

MARIA SIXPENCE
versus
JAMES CHINODAKUFA

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE 21 September 2011 and 28 September 2011

Mr. Katsande, for the Applicant
Mr. Mambara, for the Respondent.

Chamber Application

BHUNU J: On 10 June 2009 this Court issued the following consent order between the parties:

“By consent

It is ordered that:

- (a) The Master of the High Court shall appoint from his list of evaluators, an evaluator to assess the value of the improvements on stand 14221 Zengeza 3 Extension Chitungwiza.
- (b) The 1st defendant shall pay 50% of the assessed value within such period as the parties may mutually agree failing which such period shall be determined by the Court.
- (c) The parties shall share equally the costs of the evaluation.
- (d) Each party shall bear his / her own costs.”

The stand in question has since been evaluated but the applicant has to date not been paid. The respondent acknowledges his obligation to pay but offers to pay in installments over a period of 12 months. He has since paid a total of US\$1 300 to his lawyers for onward transmission to the applicant. That proposal was unacceptable to the applicant.

At this hearing he proposed to reduce the payment period to 6 months. The applicant was adamant that she wanted the house sold and payment made at once. She however, later relented and said she would accept payment in full over a period of 3

months failure of which the house must be sold and she be paid immediately thereafter in terms of the consent order.

Considering that the order was made in 2009, the applicant's proposal cannot be said to be unreasonable. The respondent has already had more than 2 years to liquidate his indebtedness to the applicant. Giving him any further indulgence beyond that conceded by the applicant will be unjust and unfair.

In the result, para (b) of the order is amended to read:

(b) That, the defendant shall pay 50% of the assessed value to the applicant (plaintiff) within 3 months of the date of this order failing which stand 14221 Zengeza 3 Extension Chitungwiza, shall be sold in execution and the proceeds shared in terms of the consent order under case number HC1317 / 08 dated 10 June 2009.

*F.M Katsande and Partners, the Plaintiff's Legal Practitioners.
Mambara & Associates, the Respondent's Legal Practitioners.*