

NOT FOR DISTRIBUTION

Judgment No. HB 20/2002

Case No. HC 2538/2001

REGINA GUMBO N.O.

Applicant

versus

REWARD SIBANDA

Claimant

and

DAVIE DUBE

Judgment Creditor

HIGH COURT OF ZIMBABWE

CHIWESHE J

BULAWAYO 7 MARCH 2002

Opposed Matter

CHIWESHE J: In this interpleader application the facts are as follows:

The claimant purchased stand 1381 Emganwini Township, Bulawayo from one Bekezela Danisa in terms of a written agreement of sale. The agreement was signed on 17 February 2000. He duly paid the purchase price by way of instalments.

On 28 February, 2002 the judgment creditor obtained judgment against

Bekezela Danisa (the seller) in another matter (case No. HC 4781/99). Pursuant to

that judgment a writ of execution was issued on 5 July 2000. The applicant was

instructed to attach and execute the seller's immovable property, the subject of an

agreement of sale between the seller and the claimant. At that juncture claimant

lodged a claim with the applicant leading to the present inter pleader application. The

question to be decided is whether the claimant has a better right to the immovable

property in question than the judgment creditor.

It is trite that delivery is essential in a sale of immovable property. Where a

contract of sale has been concluded and the purchase price paid, the purchaser only

acquires a personal right against the seller. No real right accrues until transfer of the

20/02

-2-

property has been effected.

In the present case the necessary transfer or registration of cession of rights in

the property had not been effected. The property therefore at all relevant times

belonged to the seller. Claimant has no case against the creditors of the seller before

transfer. Mere possession of the property does not give him better rights than those

enjoyed by the seller's creditors. All he has at this juncture are personal rights against

the seller. He cannot enforce those personal rights against the seller's creditors and

the world at large. The property is thus executable at the instance of the judgment

creditor.

Accordingly, the claimant's claim is dismissed with costs.

Chiweshe J