

Civil Appeal No. 319/00

JOSEPH TARISAI v CHANDE ALI

SUPREME COURT OF ZIMBABWE
CHIDYAUSIKU CJ, SANDURA JA & MALABA JA
HARARE, MAY 9, 2002

T Mutandi, for the appellant

G Phiri, for the respondent

CHIDYAUSIKU CJ: The respondent in this case obtained an eviction order against the appellant in the High Court. The appellant was dissatisfied with the eviction order and now appeals to this Court. At the conclusion of submissions by counsel we dismissed this appeal with costs. We indicated that the reasons for judgment would follow. The following are the reasons for judgment.

The respondent's case in the court *a quo* was very simple and straightforward. The respondent claimed the eviction of the appellant from house no K30, Torwood, (the house) on the basis that he was the owner of the house, having bought it from Ziscosteel Company. The documentary evidence in support of the court application clearly established the respondent's claim that he had purchased the house and the house had been transferred into, and was now registered in, his name. The appellant has no legal basis for refusing to vacate the house as he was doing.

The appellant's opposing affidavit in the court *a quo* does not

constitute a defence to the respondent's claim even if one were to accept the averments as truthful. Paragraphs 2-3 of the then respondent's (now the appellant's) affidavit read as follows:

"2. Ad Paragraphs 3, 4

I believe that there are disputes of facts (sic) which make this matter unsuitable for determination on the papers.

I contend that the agreement between Ziscosteel and myself has not been cancelled and that Ziscosteel has engaged in a double sale. I am a member of the Redcliff-Torwood Housing Co-operative Limited which has been involved in negotiations with Ziscosteel for its members to purchase the homes in which they currently reside. I attach hereto marked Annexure 'A' a copy of the Co-operative's Certificate of Incorporation.

I would wish to call witnesses who can show that there have been negotiations between Ziscosteel and members of the Co-operative, hence my belief that this matter is incapable of being resolved on the papers.

3. Ad Paragraphs 5-6

The property should not have been transferred to the applicant for the simple reason that the negotiations between Ziscosteel and the Co-operative Society have not been concluded. Ziscosteel has jumped the gun. Indeed, I attach hereto marked 'B' an affidavit made by Mr Wilson Nakunyada Banda, indicating that there have been negotiations with Ziscosteel."

An affidavit in support of the appellant's case from a Mr Banda does not take the appellant's case any further. It reads in part as follows:

"I, WILSON NAKUNYADA BANDA, do hereby make oath and state that:-

I am the Chairman of the Torwood Redcliff Co-operative Society and wish to support the respondent in this matter. The facts I depose hereto are within my personal knowledge and to the best of my belief are true and correct.

1. Ziscosteel entered into agreements of sale with many of its employees, past and present. Similar in content to annexure 'A' of the applicant's application (sic). It must be stressed that most of the employees who entered (into) the agreements of sale have resided in these houses for over ten years.
2. When most of the employees (well over sixty in number) could not raise the purchase sum within the stipulated ninety-day period, either after being dismissed or

retrenched by Ziscosteel, the Torwood Redcliff Co-operative Society was formed, its sole purpose being to enter into negotiations with Ziscosteel to enable members of the Society to purchase their property.

3. I humbly submit that these negotiations have not been concluded to finality with the result that Ziscosteel should not have sold the property to the applicant.

4. I must also hasten to add that Ziscosteel has issued summons in the magistrate's court at Kwekwe against most members of the Co-operative and that the matter there has yet to be concluded. The point I am stressing is that there are many disputes of facts (sic) which cannot be resolved on the papers.”

It is quite clear from the above that there was no agreement of sale between the appellant and Ziscosteel at the time the latter sold the property to the respondent. Thus the question of double sale or fraud does not arise. There was simply no defence to the applicant's (now the respondent's) claim and the court *a quo* was correct in granting the applicant the relief he sought. This appeal is completely devoid of any merit.

It was for these reasons that the appeal was dismissed with costs.

SANDURA JA: I agree.

MALABA JA: I agree.

Malunga & Partners, appellant's legal practitioners

Paradza & Partners, respondent's legal practitioners