signing of the agreement.

The parties clearly varied the above clause of the agreement by a further oral agreement because the purchase price was not paid in full on the date of the signing of the agreement. Instead the agreement was varied to the extent that the buyer had to pay what was termed deposits of \$377 000 000,00; \$40 000 000,00 and \$3 000 000,00. She then paid further amounts of \$60 000 000,00 and \$20 000 000,00. Dates on

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which payments were made are not clear but it would seem the \$60 million was paid on 26 October 2005 while the \$20 million was paid on 23 October 2005.

The parties appear to have also verbally varied the purchase price which was revised upwards by an amount of \$100 000 000,00 which was still outstanding by 1 December 2005.

Applicant was not prepared to effect transfer before this amount was paid. In answer to a letter from the applicant's legal practitioners of 27 November 2005 the respondent through his legal practitioners pointed out that unless the balance of \$100 million was paid he would not sign the transfer documents. He went further and demanded payment of the said sum within 7 days from 1 December 2005. Payment was to be made at respondent's legal practitioners' offices. In the event of failure to do so within the 7 days period the respondent would institute proceedings seeking to have the agreement between the parties declared terminated and that he refunds the money paid by applicant that far to the applicant.

Needless to say that the 7 days ultimatum expired. It was only on 16 January 2006 that the applicant through her lawyers offered the amount of \$100 million on a without prejudice basis and suggested she did that in order to resolve the matter amicably.

There can be no doubt the applicant failed to pay the amount within the 7 days period despite the clear warning that failure to do so would result in the agreement being terminated.

In the result, it is ordered that:

- (a) the provisional order be and is hereby discharged;

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- (b) the respondent be and is hereby ordered to refund all the amount paid by the applicant pursuant to the agreement; and
- (c) the applicant bears the costs of suit.

*Mawarire & Associates*, applicant's legal practitioners  
*Shenje & Co*, 1<sup>st</sup> respondent's legal practitioners