

**SITHOKOZILE NDLOVU**

**Versus**

**MAION ALICE BHILA**

**And**

**THE CITY OF BULAWAYO**

IN THE HIGH COURT OF ZIMBABWE  
KABASA & NDLOVU JJ  
BULAWAYO 18 SEPTEMBER 2023

*M. Moyo* for the appellant.  
*B. Dube* for the 1<sup>st</sup> respondent.

**NDLOVU J:** On 18 September 2023 this court heard and determined an appeal by the appellant against the decision of the Magistrates' Court given under case number CC2472/21. In the application before the Magistrates' Court, the 1<sup>st</sup> respondent sought and was granted an eviction order against the appellant from a house in one of the high-density suburbs in Bulawayo on the basis that the appellant has been occupying the property in question without the 1<sup>st</sup> respondent's consent. Yet, the 1<sup>st</sup> respondent is the holder of all rights and interests in respect of the property by an agreement of sale that she has with the 2<sup>nd</sup> respondent.

The High Court hearing was virtual. We gave an *ex-tempore* judgment and gave our reasons for dismissing the appeal in the knowledge that the IECMS records the proceedings in real-time. We believed that in the event of an appeal against the High Court's decision, the aggrieved party would seek the transcription of the record of proceedings and prosecute their appeal. We were however later to learn that the appellant was seeking that we reduce our reasons to writing. For the avoidance of doubt and delay we hereby do.

The controversy between the parties has a long history. The subject matter thereof has been in and out of both the High Court and the Magistrates' Court over the past several years.

## FACTS

The litigation history in this matter began with a High Court application matter under cover of case number HC 2981/11 pitting the appellant as the applicant and one Mr. Shadreck Ndlovu her then-husband featuring as the 1<sup>st</sup> respondent. The application in question resulted in a provisional order being granted in favor of the appellant. The pertinent terms of the provisional order in question by KAMOCHA J state as follows:

***“The 1<sup>st</sup> respondent be and is hereby barred from disposing or alienating or transferring the said property.”***

It is common cause that the provisional order in HC 2981/11 was never confirmed. It is also common cause that the 1<sup>st</sup> respondent, the Sheriff of the High Court, and one Angelina Belinda Sunga were not parties in HC 2981/11.

It then happened that the property in question was sold in a judicial sale to one Angelina Belinda Sunga. It was further transferred to the 1<sup>st</sup> respondent per this court’s order under cover of HC 1525/19. That sale and transfer is over 10 years old. It is common cause that the High Court Order in HC 1525/19 was never appealed against nor set aside. It is therefore extant.

It is that order in HC 1525/19 that birthed the facts and position that the 1<sup>st</sup> respondent be and is the holder of all rights and interests in the house in question.

## ARGUMENTS

The appellant sought to argue that the provisional order in HC 2981/11 is extant and that it barred the later disposal of the property be it by judicial sale or however.

That the provisional order is extant is academic in the circumstances of this case because a judicial sale is a product of a court order and in any case, the sale in execution of a court order was not barred by the terms of KAMOCHA J’s provisional order. In essence, the provisional order was overtaken by events.

The appellant also sought to argue that the sale or transfer of the property to the 1<sup>st</sup> respondent was not real and was a fraud.

There is no evidence that the sale or transfer was a fraud. Fraud or not, this court has stated that the 1<sup>st</sup> respondent is the rightful holder of all the rights and interests in the house in

question. That order is extant. There is only one High Court in Zimbabwe and different judges cannot and should not contradict each other on the same subject matter lest members of the public lose trust and reliance on court orders.

**Disposition**

In the circumstances, it cannot be said that the magistrate misdirected herself in arriving at the decision and order she made in the court *a quo*.

**Order**

The appeal be and is hereby dismissed with costs.

Ndlovu J .....

Kabasa J .....agrees

*Mathonsi-Ncube Law Chambers* appellant’s legal practitioners  
*Mabundu & Ndlovu Law Chambers* respondent’s legal practitioners