

HAZVIENZANI MUNYUKI
versus
STANLEY SHUPIKAI MUTSONZIWA

HIGH COURT OF ZIMBABWE
TAKUVA & WAMAMBO JJ
HARARE; 4 July 2024 & 11 February 2025

Civil Appeal

C Mukone, for the appellant
G H Muzondo, for the respondent

TAKUVA J: This is an appeal against the whole judgment of the Magistrate's court sitting at Harare.

BACKGROUND

On second of August 2022, respondent obtained a default judgment against the appellant. The judgment was for the eviction of the appellant from stand number 3723 subdivision C Portion of Haydor Farm Westgate Harare. The appellant had not filed an appearance to defend resulting in a default judgment being entered against her.

It is this default judgement the appellant wanted rescinded by a Magistrate. The court *a quo* dismissed with costs the court application for rescission of default judgment. The rule nisi for stay of execution was discharged.

Appellant was aggrieved hence this appeal.

The notice of appeal states as follows:

“...Take further notice that the Grounds of Appeal attached hereto will be tendered in support of the appeal;

GROUND OF APPEAL

1. The court *a quo* erred at law by holding that appellant was in willful default yet summons were served on a person with no authority to accept service on behalf of the appellant, i.e.

a security officer. A security officer is not a responsible person for appellant upon whom summons could be served without the express authority of appellant.

Order 30 RULE 1 (2) of the Magistrate's Court Rules.

2. Notwithstanding the above, although the lower court correctly ruled that even if a party was in willful default, a court has to consider prospects of success of the application. The lower court then misdirected itself at law in holding that appellant had no prospects of success that;
 - 2.1 He purchased the stand in question from TRAGOW INVESTMENTS (PVT) LTD, the land developer, which was embroiled in litigation with respondent pending in the High Court, Harare under case number HC 90/22 over the stands the latter had allocated to the former. The land developer had in turn had rightfully sold the stands to innocent third parties against whom respondent sued without joining them as parties to the High Court proceedings.
 - 2.2 The court *a quo* failed at law to realise that respondent could not enforce whatever rights it had in the land against third parties without joining them to the proceedings which was fatally defective to the respondent's claim. Respondent should be stopped from enforcing any rights he claims to have under the *quasi mutual assent* doctrine as he was fully aware of the agreement between appellant and the land developer.
 - 2.3 Additionally, an order for eviction of appellant could not be granted by the lower court until the High Court makes pronouncement on the rights of title between the land developer and appellant in the stands in question. Should land developer succeed in the High Court, innocent third purchasers like appellant will suffer irreparable harm by losing their stands.
3. The lower court misdirected itself at law in failing to follow precedence by deviating from the judgment it gave in case number C-CG 2349/22 whose circumstances are within all four (4) corners with the case in *casu*. The lower court granted the application for rescission of judgement on the basis that the applicant had prospects of success because of the dispute between respondent and the land developer, which dispute had to be resolved first.

4. The court *a quo* erred at law in failing to grant the application for rescission of judgment as applicant laid out an arguable case, thus shutting her out from accessing justice.” It cannot be disputed that the notice of appeal filed of record is not in compliance with Order 31 Rule 4 (4)(b) of the Magistrates Court (Civil) Rules, 2019 which provides;

“A notice of appeal or of cross appeal shall state –

- a) – – –
- b) In the grounds of appeal concisely and clearly the findings of fact or rulings of law appealed against; and
- c) – – –
- d) – – –.” (the underlining is mine)

In the present matter, the grounds of appeal (pages 1 – 2 of record quoted verbatim supra) are clearly long, winding and argumentative. They are certainly not clear and concise as required by the rules of the court *a quo*. This renders the Notice of Appeal fatally defective. It is trite that where a notice of appeal is fatally defective there exists no valid appeal before the appellate court. The proper course to take is to strike the matter off the roll.

Disposition

The matter be and is hereby struck off the roll with costs.

TAKUVA J:

WAMAMBO J: **Agrees**

M C Mukome, applicant’s legal practitioners

G H Muzondo and Partners, respondent’s legal practitioners