

Judgment No. HB 15/2002

Case No. HC 1904/2001

GLADYS DUBE Applicant

and

LOVEMORE HLONGWANE 1st Respondent

and

THE REGISTRAR OF DEEDS 2nd Respondent

HIGH COURT OF ZIMBABWE

CHEDA J

BULAWAYO 18 OCTOBER 2001 & 11 APRIL 2002

Nyathi for applicant

No appearance for respondent

CHEDA J: The parties entered into a written agreement in which 1st

respondent agreed to sell, and applicant agreed to purchase 1st respondent's house for

the price of \$155 000,00. The purchaser was to pay \$135 000,00 as a deposit and the

balance was payable within three months from thereon.

The agreement was signed by the appellant, but 1st respondent did not sign.

Instead he had authorised the directors of Lonet Engineering and Suppliers, trading as

Lonet Construction (the company) to sell on his behalf. A copy of the document which he signed for that purpose was filed and is dated 29 November 1999.

Mr Timile, one of the directors of the company who acted for the 1st respondent filed an affidavit explaining what happened and how the respondent spent some of his money from the proceeds of the sale.

When 1st respondent would not assist the applicant with transfer the applicant issued summons asking for an order to compel the 1st respondent to do so. The respondent entered appearance to defend. The applicant has now applied for summary judgment on the claim with costs.

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When the notice of the application was served on the 1st respondent's legal practitioners they advised that they could not locate their client and they believed that he was in South Africa. The same response came from them when a further

notice of set down was served later.

I have considered the prejudice to the applicant caused by any further delay if

the matter is not finalised, and I am of the view that I should finalise the matter

because:

- (a) When the 1st respondent disappeared he was already aware of the case as he had arranged for appearance to defend.
- (b) There is no plea to indicate what his defence to the claim is, and as such he is in default.
- (c) There is no dispute that he authorised the sale, and that he was paid the full price.

In the circumstances there is no good reason to deny the applicant the relief

she seeks as she was given possession of the house and she has paid the purchase price.

I therefore grant summary judgment in favour of the applicant as follows:

1. The 1st respondent is ordered to sign all the necessary documents to enable the applicant to take transfer of the property, namely number 5210, Cowdray Park, Bulawayo, failing which the Deputy Sheriff is authorised to do so in respondent's place.
2. The respondent is to pay the costs of suit on attorney and client scale.

Sibusiso Ndlovu, applicant's legal practitioners

James, Moyo-Majwabu & Nyoni, 1st respondent's legal practitioners