

SIBUSISIWE MSIMANGA

VERSUS

SIBONGILE SIBANDA

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 3 SEPTEMBER 2010 AND 21 OCTOBER 2010

Mrs N. Tachiona for plaintiff
Mr M. Munjanja for defendant

Eviction

CHEDA J: On the 3rd September 2010, I heard this application and deliver an ex tempore judgment and thereafter asked any of the parties to request for written reasons should they want to. *Mr Munjanja* has so requested and these are they;

This is an application seeking the eviction of respondent.

Applicant and respondent are related. Respondent is applicant's aunt as she is applicant's mother's sister. Applicant's mother is now deceased. Before she died she entered into an agreement of sale between herself and one Jacob Phosa over stand number 259 Nketa 6, Bulawayo. This property (hereinafter referred to as "the property") was transferred and registered into applicant's name in accordance with the Bulawayo City Council's requirements.

It is her averment that her mother passed on in 2002. From the time the property was purchased, respondent was staying in the said property. After her mother's death, respondent confiscated both her mother's and father's death certificates and has not returned them ever

since. In addition, respondent has refused to vacate the property in question. The said property is registered in her name, she therefore has a real right over it.

Respondent's argument is that in as much as she does not dispute that the property was registered under applicant's name and her name appears as a witness, the correct position is that it was an arrangement between herself and applicant's mother (during her lifetime) that their names appear as such. Other than her mere say-no, there is no other shred of evidence to support her. If her name appears as a witness, I do not see how it can be understood in any other way other than what the agreement of sale was between her late sister and Jacob Phosa. She has no reasonable explanation why she was not recorded as co-purchaser. Further, there is no document to show that both applicant's mother and herself entered into some arrangement with regards to the purchase of this house or any other future house. In the absence of any evidence to support her, I have no alternative but to reject her position as untruthful.

In her opposing affidavit she stated that there were two other applications pending before this court. Upon perusal and with the consent of her legal practitioner *Mr Munjanja*, these cases were disposed of by case no. HC 1454/08. What is more disturbing is that *Mrs Tachiona* advised the court, that, infact, *Mr Munjaja* had advised her that the reason why respondent opposed this application was to for her to buy time in order to build her own house then she would thereafter abandon her defence. *Mr Munjanja* indeed admitted having stated so. What is worrying is that despite these utterances, he still persisted before me that, respondent had a bona fide defence to applicant's claim. This type of conduct by a legal practitioner is misleading and it borders on abuse of the court process which these courts can

not tolerate. A legal practitioner is supposed to desist from conduct which is unbecoming and unworthy. Accordingly *Mr Munjanja* is strongly warned to desist from such conduct in future.

It is clear in my mind that applicant has made a good case for herself and respondent's argument is devoid of any merit and is accordingly dismissed.

The following order therefore is made:

1. Respondent and all those claiming occupation of stand number 259 Nketa 6, Bulawayo through her be and are hereby ordered and directed to vacate the same within 24 hours after service on them of this court order.
2. Failure by Respondent to comply with (one) above, the Deputy Sheriff be and is hereby ordered and directed to evict whoever will be in occupation of 259 Nketa 6, Bulawayo with the assistance of the Zimbabwe Republic Police.
3. Respondent to pay the Deputy Sheriff fees.

Bulawayo Legal Projects centre, applicant's legal practitioners
Messrs Munjanja and partners, defendant's legal practitioners