

ALICK SITHOLE

Versus

THABISO KHUMALO
(Executor in the estate of the late Zuze Sibanda)

and

MUNICIPALITY OF BULAWAYO

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 1 FEBRUARY 2007

Masiye-Moyo, for applicant
1st respondent in person
No appearance from 2nd respondent

Opposed Application

KAMOCHA J: The 1st respondent is a self actor. On 1 December, 2005 he entered into an agreement of sale with the applicant in terms of which respondent sold an immovable property known as stand number 1607 Old Luveve, Bulawayo. The purchase price was \$460 million which applicant paid as follows:

\$10 million on 1 December 2005; and
\$450 million on 2 December 2005

The payment was made in the form of a direct transfer into the 1st respondent's account at Barclays Bank Main Street branch, Bulawayo.

The respondent admitted he entered into the agreement of sale with applicant and received the full purchase price. However, trouble started when the buyer wanted the property to be transferred into his name so that he could take occupation. It is common cause that the 1st respondent failed to deliver the property for occupation. He also failed to take steps to transfer the property to the applicant. He in fact admitted that he refused to take steps to effect transfer of the property.

The respondent has no legal basis for refusing to transfer the property into the name of the applicant. He, however, argued that he no longer wanted to sell the property and offered to return the full purchase price. He complained that the applicant caused him to be arrested and was detained for two days causing him a lot of humiliation and embarrassment.

What happened was that when the applicant requested that transfer of the property be effected into his name the respondent appeared to be playing games. He was uncooperative and elusive leading the applicant to believe that he may have been conned of his money. That belief, albeit erroneous, prompted him to report the respondent to the police and he was arrested and detained for two days.

It is not entirely correct to suggest that the respondent wanted to cancel the agreement because the applicant reported him to the police because the report to the police was made after the respondent had written the letter of purported cancellation on 20 January 2006.

The respondent has no defence at all to the applicant's claim. His arguments were just frivolous and vexatious intended to harass the applicant. The applicant should have sought legal advice to save himself from paying unnecessary costs. In his letter to the applicant's lawyers dated 2 February 2006 respondent vowed that as long as he was alive he would not transfer the house in the applicant's name. He stubbornly said applicant should consent to the cancellation of the agreement so that he could give him back his money.

This type of attitude by a person who knows he has no defence to the applicant's claim deserves censure and the court must show its displeasure by visiting him with a punitive award of costs.

In the result I would confirm the provisional order in terms of the draft.

Hwalima, Moyo & Associates, applicant's legal practitioners