

LUNGILE NDLOVU (nee NDLOVU)

Versus

ZIBUSISO NDLOVU

And

REGISTRAR OF DEEDS N.O

IN THE HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 24 NOVEMBER 2022 AND 2 MARCH 2023

Opposed Application

Advocate P Dube, for the applicant
W. O Muzembe, for the 1st respondent
No appearance for the 2nd respondent

MOYO J: This is an application for the placement of a caveat on a certain piece of land being stand 11707 Bulawayo Township of Bulawayo Township Lands situate in the district of Bulawayo measuring 681 square meters held under deed of transfer No. 3176/200 (hereinafter referred to as the property) pending divorce proceedings under cover BV 21D12140 in the United Kingdom (hereinafter referred to as the UK).

The factual background to the matter as alleged by the applicant is that sometime in 2002 1st Respondent and herself relocated to the UK and that they subsequently got married in July 2003. She avers that prior to the relocation to the UK they purchased the property being the subject matter of this dispute. She avers that the said property was meant to be their home. She avers that they managed to pay the mortgage bond on the property in question at the end of 2003. They have since instituted divorce proceedings which are pending in the UK. She further avers that sometime in September 2021, 1st respondent travelled to Zimbabwe after

being served with divorce summons, and that she then became suspicious that he may try to sell their matrimonial home. She then seeks an order placing a caveat on the property pending the divorce and redistribution of assets in the UK. She avers that she has an interest in the property and that if it is sold, she may be prejudiced at divorce.

1st respondent has opposed the application and avers that there is no cause of action in that applicant wants this court to place a caveat pending the UK court proceedings which court has no jurisdiction over assets in Zimbabwe. That there is a material dispute of fact on whether or not applicant contributed to the purchase of the property.

On the merits, the 1st respondent avers that no case has been made at all for the placement of a caveat over his property and he emphasizes that a caveat is not placed on a property for the mere asking. He avers that there is absolutely no basis for the placement of a caveat as he bought the property in 2001 and the parties later got married in 2003. Also that his travel to Zimbabwe cannot formulate a basis for a caveat as he is entitled to travel to and from Zimbabwe as he wishes.

At the hearing of the application, the point *in limine* relating to the disputes of fact was abandoned. A point *in limine* that the paragraphs in the answering affidavit which purport to raise a new fact on that the parties were in a union prior to the marriage in the UK in 2003 should be expunged as it is now raising new facts that were not in the founding affidavit. It is my considered view that clearly applicant did not aver the relationship prior to 2003 in the founding affidavit and only referred to the marriage in 2003, therefore the nature of the relationship which is now encompassed in the answering affidavit formulates another basis which is not in the founding affidavit and should be expunged. The objection is accordingly sustained. However, in paragraph 6 of the founding affidavit the averment that prior to the relocation to the UK, the parties bought the property being the subject matter of this dispute still remains.

The 1st respondent raises another point that the UK court has no jurisdiction to deal with the property in this jurisdiction therefore, applicant cannot seek a caveat to be placed pending the proceedings therein. I have considered that:-

- 1) 1st respondent and applicant are husband and wife respectively.

- 2) That they have a pending divorce matter before the UK courts.
- 3) That there is a dispute as to whether applicant has an interest in the property being the subject matter of this dispute and that there is no consensus in that regard. 1st respondent avers that he bought this property alone and that applicant had no part to play at all. Applicant on the other hand avers that she contributed to the mortgage bond clearance.

In order to succeed in the relief applicant is seeking, she must show that she has an interest in the property on which she seeks a caveat to be placed and that there is pending litigation wherein that property will be dealt with.

It is my considered view that the approach taken by the courts in matrimonial disputes has been to achieve justice and equity between spouses where such is possible. I thus find that in a matrimonial dispute it is fair to allow both parties to ventilate and pursue their claims to the depth of their issues without taking a route that slams the door shut in either of their faces. In a matrimonial dispute, the court is inclined to allow the parties to bring up all their issues and pursue their dispute in depth and in all fairness to both of them so that the time they invested in each other's lives is aptly dealt with by the court seized with the separation. I do not consider that a party who is claiming an interest in a property where the parties are involved in a matrimonial dispute should be summarily dismissed before the heights and depths of such a claim have been explored in an appropriate fora. To do so in my view would result in an injustice. It is for these reasons, that I hold the view that once applicant is a spouse of the 1st respondent and avers that she has an interest in a property that 1st respondent owns, she cannot be lightly dismissed in this regard. The court has always taken a liberal approach to matrimonial disputes. I hold the view that it is only fair that the property be encumbered with a caveat until the matrimonial dispute between the parties has been explored and resolved. It is for these reasons that I hold the view that applicant has somewhat formulated the basis for a caveat on the property as her interest in it cannot be lightly dismissed until the respective rights and roles of either party in the property has been fully explored by the court seized with the matter.

It is for these reasons that I will grant the application. I will, however order that each party bears its own costs since this is primarily a matrimonial dispute

Webb, Low and Barry Inc. Ben Baron & Partners, applicant's legal practitioners
Muzembe Law Chambers, c/o Mazango, Matumbu & Partners, 1st respondent's legal practitioners