

SARAH KHANYE

Versus

PRAXEDES SITHEMBILE KHUMALO

And

DEPUTY SHERIFF

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 6 & 15 SEPTEMBER 2011

N. Dube with M. Ncube for the applicant
G Nyathi for 1st respondent

Urgent Chamber Application

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

“Final order sought

1. The 1st respondent be and is hereby interdicted from evicting the applicant from number 4 Gannet Close, Burnside, Bulawayo until the finalization of case number 607/11, or until the payment of the sum of US\$33 000,00 less expenses as advised by the court in case number HC 2309/10.
2. The 1st respondent to pay costs on an attorney-client scale.

Interim relief granted

Pending confirmation or discharge of this provisional order the applicant is granted the following relief;

1. The 1st and 2nd respondents be and are hereby interdicted from evicting the applicant from number 4 Gannet Close, Burnside, Bulawayo, using the writ of ejectment under case number HC 2309./10 until case number HC 607/11 is finalized.
2. In the event that eviction has been carried out after the granting of this provisional order, the 1st and 2nd respondents be and are hereby ordered to return vacant possession and occupation of number 4 Gannet Close, Burnside, Bulawayo to the applicant and those claiming through her or her duly authorized agent.”

The background facts of this matter are the following. On 19 May 2010 applicant and the 1st respondent entered into an agreement in terms of which the 1st respondent sold to the applicant the above-mentioned property. The applicant made some payments towards liquidating the purchase price. Somewhere along the line the applicant had problems in paying the balance of the purchase price resulting in 1st respondent instituting proceedings under HC 2309/10. The result of that case was an order against the applicant in favour of the 1st respondent couched in the following terms:-

“It is ordered that:

- (a) The agreement of sale entered into by and between applicant [i.e. 1st respondent *in casu*] and the first respondent [i.e. applicant *in casu*] ... on the 19th May 2010 be and is hereby cancelled on the basis that the first respondent has fundamentally breached clauses 1, 5 and 8 of the agreement of sale.
- (b) Applicant refunds first respondent all monies paid by first respondent towards the purchase price less expenses charged for rates, electricity, water and legal costs duly taxed and allowed by the Deputy Registrar of the High Court in Bulawayo.
- (c) ...
- (d) ...
- (e) First respondent and all those who claim occupation of house number 4 Gannet Close, Burnside, Bulawayo through first respondent be and are hereby ordered to vacate house number 4 Gannet Close, Burnside, Bulawayo within 7 days of service of this order on first respondent failing which the Deputy Sheriff, Bulawayo be and is hereby directed to evict the first respondent and all those who claim occupation of house number 4 Gannet Close, Burnside, Bulawayo through first respondent.
- (f) ...
- (g) ...
- (h) ...”

This order was granted on 27 January 2011. The 1st respondent did not execute this judgment from January until September 2011. The parties had, after the granting of this order, reached an agreement that the property be sold and the applicant be refunded the deposit of US\$31 000,00 that she paid less expenses like rentals, electricity and water and legal costs. In pursuant to this latter arrangement the 1st respondent referred prospective buyers to view the said property but the applicant or those claiming through her told them the property was not for sale. This conduct on applicant's part made the 1st respondent resolve to execute the

Judgment No. HB 120/11
Case No. HC 2486/11
X REF HC 2309/10; 2107/10; 607/11

above-mentioned judgment under HC 2309/10 about eight (8) months after it was granted. This is what prompted this application under a certificate of urgency. The applicant now seeks stay of execution of a judgment it was aware of for such a long period of time. She has not shown how she will suffer irreparable harm in light of the protection of her interest in the property in paragraph (b) of the order granted under HC 607/11 which she has not bothered to prosecute. She is not in a hurry to pursue her application for rescission and summons matter under HC 2107/10 because she is in occupation of the said property. The applicant is not paying the agreed rental of US\$250 per month. Applicant is clearly abusing court process and there is nothing urgent about this application. The day of reckoning has arrived.

Accordingly the application is dismissed with costs on legal practitioner and client scale.

Cheda & Partners, applicant's legal practitioners
Sansole & Senda, 1st respondent's legal practitioners