

HH 47-03
 HC 1850/03
 NYARADZAI NYARADZO MUROZVI
 versus
 RESPINA MUDZI
 and
 SEKAI WARIKANDWA
 and
 THE REGISTRAR OF DEEDS

HIGH COURT OF ZIMBABWE
 SMITH J,
 HARARE, 7 and 10 March 2003

Mr *Muzangaza* for applicant
 Mr *Gutufu* for 1st respondent
 Mr *Mabulala* for 2nd respondent

SMITH J: The applicant (hereinafter referred to as "Murozvi") filed an urgent application seeking an order staying her eviction from Stand 1764 Kambuzuma Township (hereinafter referred to as "the Property") and setting aside the sale of the Property to the child of the second respondent (hereinafter referred to as "Sekai"). Murozvi made the application on behalf of her son who was born on 5 February, 1994. I dismissed the application with costs. My reasons for so doing are as follows.

The applicant alleged that she was customarily married to the late Edward Mudzi (hereinafter referred to as "the Deceased") who owned the Property at the time of his death. The first respondent (hereinafter referred to as "Respina") was married to the Deceased. On the death of the Deceased in October 1993, an executor as appointed and he transferred the Property to Respina, even though, she, Murozvi, had been living on the Property with the Deceased since 1989. In 1997 Respina tried to evict her and her son from the Property. She resisted the claim, on the basis that her son had a claim to maintenance from the estate of the Deceased and would be prejudiced if he were evicted because he had no place to go. In January 1999 she discovered that Respina was trying to sell the Property so she made an urgent application for an order interdicting Respina from selling the Property without her consent in case No HC 1341/99. Although Respina opposed the application, a provisional order was granted on 17 February 1999. The interim relief granted was that Respina was interdicted from selling the Property and the second respondent in that case, being the Director, Housing and Community Service, Harare, was interdicted from ceding or assigning the Property to anyone else. Her then legal practitioners, who were representing her *in forma pauperis*, said they would advise her when the provisional order was to be confirmed. In October 2002 she saw that account from the City Council which had previously been in the name of Respina were being sent in the name of Sekai. She then engaged her present legal practitioners, who discovered that the Property had been transferred into the name of Sekai's son in July 2002, having been sold to him in March. When the conveyancers were asked about the matter, they replied that the provisional order had "lapsed for want of confirmation". Then on 25 February 2003 with a notice of eviction and attachment arising out of case which Sekai, as judgment creditor, had brought against Respina, as judgment debtor, in the magistrates court.

Murozvi submitted that the provisional order issued in 1999 has not been discharged. The order barred Respina from selling the Property. The sale and transfer to Sekai is therefore unlawful. Sekai was well aware of the existence of the provisional order.

Respina and Sekai both oppose the application.

Respina claims that Murozvi's allegation that she was customarily married to the Deceased is false. She was merely a "live-in girlfriend". After the death of the Deceased, the administration of his estate was done in accordance with the law. She was awarded the Property. She says that she was advised that the provisional order was a temporary order which, if not confirmed, would lapse. She had sold the Property to Sekai. Sekai said she represented her son who is the registered owner of the Property. It was she who had instituted proceedings to evict Murozvi from the Property.

After hearing the parties I dismissed the application with costs. I do not accept that the

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provisional order had lapsed, even though it had been issued some 4 years ago. There is nothing in the Rules of Court which can lead to such a conclusion. However, I would recommend that serious consideration be given to including in the Rules a provision to the effect that a provisional order would lapse after a specified period, say 4 months, unless the order specifically provides for a longer life or it has been extended. I appreciate that, if the applicant does not apply to have the matter set down for confirmation, the respondent may do so. However, there are many cases such as this one, where the parties are not aware of the need to have the matter finalised. As far as Murozvi was concerned, she was being represented *in forma pauperis* and she had obtained the order and the protection she required. Clearly she felt that there was nothing more she had to do. Her legal practitioners had obtained the order and then did nothing. The respondent thought, and apparently was advised, that the order was only a temporary one.

As regards the merits of the case, Murozvi's son has no direct claim to the Property. His claim, if any, is to maintenance from the estate of the Deceased. Sekai's son has bought the Property. It was transferred to him and is registered in his name. The Registrar of Deeds was not cited as a party to the application for the provisional order in 1999 and the order was not served on him. Therefore, in registering the transfer he did not act in defiance of any court order. There is nothing in the papers to show that the sale of the Property is invalid, other than bald allegations by Murozvi that the sale is "unlawful, irregular and in a sense contemptuous of this Honourable Court".

Murozvi is seeking an order that the sale and transfer of the Property be set aside. I can see no grounds for so doing. As I have said, her son has no claim to the Property. The only claim he may have is for maintenance. Such a claim cannot automatically be by way of a right of occupation of the Property. Even the provisional order did not confer on Murozvi or her son any right of occupation. It merely interdicted Respina from selling the stand. Since Sekai's son is the registered owner of the Property, he is entitled to have Murozvi and her son evicted.

Muzangaza, Mudeza & Tomana legal practitioners for applicant

Gutu & Associates, legal practitioners for 1st respondent

Mubalula & Motsi legal practitioners for 2nd respondent