

DOUGLAS VHURUMUNDU  
versus  
PHINEAS MARIYAPERA  
and  
CHEGUTU MUNICIPALITY

HIGH COURT OF ZIMBABWE  
MUSITHU J  
HARARE: 25 March 2024, 22 April 2024, 4 July 2024 & 11 July 2024

### **Civil Trial - Ruling on jurisdiction**

Mr *K. Maeresera*, for the plaintiff  
Mr *E. Donzvambeva* and Mr. *R.T. Mutero* for the first defendant

MUSITHU J: This ruling is made pursuant to a preliminary point raised in the first defendant's plea. The ruling deals with the narrow issue of whether this court has jurisdiction to hear this matter. At the commencement of the trial, counsel agreed to file heads of argument on the point and leave the court to deal with the matter on the papers.

The brief background facts to the matter are as follows. On 15 June 2011, the plaintiff purchased the first defendant's rights, title and interest in a certain immovable property called stand 583 Charles Street situated in Chegutu measuring 987 square metres (the property). The plaintiff claims that the purchase price of US\$12, 000.00 was paid in full and the parties signed a deed of cession at the offices of Mangwana and Partners Legal Practitioners. In terms of the deed of cession, the parties had agreed that registration of cession would be done by the second defendant after a structure was developed up to window level.

According to the plaintiff, a structure was developed up to window level, but the first defendant refused to attend to the registration of cession into the plaintiff's name. The first defendant claimed that there was another agreement signed by the parties on 30 October 2020, in terms of which the parties agreed to a purchase price of US\$90,000.00 for the same property. The plaintiff had allegedly failed to comply with that agreement. The plaintiff denied the existence of a separate agreement other than the one signed on 15 June 2011.

The plaintiff approached the court seeking the following *declaraturus*:

- That the deed of cession of 15 June 2011 be declared to be valid.

- That any purported agreement of sale or deed of cession entered by the parties on 30 October 2020 be declared to be null and void and of no force or effect.
- That the first defendant be compelled to sign all papers necessary to effect cession of rights, title and interest into the plaintiff's name, failing which the Sheriff for Zimbabwe or his lawful deputy would sign such papers on his behalf.

The first defendant filed its plea and a claim in reconvention. Apart from challenging the validity of the agreement of 15 June 2011, the first defendant also raised the preliminary point of lack of jurisdiction by this court alleging that in terms of the same agreement, the parties had subjected themselves to the jurisdiction of the Chegutu Magistrates Court. The High Court therefore did not have jurisdiction to hear the matter. In his claim in reconvention, the first defendant sought an order for the cancellation of the agreement signed by the parties on 30 October 2020. It also sought the eviction of the plaintiff from the said property and the nullification of the agreement of 15 June 2011 on the basis that it was fraudulent.

### **The question of jurisdiction**

The first defendant contends that this court does not have jurisdiction to entertain the plaintiff's claims. That contention is based on two grounds. The first is that in terms of clause 1 of the breach clause of the deed of cession of 15 June 2011, the parties agreed that disputes arising out of the agreement shall be heard and determined by the Magistrates Court sitting at Chegutu. The second point was that the plaintiff was seeking a *declaratur* as to any existing, future or contingent right or obligation in circumstances where he also claimed relief consequential upon such declaration. The Magistrates Court had jurisdiction to issue the order sought by the plaintiff in terms of s 14(1)(g) of the Magistrates Court Act<sup>1</sup>.

It was also submitted that in principle, courts should not rewrite contracts voluntarily entered into by the parties, or excuse parties from performing obligations voluntarily undertaken under the contract. The court was therefore urged not to interfere with what the parties had agreed to in writing.

In response, the plaintiff accused the first defendant of being opportunistic and blowing hot and cold. This was because in his plea on the merits, the first defendant denied ever signing the alleged deed of session of 15 June 2011 in which the jurisdiction clause is found. By denying the existence of that agreement, the first defendant was also saying he never consented to the jurisdiction of that court because he never signed the agreement. However, the essence

---

<sup>1</sup> [Chapter 7:10]

of his current objection was that he signed the 15 June 2011 agreement and consented to the jurisdiction of the Magistrates Court sitting at Chegutu.

It was further submitted that the first defendant denied that he signed the deed of cession with the plaintiff on 15 June 2011. For that reason, he could not seek to enforce a contractual clause in an agreement which he denied being party to. There was a live dispute as to whether the first defendant signed that agreement or not. The High Court therefore had jurisdiction to determine whether the first defendant signed the agreement that he sought to impeach.

The plaintiff also submitted that at the time the summons was issued, the Magistrates Court did not have monetary jurisdiction to entertain that matter. The present proceedings could not have been instituted in the lower court in the absence of an agreement by the parties.

It was further submitted that the issue before the court was not whether the Magistrates Court could entertain actions or applications for declaratory relief coupled with claims for consequential relief in terms of s 14(1) (g) of the Magistrates Court Act. The issue before the court was whether this court had jurisdiction regardless of whether or not the Magistrates Court also had jurisdiction to grant a *declaratur*.

### **The Analysis**

The source of the first defendant's objection to the jurisdiction of this court is the deed of session that the parties allegedly signed on 15 June 2011. The plaintiff insists that the document was the valid agreement between the parties. In his supplementary plea, the first defendant dismissed the same agreement as "*nothing but a hastily assembled bundle of fraudulent misrepresentations*". The first defendant puts the validity of that agreement into question insisting that the valid agreement was the one signed on 30 October 2020, in which the same property was sold for US\$90,000.00. The plaintiff challenged the validity of that agreement.

The joint pre-trial conference minute signed by the parties has four issues for trial. The first two issues were agreed as follows:

- Whether or not the Agreement of Sale/Cession between the plaintiff and the first defendant entered into on the 15<sup>th</sup> of June 2011 is valid.
- Whether or not the plaintiff and the first defendant entered into an Agreement of sale on the 30<sup>th</sup> of October 2020.

The question of which between the two agreements is valid is therefore hotly contested. The disposition of the matter ultimately hinges on the finding the court will make on that issue.

It is not in dispute that the plaintiffs claim is one for a *declaratur* coupled with consequential relief for the transfer of rights, title and interest in the property to the plaintiff. It is also not in dispute that in terms of s 14(1)(g) of the Magistrates Court Act, no Magistrate Court shall have jurisdiction in or cognisance of any action or suit wherein a declaration is sought as to any existing, future or contingent right or obligation, where the person seeking the relief does not or cannot claim any relief consequential upon such declaration. That the Magistrates Court can competently grant a *declaratur* in the circumstances set out under s 14(1)(g) is indisputable.

The narrow issue before the court is simply whether under the circumstances obtaining in this case the Magistrate Court sitting at Chegutu could still exercise its jurisdiction pursuant to clause 1 under the “Breach of Agreement” in the deed of cession.

That clause reads as follows:

“1. The parties agree that in the event of any disputes arising out of this agreement the Magistrates Court sitting at Chegutu shall have jurisdiction to hear and determine the matter”

The first defendant’s argument is that once the parties subjected themselves to the jurisdiction of the Magistrates Court sitting at Chegutu, then the summons action ought to have been instituted in that court. It is not in dispute that parties can by written agreement, submit to the jurisdiction of the Magistrates Court, notwithstanding that any monetary claims arising from any dispute between themselves would exceed the gazetted monetary jurisdiction of that court. The condition is that the parties must have decided by agreement to submit to the jurisdiction of that court. An agreement is not a unilateral act. It involves two or more people.

The first defendant’s case as I understood it is not that the plaintiff’s claim fell within the monetary jurisdiction of the court, independent of any agreement. The first defendant’s case is that the plaintiff was precluded from approaching the High Court by reason of clause 1 of the deed of cession, which clothed the Magistrates Court with jurisdiction over the matter. The question that immediately arises herein is whether there was an agreement between the parties to submit to the jurisdiction of the Magistrates Court sitting at Chegutu. The reason why the parties are in court is because the validity of the agreement on which the plaintiff grounded his cause of action is challenged by the first defendant. The first defendant denied signing that agreement and dismissed it as outright fraudulent. The first defendant counterclaimed, asserting

the existence of his own version of a valid agreement signed on 30 October 2020. The plaintiff dismissed it as fake, which is the reason why he instituted the summons action.

Under the circumstances of the present case, the Magistrates Court could only have the exclusive jurisdiction to hear the dispute between the parties through the mutual agreement of the parties. In other words, it is the contracting parties who through their conduct as recorded in their memorandum of agreement, clothe the lower court with jurisdiction based on their agreement. The court must determine which of the two agreements is valid before giving effect to or enforcing the terms of that agreement. Put differently, no court can be petitioned to enforce the terms and conditions of an agreement whose validity is in issue.

The court is persuaded by the plaintiff's submission that the first defendant is being duplicitous. He cannot seek to enforce the provisions of the same agreement that he claims to be the product of fraud. The question of which of the two agreements is valid stands out as the main issue for determination by the trial court. I am also persuaded by the plaintiff's submission that s 14(1)(g) of the Magistrates Court Act does not oust the jurisdiction of this court to grant a *declaratur* even where the lower court enjoys concurrent jurisdiction with the High Court. The preliminary point is devoid of merit, and it must be dismissed.

**Resultantly it is ordered that:**

1. The preliminary point on the absence of jurisdiction by the High Court is dismissed.
2. Costs shall be in the cause.

**MUSITHU J:**.....

*Chingezya Maeresera & Partners*, plaintiff's legal practitioners  
*John Mugogo Attorneys*, first defendant's legal practitioners