

ADMIRE SIBANDA

VERSUS

DR. G. MTHUPHA

IN THE HIGH COURT OF ZIMBABWE
CHEDA J

BULAWAYO 31ST MARCH 2008 AND 13 NOVEMBER 2008

Mr M Ncube for the applicant

Mr N Mazibuko for the respondent

Urgent Chamber Application

Contract

CHEDA J: This application was brought on an urgent basis on the 6th February 2008 and I granted the provisional order.

Respondent being not satisfied with the order opposed this application.

Applicant is alleged to have entered into an agreement to purchase a motor vehicle from respondent sometime in January 2008. The purchase price was \$17 billion (old currency).

By consent a further \$1 billion was factored in, in order to cushion respondent against inflation, the total sum was now \$18 billion. The \$1 billion was to be paid in cash.

On the 16th January 2008 a sum of \$10 billion was paid into respondent's account at ZB bank and on the same day \$5 billion was transferred from CBZ into ZB Bank. On the 29th January 2008 a further \$2 billion was transferred into his account. On the 31st January 2008 a further \$1 billion was tendered to her in cash and she refused to accept it. On the same date applicant demanded delivery of the motor vehicle, but, she refused.

Applicant has since issued summons against respondent under case number HC 251/08.

This was applicant's version of events which resulted in him being granted a provisional order.

Respondent has opposed this urgent application. Her version of events, briefly is that she put up the motor vehicle for sale in order to pay for her children's University fees in South Africa. According to her application she was supposed to have paid the \$18

billion by the 31st January 2008 and as applicant failed to pay up, she cancelled the contract. However, negotiations went on following her purported cancellation.

While negotiations were going on applicant introduced two people Clarence and Buhle as potential buyers. Again, it seems that when these new purchasers were about to enter into an agreement it fell through.

It seems to me the sale agreement between applicant and respondent was cancelled hence the introduction of Clarence and Buhle whom he stated were his relatives. Applicant was aware that for whatever reason his agreement with respondent was cancelled by mutual consent, hence his acceptance to have his relatives substitute him.

The question then, is, was applicant still entitled to any right over the car as of the 1st February 2008.

In my view, he was not. After the 1st February 2008 there was no contract between applicant and respondent to talk about. By introducing and allowing his relatives to substitute him he had consciously and mutually agreed to the cancellation of the contract. Their contract ended at that point. A new contract was being negotiated between respondent on one hand and Clarence and Buhle on the other.

In light of the above the following order is made:-

- 1) The Provisional order granted by this court on the 7th of February 2008 be and is hereby discharged.
- 2) Respondent to pay the costs on the ordinary scale.

Messrs Cheda and partners, applicant's legal practitioners

Messrs. Calderwood, Bryce Hendrie and partners, respondent's legal practitioners