

STEPHEN PASIPANODYA (In his capacity as the
executor in the estate of the late Edna Pasipanodya.)
versus
TRACY RUWIZHI (In her capacity as the executrix in
the estate of the late John Ruwizhi.)
and
THE DIRECTOR OF HOUSING MUNICIPALITY OF CHITUNGWIZA.

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE, 30 March 2009 and 22 July 2009 and 10 November 2010

Mrs *Wood*, for the plaintiff.
F Katsande, for the first defendant

BHUNU J: The plaintiff Stephen Pasipanodya in his capacity as the executor to the estate of the late Edna Pasipanodya issued summons against the late Betty Ruwizhi in her capacity as the successor to the estate of the late John Ruwizhi and the Director of Housing Municipality of Chitungwiza on 18 November 2003 claiming cession of rights over stand number 11192 Rusununguko Zengeza 4 Chitungwiza, certificate of occupation of the same, an eviction order against the late Betty Ruwizhi and all those claiming occupation through her and costs of suit.

On the other hand upon Betty Ruwizhi's demise Tracy Ruwizhi the daughter of the late John Ruwizhi was dully appointed as executor to his estate.

The basis of plaintiff's claim was that he had inherited the property from his late aunt one Edna Pasipanodya.

The plaintiff's claim was vigorously resisted on the basis that the late John Ruwizhi had dully purchased the property from the late Edna Pasipanodya. When the matter came before me for trial on 31 May 2010 the plaintiff testified that the matter had in fact been amicably settled between him and Tracy Ruwizhi. In short all what he was seeking now was enforcement of the settlement terms.

It is common cause that the parties hammered out a verbal agreement to settle out their dispute. The terms of the agreement were later reduced to writing but the written document was only signed by the first defendant.

The purported settlement document reads as follows:

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By Consent

The parties have agree(d) as follows:

- (a) That the first defendant shall pay the plaintiff US\$9 000-00 (nine thousand dollars).
 - (i) \$6 000-00 against the signing of the agreement
 - (ii) The balance of \$3 000-00 shall be paid in two installments of US\$1 500-00 each.
- (b) That within 48 hours (forty-eight) hours the payment of the US\$6 000-00, the plaintiff and the defendant shall attend at the offices of the second defendant to effect cession in favour of the first defendant of the right, title and interest in stand 1192 Rusununguko road Zengeza 4 Chitungwiza.
- (c) That each party shall bear his/her own costs”

Though the written document was not signed by both parties, it is common cause that it accurately reflects the verbal agreement between the parties. In fulfillment of that settlement agreement the first defendant proceeded to deposit the amount of US\$9 000-00 into the plaintiff’s trust account with his legal practitioners.

Upon payment of that amount the parties proceeded to the second defendant’s offices with a view to effect cession in terms of the settlement agreement. Upon perusal of the file kept at the first defendant’s offices in respect of the property in question the first defendant stumbled upon written documents to the effect that John Ruwizhi had in fact paid the whole purchase price to Edna Pasipanodya before their demise. Edna Pasipanodya had acknowledged receipt of the full purchase price in consequence whereof she had completed the necessary forms to effect cession to John Ruwizhi.

The first defendant sought to resile from the settlement on two grounds. Firstly on the grounds of duress and secondly, that the settlement agreement was induced by a common error to both parties.

In respect of the allegation of duress all what the first defendant could say was that the plaintiff kept on bothering her by constantly phoning and prodding her to agree to the settlement terms. I am certain that in the absence of illegitimate force or pressure that much cannot amount to duress.

Turning to the question of error, the first defendant appears to be on firmer ground. It is clear that had she known beforehand of the existence of the contractual and official documents tending to show that the whole purchase price had in fact been paid, she would not have entered into the settlement agreement. For that reason alone I hold that the settlement agreement was vitiated by error and to that end null and void. That being the case there is no basis upon which the plaintiff's legal practitioners can continue to hold onto her money when the reason for which they have been holding onto the money has fallen away.

It is accordingly ordered:

1. That the plaintiff's claim that the matter has been settled be and is hereby dismissed.
2. That the plaintiff's legal practitioners be and are hereby ordered to refund to the first defendant the US9 000-00 paid by her into their trust account.
3. That costs be costs in the cause.

Byron Venturas & Partners, plaintiff's legal practitioners
F M Katsande & Partners, first defendant's legal practitioners