

ALAN JOHN WILLIAM DIXSON
versus
REGISTRAR OF DEEDS N.O
and
RUMBIDZAI ELIZABETH MUZEMBI
and
FIDELIS NGORORA

HIGH COURT OF ZIMBABWE
MANZUNZU J
HARARE, 9 March & 14 April 2022

Chamber Application

S Muzondiwa, for the applicant
T Tanyanyiwa, for the 2nd respondent

MANZUNZU J

INTRODUCTION:

The applicant seeks an order to cancel Deed of Transfer numbers 551/2013 and 552/2013 in favour of the second and third respondents respectively. The application is opposed by the second respondent. Despite service of the application on the third respondent, he did not file any notice of opposition.

BACKGROUND

The brief background to the matter is that the applicant was the owner of a certain piece of land known as stand 723 Glen Lorne Township 15 of Lot 14 of Glen Lorne measuring 5964 square metres (the property). The applicant held title to the property under Deed of Transfer No. 4027/81 dated 25 June 1981. According to the applicant he left his title deeds in the custody of his legal practitioners.

It is not in dispute that the second respondent obtained title to this property under Deed of Transfer number 551/2013 on 2 April 2013. This was pursuant to the confirmation of a provisional order by this Court in case number HC 3617/12 on 14 November 2012 in terms of the Titles Registration and Derelict Lands Act, [Chapter 20:20]. The provisional order and its confirmation were obtained in default. The only party cited as the respondent in that case was the Registrar of Deeds. The confirmation order which was granted in default in HC 3617/12 reads as follows;

“IT IS ORDERED THAT:

1. A provisional order granted by this honourable court on 10 October 2012 be and is hereby confirmed.
2. The registrar of deeds be and hereby directed to transfer to Rumbidzai Elizabeth Muzembi (born 30 December 1969) certain piece of land situate in the district of Salisbury called stand 723

Glen Lorne township 15 of lot 41 of Glen Lorne measuring 5964 square metres held under deed of transfer no. 4027/81 in the name of Alan John William Dixson (born 18 February 1955).

3. The applicant be and is hereby authorized to attend to all formalities required by the Zimbabwe Revenue Authority for the issue of a capital gains tax clearance certificate on behalf of Alan John William Dixson.”

The second respondent disposed of the property to the third respondent who got title on 2 April 2013 under Deed of Transfer 552/2013.

On 23 July 2015 the order of 14 November 2012 was set aside by consent of the parties. I recite hereunder the order issued by the court in HC 7703/14;

“IT IS ORDERED BY CONSENT THAT:

1. The order granted by the Honourable Court on the 14th November 2012 be and is hereby set aside.
2. Applicant be and is hereby joined as a respondent in HC 3617/12 and shall file opposing papers to the same within 14 days of this order.
3. Fidelis Ngorora be and is hereby joined as a respondent in case no. HC 3617/12
4. Costs to be in the cause.”

The applicant has filed this application pursuant to this order.

PRELIMINARY POINTS:

Two points *in limine* were raised by the second respondent which are subject of this judgment. The first one raised at the time of hearing was that the application does not comply with r 60 (1) of the High Court Rules 2021 which provides that;

“(1) A chamber application shall be made by means of an entry in the chamber book and shall be accompanied by Form No. 25 duly completed and, except as is provided in subrule (2), shall be supported by one or more affidavits setting out the facts upon which the applicant relies: Provided that, where a chamber application is to be served on an interested party, it shall be in Form No. 23 with appropriate modifications,”

Mr Tanyanyiwa who appeared for the second respondent said the application set the *dies induciae* at 5 days instead of 10 days therefore it was an incurable defect which cause the matter to be struck off the roll. I do not think so. The second respondent has not suffered any prejudice as a result. This is a proper case where the court has to condone the applicant.

The second point *in limine* raised was that there are material disputes of fact. In opposing the application, the second respondent said she bought the property from the applicant. She gave a history of how she bought the property from the applicant which history is equally disputed by the applicant. In order to resolve the issue of whether or not there are material disputes of fact one has to look at the issue which the court is called upon to resolve by this application. I earlier own said this application is pursuant to the rescission of an order which gave authority to second respondent to take transfer of the property. In essence the relief sought by the applicant can simply be put this way; where the applicant is saying the following to the second respondent;

“the order conferring you with the title of the property has been set aside. The setting aside of that order has the effect to set aside your title to the property until a determination is made by the court as to who owns the property between you and me.”

Resolution of this issue has nothing to do with whether or not there was an agreement of purchase and sale of the property between the parties. That issue rests with case number HC 3625/12 where second respondent is wrestling for title of the property from the applicant. This application is squarely to do with the interpretation of the order of 23 July 2015 which sets aside the confirmation order of 14 November 2012. The question which must be answered is whether the order has the effect to set aside the second respondent's title to the property. There are therefore no material disputes of fact which cannot be resolved on the papers. The second preliminary point fails.

DISPOSITION:

The preliminary points raised by the second respondent be and are hereby dismissed with costs.

Samukange Hungwe attorneys, applicant's legal practitioners
Tanyanyiwa and Associates, second respondent's legal practitioners.