

MUNICIPALITY OF VICTORIA FALLS

Versus

LOIDA NYATHI & 11 OTHERS

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 27 SEPTEMBER 2010 & 19 JANUARY 2012

J James for the plaintiff
C Dube-Banda for the defendants

Civil Trial

NDOU J: These are twelve cases, which were consolidated into two matters, which were heard at the same time. For easy reference the one matter involved what may be called the ZimSun houses (5 defendants under HC 2224/08). The five defendants being Alice Ndlovu, Sivumo Ndlovu, Kambarachi Zex Raura, Freda Khumalo and Simolita Maseko. The other matter involved what may be called the National Housing Fund (“NHF”) houses (7 defendants under HC 2225/08). The seven defendants being Loida Nyathi, Everson Ndebele, Collen Ndebele, Phindile Ncube, Sihlobo Sibanda, Shadreck Ndlovu and Stephen Ndlovu. The trial lasted twelve days which is understandable, considering that there were two witnesses for the plaintiff and twelve (12) witnesses for the defendants i.e. all the defendants. Two of the defendants had died by the time the trial commenced, and they were substituted by the executrix of their estates. There was a bundle of documents with slightly over four hundred (400) pages as well as some more documents which were later introduced during the course of the trial. However, a closer analysis will show that the issues are fairly simple, and are similar in the seven NHF houses and the five ZimSun houses. Basically, it boils down to this:

- (a) Is the plaintiff the owner of the twelve houses in question, or are the defendants the owners?
- (b) If the plaintiff is the owner, then the plaintiff is entitled to an order for:-
 - (i) Evicting the defendants
 - (ii) Damages
 - (iii) Costs of suit
- (c) If the defendants are the owners, then they are entitled to transfer of these houses into their names with an order for costs against the plaintiff. In essence the defendants have to prove that there were valid contracts of purchase in respect of each of the houses in dispute. The houses concerned are the following:

Loida Nyathi	-	House 4251
Everson Ndebele	-	House 4255
Collen Ndebele	-	House 4247
Phindile Ncube	-	House 4242
Sihlobo Sibanda	-	House 4246
Shadreck Ndlovu	-	House 4241
Stephen Mpofu	-	House 4244
Alice Ndlovu	-	House 4403
Sivumo Ndlovu	-	House 4401
Smolita Maseko	-	House 4408
Kambashu Zex Raura	-	House 4407
Fred Khumalo	-	House 4400

All these properties are at Chinotimba, Victoria Falls. Cut to the bone, in all instances the plaintiff claims that these are pool houses for use by plaintiff employees. Plaintiff contends that the defendants were given these pool houses by virtue of their employment with plaintiff. It further being contended that upon termination of such employment, each individual defendant will cease to occupy the property in issue. This position does not apply to one of the defendants, Stephen Mpofu, who was never employed by the plaintiff. His case is different but the bottom line is that he was granted occupation through a lease. Of the twelve defendants, only two, namely Sihlobo Sibanda and Smolita Maseko are still in the employ of the plaintiff. As alluded to above, the defendants' counter claim is for an order directing the plaintiff to take all necessary steps to transfer the various stands to each defendant on the basis that the defendants purchased the stands on a rent-to-buy scheme. This is denied by the plaintiff. It is beyond dispute that these properties in issue are registered in the name of the plaintiff. The plaintiff is the registered owner of these twelve stands. This point is admitted in paragraph 2.3 of each defendants' plea under HC 2225/08 and paragraph 2.5 in each defendants' plea under HC 2224/08. There are documents from the Ministry of Local Government ("Ministry") dated 20 July 2000 (pages 45 and 55 of the bundle of documents) which evince the transfer from the Ministry to the plaintiff. This creates a problem for the defendants who contend the stands still belong to the Ministry.

They, however, did not take any legal action against the Ministry to prevent the transfer of the stands from the Ministry to the plaintiff. Be that as it may, I propose to consider the evidence adduced by the parties in turn.

Phillip Ndlovu - He testified on behalf of the plaintiff. He evinced that he has been the Chamber Secretary of the plaintiff since 2006. Whilst he was not employed by the plaintiff in the 1980s or 1990 - 1992, when most of the events occurred, from the official records available

to him, and from his own investigations, the plaintiff was the legitimate owner of the houses in dispute. He said that the defendants obtained the houses in question from the plaintiff, because of their employment with plaintiff or because they were quasi-employees of the plaintiff such as Government teachers working at plaintiff's schools. In the case of Stephen Mpofu he obtained the house because the plaintiff had previously made available accommodation to him. It is his testimony that there was a shortage of houses in Victoria Falls during the 1980s, 1990s and to date. This is evinced by documents like the minute from the parent Ministry dated 15 September 1997 produced as evidence. There are various Council deliberations and resolutions captured in the minutes filed of record which confirm the shortage. Such deliberations and resolutions centered around the necessity to provide plaintiff's employees with accommodation. There is a memorandum which goes further to explain that some employees were living in toilets on account of the shortage of houses. *The National Housing Policy Frameworks for Zimbabwe: A Review of the Policies and Strategies*, confirms the shortage. The defendants also confirm the shortage and concede that they had to wait for some years before they were allocated the houses. He said there must have been connection between the defendants' employment with the plaintiff and the allocation of the houses. This is an independent witness who spoke of matters which related to his professional responsibilities. He was expounding to the court what he knew and observed from the official records. He has no personal interest to pursue and no hidden agenda. This is in stark contrast to the defendants who had an obvious massive financial interest in the outcome of this case, namely to retain the houses which they had been informed as early as 1993 were not theirs, but were in fact pool houses of the plaintiff. This witness confirmed that all these disputed houses were registered in the name of the plaintiff. This is important as such registration is matter of substance and not form. He explained that there were attempts to assist the plaintiff employees to acquire houses through CABS finance. These initiatives came to naught because they required the plaintiff to pay cash deposits on behalf of its employees. As plaintiff is a creature of the Urban Councils Act, section 148 of the Act made such initiatives impossible. The plaintiff could only act as a guarantor to the employees and not pay cash deposits on their behalf. In such an event, the plaintiff would still require ministerial approval. There is no record of such approval. He also significantly testified that none of the defendants has written agreement evincing that they have become owners of these houses. According to plaintiff's record there is nothing that shows that ownership of the houses was passed to the defendants. The defendants paid security deposits and monthly rentals and allied charges but not purchase prices for the houses. The records clearly show that these are pool houses for use by those in plaintiff's employ. All the defendants were given notice to vacate these pool houses after they were allocated residential stands of their own and they refused to do so. They have defiantly remained in occupation of plaintiff's houses even when most of them have left plaintiff's employ save for the two defendants still in plaintiff employ. They have not exhibited any

contract of sale to the plaintiff. In brief they have not shown the legal basis upon which they claim the plaintiff sold them the houses. There is no record produced by the defendants that they acquired the houses on rent-to-buy contracts. He also indicated that other plaintiff employees did not claim these pool houses and moved out. This witness was subjected to lengthy, tactful and determined cross-examination. At the end of the day I find that he is a credible witness. He made several concessions favourable to the defendants' case. He is a truthful witness.

Thembinkosi Khumalo - He has been employed by the plaintiff for nineteen (19) years. He is the acting Town Treasurer for the plaintiff. He started plaintiff's employ as a Senior Accounting Officer in the Treasury Department. He mainly corroborated what the first witness said in a material way. As far as the ZimSun houses are concerned, he said in 1992 ZimSun had built 160 houses for its staff. These houses were built at the time when plaintiff was facing acute shortage of accommodation for its staff. Plaintiff approached ZimSun who offered them twelve (12) houses including the 5 subject of these proceedings as stated above. The plaintiff paid for these houses using stands on which ZimSun built their staff houses plus an additional amount of Z\$68 000. After acquiring these ZimSun houses they put in the plaintiff staff and quasi-plaintiff staff. He confirmed that there were initiatives to sell these houses to staff through CABS but, as stated by the previous witness, all these came to naught on account of the low salaries of staff and statutory limitations as plaintiff is a local government. He said some of the defendants stopped paying rentals in 2007 whereas two who are still plaintiff employees have continued paying. These two defendants who are still plaintiff employees are Smolita Maseko and Sihlobo Sibanda. He evinced that if council property is being sold, Treasury Department would be served with an agreement of sale. The agreement of sale must state the tenure of the loan (if it is not a cash sale), the instalment payable by the beneficiary and the interest on the loan amount. He categorically stated that none of the defendants had any agreement of sale with the plaintiff. He said that the Z\$500 paid by each defendant was Z\$250 for rent and Z\$250 for security deposit (good tenancy deposit). He also said when plaintiff's employees wanted to carry out repairs in these houses, such repairs must first be certified as necessary by the town engineer. This is a pre-condition of reimbursement of the tenant by the plaintiff. As far as defendant Steven Mpofo is concerned, he was not employed by the plaintiff. He was employed by ZimSun. He was renting plaintiff's guest house. They decided to accommodate him in one of the pool houses on a lease basis. He was adamant that plaintiff made a decision to allocate these houses to its employees to attract and retain them. The houses were, however, to remain as pool houses. He further stated that when houses were allocated by plaintiff to individuals whether employees or not, the plaintiff ensured that there were documents which showed the various costs centres such as for the sewer, education levy etc. This is reflected in receipts such as on pages 250, 251 and 356 of the bundle of documents.

This was because the houses in question were being rented. The defendants had rent cards where credits were entered when payments were made and the payments credited to the appropriate costs centres. He said Treasury had agreements of sale (rent-to-buy) for other properties allocated to the defendants, but did not have that in respect of the 12 houses in issue. What the defendants had even on their own admissions, were rent cards. He said a rent card is self evident and cannot be stretched to mean rent-to-buy. As far as the letter written by a Mr Lucas M M Sibanda the former Chief Executive Officer of plaintiff, he said this individual was dismissed by the plaintiff on account of documented acts of misconduct. He said his letter of support of the defendants is untrustworthy and devious. On the question of damages he said rentals for the houses in question were US\$150 per month at the lowest rate to US\$200 per month for the more expensive ones. He said damages in the sum of US\$150 per month in respect of each of the defendants would be appropriate. This witness was extensively cross-examined by defendants' counsel. I am satisfied that he gave his evidence well. I find that he is a credible witness. He is very familiar with the financial operations of the plaintiff and in particular he is very familiar with acquisition of the houses in issue and how the defendants ended up in occupation.

Coming to the defendants' case I also propose to consider the evidence adduced in turn.

Phindile Ncube - He was employed by the plaintiff between 11 May 1987 and February 2009. He had joined the plaintiff as Revenue Clerk responsible for housing. In 1988 he was elevated to the position of Senior Housing Clerk responsible for the supervision of housing clerks and the computation of the home ownership scheme. He gave a detailed account of the Government Housing policy. Most of the evidence is not relevant for the determination of the legal issues before me. I will only focus on the relevant part of the testimony. In relation to the house in dispute between him and the plaintiff, he says he placed his name on the Housing Waiting List as he was staying with his parents at the time at 3133 Chinotimba. He was allocated the disputed stand number 4242 Chinotimba. After the allocation he made improvements on the property as evidence that he considered that the plaintiff allocated the property to him on a rent-to-buy basis. Such improvements comprise of installing burglar bars, fencing of the property and sharing of the walling costs with the neighbour. He conceded that he has another property, being stand 4222 Chinotimba allocated to him by the plaintiff. He said that he, like the other defendants, was sold stand 4242 because he was on the waiting list. He, however, did not have a single document to prove the purported sale. Despite the fact that he alleged that he was virtually running the Housing Department of the plaintiff at the relevant time, he could not produce any document to prove his claim. All he had is a rent card. It is quite clear that the rent card is tenant's card, not a card to prove ownership. Even his erstwhile legal practitioners conceded this fact on pages 94-95 of the bundle of documents. He could not explain why he and the other defendants did not sue the Minister responsible for National

Housing to transfer the houses in dispute to them, but adopted an attitude of supine indifference, when the said Minister transferred the said houses into the plaintiff's name. He tried to suggest that during the early 1990s there were no rent-to-buy agreements, and that is why he and other defendants had no documents to support their version of events. Unfortunately for him, the documents from pages 279 to 415 on the bundle of documents proved otherwise. In pages 279 – 285 is a rent-to-buy entered into on 1994 in respect of stand 5053 Chinotimba. On page 299 the sale agreement was entered into in 1997. His own agreement of sale in respect of stand 4222, *supra*, was entered into around 1994. He said that the document by Mr Sibindi on page 76 of bundle of documents was the source of all the defendants' problems. This is patently untrue because the document was authored in 2007 and yet at least 14 years earlier, the plaintiff had already said that the houses in question were pool houses, and belonged to it. The plaintiff even has the support of the Workers' Committee in this regard. This witness held himself out as an expert and the spokesperson for all the twelve defendants. He confidently described himself as a "local government practitioner". He did this to try to speak with an authoritative voice that brooked no contradiction. Regrettably, he failed dismally in this endeavour. He was an extremely poor witness. He was not credible as alluded to above. Further, he was a witness with an interest, not only in retaining stand 4242 Chinotimba, but also because he had obviously misled the other defendants and given them the impression that he was the authoritative voice in respect of the twelve houses in question. There was the difficulty in that as early as 1991, 1992 and 1993, onwards, the plaintiff had made it clear that the twelve in question belonged to the plaintiff and plaintiff wanted them back. This is clear in the letters from legal practitioners and also minutes of the seven National Housing Fund houses. He tried to assert that Central Government gave directives to Councils, such as the plaintiff and thus the plaintiff was obliged to obey these directives which had the force of law. In other words, the local authorities were only agents, or implementing arms of the Central Government. This assertion was clearly flawed. The witness was unable to point to any such legislation which made suggestions by Central Government law binding upon Council. It is clear that the National Housing policies were guidelines. In fact on page 208 of the bundle of documents it is made clear that these were guidelines. In any event the Central Government transferred these houses into the plaintiff's name. The defendants did not challenge the said transfer before the court. When he was cross-examined, and asked how it was that all twelve defendants had other stands in breach of the Central Government policy which he appeared to champion so enthusiastically because it was convenient to him, he made a *volte face* and said that this policy on the prohibition against multiple ownership of houses in the high density suburbs, was relaxed by the plaintiff. However, he was unable to provide documentary evidence of such relaxation of the policy. He was unable to do so because he was misleading this court. Further, he was unable to give the agreed purchase price for the house in dispute. The purchase price is an essential element of the agreement of sale. He tried to get around by

stating that he expected to pay rentals for the house over thirty (30) years and after that the house would be his. He then changed and said that he had fully paid for the house in issue because of inflation. He ran into great difficulty when he referred to the ZimSun houses, where again, he tried in vain to hold himself out as an authority on these houses. He said the purchase price of these houses was \$35 000,00. This figure is not supported by any documentation. He went on to say that these houses were supposed to be paid for over twenty-five (25) years. But \$35 000 divided by 25 years, then by twelve months to arrive at the monthly payments, gives a figure of \$116,67 which is nowhere near the \$25 977 purchase price referred to on page 9 of the bundle of documents. To compound his already difficult situation, he then changed and said that initially the ZimSun houses were paid for by way of a deposit of \$250, the monthly rentals of \$250 for 25 years. Simple mathematics shows that the purchase price at $\$250 \times 12 \text{ months} \times 25 \text{ years} = \$75\,000,00$. This figure had no relation to what he was talking about. He then said that the plaintiff decided to reduce the purchase price to \$180. Still $\$180 \times 12 \text{ months} \times 25 \text{ years} = \$54\,000$. This is so because he said the deduction from employees' salaries to pay for the house should not exceed 27% of the employee's salary. This again was not supported by any documentation. He further explained that of the \$180, \$20 would be utilized for service charges and \$160 towards the purchase price, still the figure would be almost double the purchase price stated above. There was no explanation forthcoming from him when the policy to reduce the price from \$250 to \$180 monthly was effected. All along it was defendants' case that in respect of the ZimSun houses, they had paid a deposit of \$250 and monthly instalments of \$250. They had paid the full purchase price for the houses in question. This was their case in their pleadings and synopsis of evidence. There is no mention in the pleadings of the change to \$180 per months or \$160 plus \$20 service charges per month. It is highly improbable that if the defendants' erstwhile legal practitioners had been given instructions, they would not have mentioned it in both the pleas and synopsis of evidence. This was something which was crucial to their case, as it relates to the alleged purchase price. The fact that this was never mentioned in the pleadings shows that this witness made it up. These contradictions and changes simply demonstrate a desperate witness who could not tell the truth. In any event the issue of the alleged change in the monthly instalments was never put in cross-examination to Mr Khumalo. This shows that it is an after-thought by the witness. The only inference to be drawn is that the witness was untruthful, and so the other defendants who supported him in making this assertion.

It is also significant that nowhere in the five defendants' pleas and synopsis of evidence is the alleged purchase price mentioned. All in all this witness was totally unreliable and his testimony is not worthy of any belief.

Collen Ndebele - He, like the other defendants, gave similar evidence, which was not supported by any documentation, but in fact contradicted by documentation before the court.

He had no documentation to support his assertion that he entered into an agreement to rent-to-buy the house he was claiming. All he relied upon was a rent card which in fact showed that he was a tenant. He said he believed that he had paid for the house in dispute in full, yet on his own version he paid just over 20 years. His rent card showed nothing of ownership. His testimony suffers the same weakness as that of the previous witness. He was as unimpressive as the last witness. He was equally evasive on the purchase price and the lack of agreement of sale.

Sihlobo Sibanda - He was equally not impressive as a witness. The documents showed that he was allocated the disputed house because of his position as a bursar but he made a valliant attempt to deny this. In his case he was aware of the problem regarding the houses because he took minutes at Council meetings when the issue was discussed as far back as November 1997. He had no purchase price for the house, but said that he was supposed to pay over thirty (30) years. He said that his waiting list card was taken at the time he was allocated the house in issue, but somehow he was allocated another stand. The waiting list card must have been taken when he was allocated the latter stand and not the house in issue. It is significant to note that in the latter application he used a misleading address i.e. 2512. This was misleading to disguise the fact that he already had another house 4246 Chinotimba. In his own version he would have been sold two residential stands in a space of three years contrary to Government policy. It is clear that he was never sold the house in issue. He is, however, still in plaintiff's employ and continues to pay rentals through deductions. In this regard his position is different from other defendants.

Shadreck Ndlovu - Like the previous witnesses, he said a lot but had no documentation to support his assertion that plaintiff sold him the house in issue. He had no idea of the purchase price of the house, he was not sure if he paid in full for the house, he was just swimming in a sea of uncertainty. He said that despite the fact that his waiting list card was taken away when he was allocated the house in dispute, he was allocated stand 4237 simply because he was a war veteran. He was unable to show anything in the housing policy document to illustrate that war veterans were entitled to be allocated more than one stand in the high density suburbs. In any event, in respect of stand 4237 there were proper documents to show that he entered into a rent-to-buy agreement and yet for the house in dispute such documents were conspicuous by their absence.

Stephen Mpofo - Like other defendants he had no documentation to support his story that he owned the house in question. He had no idea of the purchase price and he did not know how long he was supposed to take to pay for the house. He appeared confused and did not know what was happening.

Everson Ndebele - Like other defendants, he had no documentation for the alleged purchase of the stand in dispute. His testimony is equally incredible. He received documentation for the other stand, 4817 but not for the disputed stand.

Osina Nyathi - She testified on behalf of her late mother who was the original defendant. She tried as much as possible to give the impression that she knew how the house in question was allocated to her late mother. She sadly failed to do so.

Alice Ndlovu - Whereas, Phindile Ncube wanted to be the spokesman in respect of all the twelve houses this witness attempted to be the spokesperson for the defendants relating to the ZimSun houses. She made a valliant attempt to use the rent card as proof of ownership. She was generally an untruthful witness. She tried to give the impression that she had no connection with stand 5048 and that that stand was her husband's. The application papers on page 405 of the bundle of documents clearly show that both her and husband applied for stand 5044 and correspondence was copied to both of them. She could not give a purchase price. She associated herself with the explanation given by Phindile Ncube in this regard. She said a lot but failed to give a credible account of the alleged purchase of the stand in dispute.

Smolitha Maseko - Like the previous witness Sihlobo Sibanda, she is still in plaintiff's employ and rentals are being deducted from her salary, according to the testimony of plaintiff's witness Thembinkosi Khumalo. Like other defendants, she failed to establish that the house in dispute was sold to her. Although unlike the other defendants, she and Sihlobo Sibanda may not be evicted in terms of the cause of action *in casu* and ordered to pay damages, suffice to say that they are in occupation of their respective properties on account of their continued employment by the plaintiff and not on account of sale agreement.

Kambarashe Zex Raura - Like other defendants he had no agreement of sale to establish that he purchased the house in dispute. His untruthfulness is evinced by the fact that in his application for stand 5049 he stated that he did not own any other stand as at 1996, when in his own version, in 1991, he had been allocated stand 4407. This is either a deliberate lie or a confirmation that he was aware that stand 4407 was a pool house. He further said he was never told the purchase price, but was advised that he was to pay \$250 as deposit and \$250 per month. He said there was vague talk of paying \$250 per month for 25 years but he was never informed of the purchase price and he could not answer questions on the issue of the purchase price. I am satisfied he is equally an unimpressive witness.

Sivumo Ndlovu - Like other defendants she had no documentation to prove that she had entered a lease to buy agreement in respect of the property in issue. This is in stark contrast to the documents which clearly set out the rights and obligations of the respective parties of stand 5053. She also had no purchase price on the house she claimed she had bought.

Ruth Khumalo - Her testimony is characterized by hearsay. But the bottom line is that she was unable to produce any documentation to show that she purchased the stand in dispute.

Having made the above findings of facts I proceed to consider the effect of these findings and the law applicable. I have to determine whether there were contracts of purchase and sale between the protagonists in these two matters. I have to determine whether the essentials a purchase and sale contract are present. *In casu*, there is no dispute that there is more than one party to the alleged contracts – *Barnhoorn v Duvenage* 1964 (2) SA 486 (A) 494A-D. The crucial issue is whether there was true agreement between the parties. It is trite that agreement by consent is the foundation of contract – *Salisbury Municipality Employees Association v Salisbury City Council* 1957 (2) SA (SR) 557; *Cinema City (Pty) Ltd v Margenstern Family Estates (Pty) Ltd* 1980 (1) SA 796 (A) 804D and *The law of Contract in South Africa*, R H Christie (3rd Ed) at 21-23. In order to decide whether a contract exists one looks first for the true agreement of two or more parties and because such agreement can only be revealed by external manifestations one's approach must of necessity be generally objective. The court can only judge from external facts whether the minds of the parties have come together – *Jordaan v Trollip* 1960 IPH A25(T) and *Allen v Sixteen Stirling Investments (Pty) Ltd* 1974 (4) 164 (D) at 172. Looking at the evidence led by the plaintiff there was no meeting of minds that these houses were being sold to the defendants. It is trite that the most helpful way of determining whether there has been agreement, true or based on quasi-mutual assent, is to look for an offer and an acceptance of that offer. A binding contract is as a rule constituted by acceptance of an offer – *Reid Bros (SA) Ltd v Fisher Bearing Co Ltd* 1943 AD 232 at 241. But offer and acceptance must never be sought for their own sake but as aids in deciding whether an agreement has been reached. A true offer means an express or implied intention to be bound by the offeree's acceptance – the *animus contrahendi* – *Sambou-Nasionale Bouvereniging v Friedman* 1979 (3) SA 978 (A) at 991G and *Spes Bona Bank Ltd v Portals Water Treatment South Africa (Pty) Ltd* 1983 (1) SA 978 (A). *In casu*, there was no such offer to the defendants. The rent cards produced do not constitute an offer made with the requisite *animus contrahendi*. There were no unequivocal offers of sale made to defendants. The offer must be unequivocal i.e. positive and unambiguous – *Boernie v Harris* 1949 (1) SA 793 (A) at 799 and *Wasmuth v Jacobs* 1987 (3) SA 629 (SWA) at 633E-G. Accordingly from the evidence, there was no agreement by consent or true agreement, or a meeting of minds, or a coincidence of wills, or consensus ad idem between the parties and the only credible explanation is that these houses were pool houses for use at the discretion of the plaintiff. On this point alone the plaintiff's claims must succeed and the defendants' counter-claims fail. Further, there is no agreement on the price. As alluded to above it is not easy to ascertain the alleged purchase price. This points to the relationship of lease and not purchase and sale between the parties. The defendants, save for one, were all employees of the plaintiff at the time of allocation of the houses in

dispute. They obviously know the difference between being pool accommodation and rent-to-buy houses. All the defendants later, but before this dispute arose, entered into proper rent-to-buy agreements with the plaintiff so they are familiar with such agreements. The latter agreements clearly state the terms of agreement and the parties. They cannot be heard to be saying they mistook the rent cards for agreements of sale. The defendants are just influenced by greed and are trying to obtain two properties each from the plaintiff by converting their leases of the pool houses into ownership agreements. There is simply no agreements of sale in respect of the houses in issue and the court cannot contract for the parties - *Hillas & Co Ltd v Arcos Ltd* (1932) 147 LT 503 (HL) at 514; *Globe Electrical Transvaal (Pty) Ltd v Brunhuber* 1970 (3) SA 99E at 105-6; *Levenstein v Levenstein* 1955 (3) SA 615 (SR) and *Titaco Projects (Pty) Ltd v AA Alloy Foundry (Pty) Ltd* 1966 (3) SA 320 (W) at 338C-E.

The plaintiff's claims must succeed against all the defendants save for Sihlobo Sibanda and Smolitha Maseko. These two defendants are still employed by the plaintiff as alluded to above and plaintiff is still collecting rentals from their respective salaries. If the plaintiff wants to evict them it cannot be on the basis of this cause of action. As far as the damages are concerned, the plaintiff does not charge market related rentals of US\$150 per month as claimed in this case. The plaintiff is charging US\$20,00 per month for the houses in dispute. There is no basis for granting plaintiff damages based on market related rentals.

Accordingly, it is hereby ordered:

- 1) That the plaintiff's claim for the eviction of the defendant Smolitha Maseko and Sihlobo Sibanda from houses 4408 and 4246 respectively be dismissed.
- 2) That the counter-claims by Smolitha Maseko and Sihlobo Sibanda against the plaintiff be dismissed with each party bearing own costs.
- 3) That the plaintiff's claim for the eviction of:-
 - 3.1 Loida Nyathi - House 4251 Chinotimba
 - 3.2 Everson Ndebele - House 4255 Chinotimba
 - 3.3 Collen Ndebele - House 4247 Chinotimba
 - 3.4 Phindile Ncube - House 4242 Chinotimba
 - 3.5 Shadreck Ndlovu - House 4241 Chinotimba
 - 3.6 Stephen Mpofu - House 4244 Chinotimba
 - 3.7 Alice Ndlovu - House 4403 Chinotimba
 - 3.8 Sivumo Ndlovu - House 4401 Chinotimba
 - 3.9 Kambashu Zex Raura - House 4407 Chinotimba, and
 - 3.10 Fred Khumalo - House 4400 Chinotimbabe and is hereby granted.

- 4) That each of the above-mentioned defendants name in paragraph 3 above, be ordered to pay US\$20,00 per month from the month of February 2009 to date of eviction.
- 5) That the counter-claims by each of the defendants named in paragraph (3), above are dismissed.
- 6) That the defendants named in paragraph 3 above are to bear costs of suit on the ordinary scale.
- 7) That plaintiff be declared owner of all the properties subject matter of this case.

James, Moyo-Majwabu & Nyoni, plaintiff's legal practitioners
Dube-Banda, Nzarayapenga & Partners, defendants' legal practitioners