PHILLIP MHARIDZO CHIRADZA
and
ENNET CHIRADZA
versus
RUWA LOCAL BOARD
and
THE REGISTRAR OF DEEDS
and
GIFT MUNYARADZI VAMBE
and
MR MUKONYORA

HIGH COURT OF ZIMBABWE
KARWI J
HARARE, 22nd July 2004, 24th January 2006 and 22 February 2006

Mr *Gijima*, for the 1st respondent
Mr *T. Biti*, for the respondent

KARWI J: After hearing submissions from Counsel for the parties, I dismissed this application with costs and promised that my reasons would follow. Here are they:

Applicants, who are husband and wife and are joint owners of Stand No. 690 Ruwa Township of Stand 659, Ruwa, are seeking an order:-

"1. That the agreements of sale between the first respondent and the 3rd and 4th respondents of stands 12867 and 12870 do and are hereby set aside.

2. First respondent be and is hereby ordered to sell Stand Nos. 12867 and 12870 of Stand 2844 Ruwa Township to the applciants."

The facts, which are common cause and which give rise to this application are that, sometime in March 2003 the first respondent published a notice calling for objectives to the sale of Stands 12867 and 12870 of Stand 2844 Ruwa Township. Applicants' Stand No. 659 is adjacent to the two stands first respondent wanted to sell. Applicants raised an objection to the proposed sale as they had material interest in acquiring the stands in question. Thereafter, the applicants say that their legal practitioners received a telephone communication from a Mr Munemo, an employee of

first respondent advising that the first respondent would sell the stands to the applicants. First applicant, in his founding affidavit says that he was advised of this offer by his legal practitioners on the 7th July 2003 and he accepted the offer and awaited communication from first respondent on the purchase price. First applicant further indicated that Mr Munemo assured his legal practitioners that the advertisement of the property would be a mere formality as it was settled that he would be able to purchase the two stands. Subsequently, his legal practitioners received a letter advising of the new purchase price and that the properties would be sold on a first come first served basis. First applicant said, in his founding affidavit that since he had already been offered the properties and had been assured that he would be able to purchase the properties, he took it that this meant that he only required agreement on the purchase price. He therefore requested the first respondent to revise the purchase price on 11th July 2003. On the 14th August 2003, Mr Munemo advised that the two properties had been sold to the 3rd and 4th respondents following a further advertisement in the press.

First applicant stated that having regard to the circumstances of this matter he had a legitimate expectation to purchase the two properties in question as he had been assured that he would purchase them. He therefore contended that the purported sale to third parties was irregular and made to prejudice him. First applicant added that he had invested in a borehole which had always supplied water to his adjacent stand, which borehole is located on Stand No. 12867. He also contended that selling the property to 3rd and 4th respondents would amount to unjust enrichment. First applicant also advised that he had always used and maintained certain buildings on Stand No 12871 for his staff. The properties in question draw water from his stand and he had invested a lot in maintaining the two properties.

In his opposing affidavit, Mr Oswell Gwanzura, the chairman of the first respondent stated that first respondent advertised its intentions to sell stand 12567, 12570, 12871 and the remainder of stand 2844 in the Herald of 28th

February 2003 and 29th March 2003. There had been an exchange of correspondence between the applicants and the first respondent in 2002 and applicants were informed on 15th October of that year that the sale of the stands would be advertised in the local press. Mr Gwanzura further stated that applicant's objection was out of time. Section 152(4) (b) of the Urban Councils Act, [*Chapter 29:15*] gives objectors a period of twenty one days within which to object. Applicants' objection was raised on 4th April 2003. This was well out of time, as the twenty one days within which objections should be raised had passed. More importantly, first respondent further stated that the applicants were never offered the stands but were merely advised that the first respondent had resolved to dispose of the two remaining stands, and that the matter would be dealt with on a first come first served basis. Mr Gwanzura also stated that applicants' purported investment in a borehole on one of the stands in issue was illegal for he had no right to do so. He also said that applicants' own stand is on reticulated water supply and they operate Account No. 5006900 with first respondent. There was no need for applicants to rely on water supply from another stand. Mr Gwanzura also stated that applicant's "use and maintenance" of certain buildings on Stand 12871 was unlawful and was not sanctioned by first respondent. No claim for unjust enrichment should be sustained. Mr Gwanzura contended that first respondent followed all legal procedures in subdividing and selling the land concerned and prayed for the dismissal of the applicant's claims.

In his Heads of Argument, applicants' counsel submitted that a valid agreement to sell the two stands was entered into between themselves and the first respondent. The balance of equities favoured the applicants in that transfer had not passed to 3rd respondent. It was further submitted that there was no averment by 3rd respondent that it would suffer irreparable harm or prejudice if the agreement of sale between it and first respondent was set aside and first respondent ordered to sell the stand to applicants.

The sale of immovable property by a local authority is governed by Part X of the Urban Councils Act, [*Chapter 29:15*]. Any local authority is sanctioned by that law to publish notice of its intention to dispose of any immovable property in two separate editions of a local newspaper. The notice should call for objections, if any to the proposed sale and any objections must be filed with the Local Authority within twenty one days from the date of the last publication of the notice. It is quite clear to me that first respondent duly complied with this legal requirement as two notices were published. It is clear to me that, if the applicants had entered into a prior agreement with first respondent to buy the two properties, they could have easily objected to both notices on the basis that they had agreed to buy the said properties and therefore the same properties could not be put on the market. The applicants did not do so. They only objected on the basis that they wanted to buy the two properties.

The obvious issue which falls for decision in this matter is whether or not the applicants had a legally binding agreement with first respondent to purchase the stand in question. In my considered view, there was no such agreement at all.

All the circumstances in this case do not support the existence of an agreement between the parties. Counsel for the 3rd respondent correctly noted that there are three essentials for the contract of sale and there are agreement on *merx*, the *praetum* and the issue of exchange. See *McAdams v Flanders Trustees*, 1919 AD 207 at 224, *Commissioner of Customs and Excise v Randles Brothers and Hardson Ltd*, 1941 at 369, *Margaret Estate Ltd v Chemille Co-op SA Ltd*, 1964 (1) SA 669 (Or). If one applies the above principle to this case, it would become clear that there was no sale at all. Counsel for the 3rd respondent, Mr *Biti*, correctly submitted that in any event there could never have been a sale without the final process of advertising. Whatever undertakings or oral representations were made, they were invalid as a result of the need to follow statutory requirements.

It is also quite clear to me that both 3rd and 4th respondents were innocent purchasers. They saw adverts in the newspaper and made offers to buy the said stands, which offers were accepted by first respondent. No objections were received by the first respondent and the sales were above board. There was no evidence furnished which would even suggest that the 3rd and 4th respondents had prior knowledge of any dispute over the same stands. The two sales are therefore lawful and valid. They cannot be impinged. The application cannot therefore succeed.

It is therefore ordered that the application be and is hereby dismissed with costs.