

MARGARET MUNYAVI  
versus  
ZIMBABWE REINSURANCE COMPANY LTD  
and  
BUSINESS COMMUNICATIONS CENTRE

HIGH COURT OF ZIMBABWE  
MAVANGIRA J.  
HARARE 8, 9, 30 May and 6 June 2007

**Civil Trial**

Mr. P. *Machaya*, for the Plaintiff  
Mr. *Nyeperayi*, for the 1<sup>st</sup> Defendant  
No appearance for the 2<sup>nd</sup> Defendant

MAVANGIRA J: The plaintiff's claim as amended is for an order declaring as null and void and of no force and effect an agreement of sale entered into by and between 1<sup>st</sup> and 2<sup>nd</sup> defendants in respect of Flat F209 Bubi Court, Eastview Gardens, Eastlea, Harare. The property is situated on Stand 18336 Harare Township, in the District of Salisbury. The second order sought is for specific performance, directing 1<sup>st</sup> defendant to take all the necessary steps and sign all the necessary documents to effect registration of transfer into the plaintiff's name within 14 days of the tender of payment to it by plaintiff of the purchase price for the property in the sum of \$950 (revalued). Thirdly, an order is sought that in the event of 1<sup>st</sup> defendant declining to accept the tender of payment as aforesaid, or, having accepted the tender, failing within 14 days of such declining or acceptance, to take all necessary steps and to sign all necessary documents to effect registration of transfer into the name of the plaintiff, the Deputy Sheriff be directed and empowered to take all such necessary steps and sign all such necessary documents on behalf of 1<sup>st</sup> defendant.

In the alternative, the plaintiff prays for an order that the defendant pays damages for breach of contract in the sum of \$170million, being the current market value of the property, less the contract amount of \$950 (revalued).

The plaintiff's contention is that she entered into an agreement of sale with the 1<sup>st</sup> defendant in terms of which agreement she purchased Flat F209, Bubi Court, Eastview Gardens, Harare. She contends that she

received an offer to purchase the flat from the 1<sup>st</sup> defendant's agent, in the form of a letter dated 9 February 2001, exhibit 1, and that by way of a letter dated 13 February, 2001, exhibit 2, she accepted the offer, thereby resulting in the agreement. The 1<sup>st</sup> defendant on the other hand, contends that there was no agreement reached between the parties as its letter, exhibit 1, was not an offer but an invitation to treat. It further contends that an offer form completed by the plaintiff's agent at the 1<sup>st</sup> defendant's agent's offices constitutes an offer by plaintiff, to purchase 1<sup>st</sup> defendant's flat, which offer was rejected by the 1<sup>st</sup> defendant and thus there was no resultant contract entered into by and between the parties.

In exhibit 1, the 1<sup>st</sup> defendant's agent wrote:

**"RE:PROPOSED SALE OF EASTVIEW GARDENS**

Reference is made to the above matter.

The owners of Eastview Gardens, The Zimbabwe Reinsurance company Limited, have advised that they shall be selling the premises you are leasing from them. The sale shall be on sectional title basis and each flat shall have title deeds on transfer.

As a sitting tenant, we are hereby giving you notice of the owner's intention to sell the flat and advise that we are offering you to purchase if you are interested in doing so. The purchase price for the flat is **\$950 000,00**. The terms of payment are as follows:

- 25% cash deposit and the balance payable by mortgage loan  
*OR*
- 30% cash deposit and the balance payable over six equal monthly instalments  
*OR*
- Cash deposit and/or full mortgage bond/loan from employer

May you please advise us in writing whether or not you shall be taking up the offer as soon as possible and in any event by 28 February 2001. In addition, if you are taking up the offer, may you please call at our offices in person to complete the necessary formalities by the same date."

In response to the above letter, the plaintiff wrote to the 1<sup>st</sup> defendant's agent on 13 February 2001 in the following terms:

“Thank you for your letter dated 9<sup>th</sup> February 2001, in which you are informing me of the owner’s intention (ZIMRE) to sale the flat am currently occupying (sic) and offering me, as sitting tenant, to purchase the property.

I gladly accept the offer and will be going for option 2 of your letter that is 30% cash deposit and balance payable over six equal monthly instalments.

I am currently in the United Kingdom and do hereby inform you that Mr. J. Kaseke, Managing Director of Gavshod Trading, will be calling at your offices on my behalf to complete and sign all the necessary documents/formalities on my behalf.

Thank you once again for the offer.”

In *Eastview Gardens Residents Association v. (1)Zimbabwe Reinsurance Corporation Limited (2) CB Richard Ellis (3) The Registrar of Deeds SC90/02*, a separate matter involving the same flats, the appellant therein argued that the same letter, which is exhibit 1 in this matter, created a right of pre-emption in favor of the recipients of the letter. The argument by counsel for the 1<sup>st</sup> respondent in that matter, which is the 1<sup>st</sup> defendant *in casu*, on the other hand, is captured by MALABA JA at page 9 of his cyclostyled judgment, when he states:

“...I agree with Mr. Girach that the letter (exhibit 1 *in casu*) contains a simple offer by the 1<sup>st</sup> respondent (1<sup>st</sup> defendant *in casu*), to sell the flats to the sitting tenants at the specified price. There is an indication to them to indicate in writing acceptance of the offer by close of business on 28 February 2001. It is an ordinary offer unaccompanied by an undertaking by the 1<sup>st</sup> respondent to keep it open until close of business on 28 February 2001. There was no promise not to revoke the offer during the period fixed for the notification of its acceptance.”

The learned judge proceeded:

“The general rule is that an ordinary offer may be withdrawn on notice to the offeree at any time before it is accepted. See *Yates v Dalton* 1938 EDL 177; *Bird v Summerville* 1960 (4) SA 395 (N) at 400F; *Stewart v Zagreb Properties (Pvt) Ltd* 1971 (2) SA 346 (R, AD) at 352.

At the time the offer contained in the letter of 9 February 2001 was withdrawn none of the three hundred and nine tenants involved in case HC 3277/01 had indicated in writing acceptance of the offer. In fact, none of them accepted the offer before the close of business on 28 February 2001.

The offer lapsed on the expiry of the period within which its acceptance had to be communicated to the first respondent....”

*In casu* the plaintiff, as sitting tenant, wrote in acceptance of the 1<sup>st</sup> defendant’s **offer**. I do not find persuasive Mr. *Nyeperayi*’s argument that exhibit 1 does not constitute an offer but is only an invitation to treat nor his submission that the above cited statements by MALABA JA cannot be of any assistance to this court as they were made *obiter*. The comments by the learned judge of appeal pertained to the very letter now under consideration and no facts or evidence have been placed before this court justifying a different approach to, or view of the letter. On a literal interpretation of the letter, it clearly is expressing an offer: **“As a sitting tenant, we are hereby giving you notice of the owner’s intention to sell the flat and advise that we are offering you to purchase if you are interested in doing so.”** To give the meaning to these words that is urged by Mr. *Nyeperayi* would in effect be to depart from their literal meaning. No justification for doing so has been placed before this court.

In my view, as the plaintiff accepted the 1<sup>st</sup> defendant’s offer and communicated the acceptance to the 1<sup>st</sup> defendant before the 1<sup>st</sup> defendant’s letter of 15 February 2001, exhibit 3, in which the offer is purportedly withdrawn by the 1<sup>st</sup> defendant, is of no force and/or effect with regard to the plaintiff. Furthermore, the wording of exhibit 3 itself, is significant. It specifically refers to the withdrawal of **“the offer”**. In my view it is also significant that whilst the 1<sup>st</sup> defendant’s agent’s first letter to the plaintiff, exhibit 1, is headed: “Re Proposed Sale of Eastview Gardens”, some of the subsequent letters including exhibits 6 and 8 are headed “Re: Purchase of Flat F209 Bubi Court, Eastview Gardens, Eastlea”. Aquilina Lizhibowa’s evidence that the 1<sup>st</sup> defendant was, in such subsequent correspondence, only indicating that it was leaving it open to plaintiff to purchase any other flat and not Flat F209 is not supported by a reading of the said correspondence. Of particular significance is exhibit 6 dated 20 March, 2001 which reads:

“We refer to your visit on 14 March 2001, to our offices regarding the payment of the above and wish to advise that payment of the

said flat can only be made after the finalisation of the pending Court case. (Since you are purchasing F209 Bubi Court)." (the underlining is mine).

It is also significant that this letter was written after exhibit 3 in which the 1<sup>st</sup> defendant's agent purported to withdraw the offer for plaintiff to purchase the said flat. The letter clearly refers to or discusses payment for Flat 209 and not any other flat. More interestingly, exhibit 8, dated 24 February, 2003, some 2 years after exhibits 1 and 3, also states, under a heading referring to Flat 209:

"We refer to our discussion Munyavi/Manyowa on 20 February, 2003 and the subsequent telephone discussion Kaseke/Manyowa of 24 February, 2003 in connection with the above.

We wish to advise that the sale price of the above property is now \$18 million. A minimum cash deposit of \$9 million is required and the balance of \$9 million is payable in cash over 3 months at a prescribed rate of interest. We wish to further advise that the price of \$18 million will hold up to 28 February, 2002 (sic) and after that the sale price is being reviewed upwards to \$20 million. **We have noted your interest in acquiring this property** and to this extent we urge you to pay the required deposit of \$9 million on or before 28 February, 2003 so as to secure the property at \$18 million.

We attach hereto our standard Offer Form for your use **in confirming your interest to purchase this flat**. We await return of the offer form by end of business on 25 February, 2003 after which the flat shall be open for sale to the public." (emphasis added).

It is also worthy of note that the letter was written after exhibit 11 an e-mail dated February, 2001 from plaintiff to 1<sup>st</sup> defendant's agent. She stated therein:

"This letter serves to inform you that, I am prepared to purchase the flat am currently occupying. (sic). I therefore propose to go for option number two which will give me time to organize my finances."

I will be calling your offices to complete the necessary formalities."

The evidence before the court does not support the 1st defendant's averment that the offer made to plaintiff to purchase flat F209 was withdrawn and that a subsequent offer to purchase any other

flat replaced the former. The plaintiff specifically responded to the first offer. There was no specific response turning her offer down and subsequent correspondence already quoted above tends to confirm plaintiff's stance in this matter. There was a valid and binding agreement of sale between the parties in respect of Flat F209. In the circumstances the alleged (subsequent) sale to the 2<sup>nd</sup> defendant, which sale was entered into on the date that exhibit 3 was written, cannot stand. The 2<sup>nd</sup> defendant has notably not filed any papers to contest the plaintiff's claim.

In the result and for the above reasons I have no hesitation in granting to plaintiff the relief that she claims in the alternative as registration of transfer of the property into the 2<sup>nd</sup> defendant's name had already been effected. Granting the main claim would likely require so many other aspects to be dealt with before transfer can be effected into her name, with a resultant delay that would cause further prejudice to the plaintiff as time passes. The 1<sup>st</sup> defendant's representative who gave evidence before the court stated that insofar as the quantum claimed by the plaintiff in her alternative claim was concerned, he had no qualms, should the plaintiff be granted such relief, with the amount claimed, being \$170 million, as the current market value of the property less the contract amount of \$950. The resultant amount as thus agreed is therefore \$169 999 050. The plaintiff having succeeded in her claim, costs must therefore follow the result.

It is therefore ordered as follows:

1. The first defendant shall pay the sum of \$169 999 050 (one hundred and sixty-nine million nine hundred and ninety nine thousand and fifty dollars).
2. The first defendant shall pay interest *a tempore morae* on the said amount from the date of judgment.
3. The first defendant shall pay plaintiff's costs of suit.

*Kantor and Immerman*, Plaintiff's Legal Practitioners.  
*Costa and Madzonga*, First Defendant's Legal Practitioners.