

BONIFACE MUBAKO

Versus

JANE WEIR

And

BULAWAYO CITY COUNCIL

And

ASSISTANT MASTER OF HIGH COURT

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 2, 6 AUGUST AND 1 FEBRUARY 2007

R Moyo-Majwabu, for applicant
First respondent in person

Judgment

NDOU J: The applicant seeks a provisional order in the following terms:

“Terms of order made

That you show cause to this honourable court why a final order should not be made re-instating the deed of cession granted on the 28th February 1998 to facilitate registration of applicant on stand number 4279 Nkulumane by the Deputy Sheriff.

Interim Order

That an interim order is hereby granted re-instating a deed of cession granted on the 28th February 1998 and further that the Deputy Sheriff is hereby authorised to sign all necessary documents to register all rights, title and interest of stand number 4279 Nkulumane in favour of applicant Mr Boniface Mubako in this matter.”

The brief facts are that the applicant entered into an agreement of sale with late Takaidza Robert Bvingwa to purchase house number 4279 Nkulumane for a purchase price of \$38 000,00 payable directly to the seller (Mr Bvingwa), plus the applicant was to pay off Bulawayo City Council bills amounting to \$1 236,98. The

applicant paid off the bills. Applicant also paid the late Mr Bvingwa \$20 000. It was agreed that the balance would be paid off at Chirumanzu in the presence of the late Mr Bvingwa’s siblings.

Before the Chirumanzu meeting, the late Mr Bvingwa approached the Bulawayo City Council with an application for their consent to cede his right, title and interest in stand number 4279 Nkulumane to the applicant. The written consent was duly given by Bulawayo City Council on 25 February 1998. On 28 June 2001 the applicant went to see the late Bvingwa in Chirumanzu. In the presence of the late Bvingwa's brothers, Erasmus and Cletos and the Village Development Committee Chairman, Mr Madondo the parties reaffirmed their agreement. The minutes of this meeting were recorded. At this meeting the late Bvingwa, *inter alia*, appointed his brother C Mutero as his agent for receipt of the outstanding payments. On 8 August 1998, a payment of \$1 750,00 was made through the agent. In addition \$250,00 was recorded to have been received. This left a balance of \$18 000,00 which the parties agreed the applicant would deposit into the late Bvingwa's POSB account which was to be furnished at a later date. The late Bvingwa passed on before the balance was tendered. The 1st respondent has been appointed the executor of the late Bvingwa's estate. The applicant discovered this fact in 2001 and proceeded to lodge a claim for the said house with the Master of the High Court. He also tendered the balance of the purchase price. He later, on 19 March 2003, deposited the said balance with the Master of the High Court, Bulawayo. It is common cause that the applicant has been in occupation of the house from the date the Bulawayo City Council consented to the cession on 25 February 1998. The respondent's case at most is that she doubts that the applicant made any payments in terms of the agreement of sale. She gave her reasons for the doubt. Looking at the documents filed in this application

the applicant did make some payments. Mr *Moyo-Majwabu* for the applicant indicated that the applicant seeks, via certificate of urgency, the confirmation of the agreement of sale. The above draft order suggests otherwise. As the applicant has shown that he has interest in the property the provisional order should be aimed at the preservation of the status quo pending the consideration of his interest filed with the Master. The applicant should exhaust his remedies of lodging the claim with the Master against the estate of the late Bvingwa. As alluded to above he has already

Judgment No. HB 16/07

Case No. HC 385/04

lodged his claim. That claim is pending determination by the Master. He, therefore, cannot institute parallel proceedings in this court arising from the same cause of action.

Accordingly, the application is dismissed with costs.

James, Moyo-Majwabu & Nyoni, applicant's legal practitioners