

FARAI JAMES MKETWA
versus
NARANDAS KARSON LAXMIDAS
and
KRILAX INVESTMENTS (PRIVATE) LIMITED
and
BULAWAYO CITY COUNCIL

HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO, 23 October and 16 November 2006

Opposed Application

Mr *C.P. Moyo*, for the applicant
Ms *P. Dube*, for the 1st and 2nd respondents
No appearance from the 3rd respondent

KAMOCHA J: The applicant in this matter is seeking for an order of specific performance of an alleged verbal contract of sale of stand number 13 Pingstone Road, Kumalo, Bulawayo. According to the applicant the alleged verbal agreement between him and the first respondent took place during the months of January or February 2005. The purchase price for the property was \$150 000 000-00.

By August 2005 the applicant had raised the full purchase price plus an additional \$5 000 000-00 which was said to be fees for the accountants who were to prepare the agreement of sale. He therefore, paid a total amount of \$155 000 000-00 on 22 August 2005 into the account of the second respondent by way of an electronic transfer.

The property in fact belonged to the second respondent - a company in which the first respondent was the managing director.

The applicant and first respondent agreed that their verbal agreement was going to be reduced to writing. When applicant was enquiring about when he was going to sign the written agreement he was advised that there were new developments. He was told that the purchase price had been revised upwards. He was told that the property had been evaluated and its market value had shot up to \$250 000 000-00. Applicant was being asked to pay that amount. Naturally, the applicant was taken by surprise.

He was then paid back the \$155 million he had paid which he accepted under protest for fear of losing out on interest and he deposited the cheque into his account.

In their opposing papers the first and second respondents denied that a contract was concluded between the parties. They alleged that what took place were mere negotiations relating to the sale of the property and such negotiations never passed the stage of negotiations since no agreement had been reached about (a) the purchase price; (b) the terms and conditions of sale or any other requirements of a binding contract.

Further, the first respondent who was engaged in the discussions with the applicant had not yet been given the authority by the other directors to sell the property. The company has 4 directors.

The first respondent said he had indicated that the price of \$155 million was based on a municipal valuation. He was prepared to accept that money if it had been paid immediately provided that a written contract of sale had been drawn-up by the company's accountant and the rest of the directors had been made aware of the sale and consented thereto. The company's accountant then told the first respondent to obtain a proper evaluation of the property before a written contract could be drawn up. He told him to also obtain the consent of the other directors.

According to the first respondent the proper valuation put the market value of the property at \$500 million not \$250 million as suggested by the applicant.

Since the applicant could not afford the price of the property the first respondent returned the \$155 million to the applicant who accepted it without protest.

This matter should not have been brought up by way of a court application since there are glaring serious material disputes of fact. The respondents are hotly disputing that a contract of sale was concluded. Their stance is that the negotiations never went beyond the stage of negotiations. Even the papers filed by applicant when examined closely disclose, at best, an inchoate contract.

The respondents vehemently dispute that there was any agreement on the purchase price. They also dispute with equal force that there was any agreement on the terms and conditions of the sale. They also contend that the contract was going to be reduced to writing for it to be binding on the parties yet the applicant maintained that the reduction of the contract into writing was a mere formality.

These disputes, in my view, cannot be resolved on the papers even if the court were to take a robust and common sense approach. In the result, I would dismiss the application with costs.

Majoko & Majoko, applicant's legal practitioners.

Ben Baron & Partners, 1st and 2nd respondents' legal practitioners.