**PARIDZAI CHIPIRINGU**

**Versus**

**CITY OF KADOMA**

IN THE HIGH COURT OF ZIMBABWE

KAMOCHA J (Retired)

BULAWAYO 10 JULY 2015 & 14 FEBRUARY 2019 & 28 JULY 2022

**Court Application**

*C. Chigomere* for applicant

No appearance from respondent

 **KAMOCHA J:** The applicant in this matter was seeking for an order in the following terms:

 “It is ordered that:

1. The applicant be and is hereby declared the legitimate owner of stand number 5932 Mornington Extension, Kadoma;
2. The repossession of stand number 5932 Mornington Extension, Kadoma by the respondent be and is hereby declared null and void;
3. The respondent be and is hereby ordered to pay costs of suit.”

In his founding off affidavit Mr Paridzai Chipuringu hereinafter referred as “the applicant” stated that he allegedly entered into an agreement of sale of stand number 6266 Tafadzwa In-fill, Rimuka, Kadoma on 3 January 2019 with the City of Kadoma herein after referred to as the respondent. The selling price of the sand was Z$2 500 000,00 which the applicant claimed to have duly paid and the stand was allegedly allocated to him. He attached annexure “A” as respondent’s confirmation of payment of the sum of Z$2 500 000,00. After the applicant had allegedly paid the purchase price and the stand had been allocated to him, there arose a dispute between the owner of the adjacent stand and him. The former had allegedly constructed structures encroaching into the stand of the applicant. It was resolved that the applicant be allocated another stand and was finally allocated stand number 5932 Mornington Extension, measuring 2 109m2 and he was called upon to pay a further sum of US$930,00 as a top-up of what he had paid for the Tafadzwa In-fill stand. He attached a copy of an offer letter from the respondent dated 14 December, 2010 as annexure “B”.

He averred that on 17 December, 2010 he paid US$300 leaving a balance of US$630,00 to be paid on or before 20 February, 2011. The respondent allegedly acknowledged receipt of payment of the US$300,00 through a confirmation of payment allegedly signed by the Director of Housing and Community Services on 17 December 2010.

He produced a document marked annexure “A” dated 17 December, 2010. The document recites that there was a balance of US$620,00 which should have been paid by 28 February 2011.

I pause to observe that there is no proof of payment of the balance of US$620,00 as there is no receipt to that effect. The applicant also produced a copy of the alleged agreement of sale as annexure “C” dated 14 December 2010.

 I further observe that the value of the stand in US$ was $620,00 the applicant was required to pay 50% of that amount which is US$460,00 but for some unexplained reasons the document says he paid only US$300,00.

The above observations were raised with the applicant and the responses will be dealt with in this judgment. The applicant averred that after the plans for the main house and a cottage had been approved by the respondent he started construction of a cottage on the stand. The respondent’s inspector approved the following stages:- setting out, excavation, concrete footing and hardcore stages. The cottage was built up to window level.

Applicant produced annexure “D” the building plan and annexure “E” an Inspector’s approved of the stages of the cottage completed. But this was done before he paid the outstanding amount.

On 20 August 2012, he received a letter from the respondent’s Director of Housing advising him that the respondent was repossessing the Mornington stand because there was no record to show that the applicant had purchased the stand from the respondent and the structure erected thereon was illegal and should be removed.

Instead he addressed a letter to the Town Clerk on 14 September 2012 seeking for permission to commence developments on the stand and indicated that the allegations raised against him that he had acquired the stand fraudulently were mere fabrications.

In response to the applicant’s letter the Director of Housing on 26 September 2012 requested the applicant to furnish him with the following document: agreement of sale; offer letter and proof of payment in respect of the stand which he paid.

There was no response from the respondent for a long time until applicant wrote letters to the acting Director of Housing on 3 December 2012 and another to the Town Clerk on 29 January 2013.

Mr Dondo the Town Clerk responded on 30 January 2013. He advised the applicant that he had been stopped from development on the stand following a Council resolution of 27 November 2012. The letter further advised applicant that the prohibition had no bearing on the court proceedings. He was told that Council discontinued his services because it allegedly had evidence that he had defrauded it in relation to stands. The Town Clerk opined that the court outcome did not change anything as it was a withdrawal before plea and not an acquittal.

Finally, the applicant was advised that as far as the development on its stand was concerned, he had been allegedly challenged to prove that he had purchased the Rimuka stand from which he had transferred to Mornington. In the absence of proof that he had indeed purchased the stand, the repossession would stand. The applicant contended that he no longer had possession of documents relating to stand number 6266 Tafadzwa In-fill as he had submitted them to the respondent when he was allocated the Mornington stand. On realizing that not progress was being made in the matter the applicant handed it to his lawyers and instructed them that the respondent had unlawfully repossessed the stand. He claimed to have purchased it above board and proceeded to effect developments to the tune of US$8 000,00. He therefore, reiterated that there was no legal basis for the respondent to repossess the stand from him and moved that the possession should be declared null and void.

What sticks out like a sore thumb is the fact that applicant was unable to produce evidence showing that he properly bought the stand. He has not produced receipts to that effect. He claimed that his purchase was above board. But he who alleges has the burden on a balance of probability to prove that his purchase was indeed above board.

I, in the result, find myself being unable to declare that the applicant is the legitimate owner of stand number 5932 Mornington Extension and would dismiss this application with costs.

This application is hereby dismissed with costs.

*Mutatu & Partners*, applicant’s legal practitioners

*Magwana & Partners, c/o Coghlan & Welsh,* respondent’s legal practitioners