

HIGHER DIMENSIONS ESTATE AGENT

Versus

MR AND MRS DAVID

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 29 MAY 2008

S S Mlaudzi, for applicant
Respondents in person

Opposed Court Application

KAMOCHA J: This is an application for summary judgment wherein the applicant seeks the respondents to pay it the sum of nine hundred million dollars as agents' commission. The applicant alleged that the respondents granted it a written mandate to sell their property known as 882 Riverton Road, Mandara, Harare.

It got an offer on 6 March 2006 from a purchaser whose employers wrote a letter confirming the availability of the purchase price. It was alleged that the respondent confirmed the sale to the purchaser. But, when the applicant issued an invoice for the agents' commission due, the respondents refused to pay.

The applicant felt that the respondents had no *bona fide* defence and had entered appearance to defend as a delaying tactic.

The respondents who are self actors on the other hand contended in their opposing papers, that the applicant was not entitled to the relief it sought. While accepting that they granted the applicant mandate to sell their property that mandate was a general selling mandate commencing on 29 December 2005 for a period of 30 days. Thereafter it would be reviewed and revised accordingly. During that period either party could give 7 days notice in writing to terminate the mandate.

The above were in fact the terms of the mandate signed by the respondents. The respondents further submitted that the applicant was unable to find a buyer within the 30 days period. That is common cause. The applicant only got an offer to purchase on 6 March 2006 well after the 30 days period. There is no evidence to suggest that the mandate was reviewed and revised. It must have expired. In any case the respondents cancelled the mandate by e-mail dated 8 February 2006 wherein they advised the applicant that they no longer wished to sell the house. The requirement of

seven days notice to the other party was satisfied and yet the applicant went ahead and received an offer nearly a month later on 6 March 2006.

The respondents mandated another agent who managed to sell the property to the same buyer the applicant had found for a price of 13 billion dollars instead of the 12 billion dollars he had offered to the applicant. The respondents were perfectly entitled to give a mandate to another agent since the applicant was not granted a sole

and exclusive mandate.

The applicant presented its offer long after the respondents had withdrawn their mandate. The respondents are entirely correct in submitting that the applicant is not entitled to the order it seeks.

It is difficult to understand why the applicant applied for summary judgment in such circumstances when its application is devoid of any merit.

It is accordingly dismissed with costs.

Samp Mlaudzi & Partners, applicant's legal practitioners