

TUNGAMIRAYI MUGANHIRI
versus
CITY OF HARARE

HIGH COURT OF ZIMBABWE
MANZUNZU J
HARARE, 31 March & 20 April 2022

Court Application

K Chimiti, for the applicant
A Moyo, for the respondent

MANZUNZU J: The applicant's claim is premised on facts which are common cause. On 31 October 2019 the applicant and respondent (the parties) entered into an agreement of sale of a residential stand number 1098 Strathaven township, Harare measuring 2000 square metres. The purchase price was set at \$44 620.00 which applicant paid in full. The respondent breached the agreement by its failure to give vacant possession of the property to the applicant. In fact as it turned out the property was no longer available when it was sold to the applicant because there was an earlier sale of the same property to someone else.

The respondent admits breach of the contract. As a result the applicant seeks to be compensated with another property of equivalent market value or alternatively be paid damages in the sum of USD58 666.66. At the hearing it was clear applicant opted for the compensation of USD58 666.66. This was on the realization that respondent was not willing or able to give applicant any property of a comparable nature to the one initially sold to him.

While the respondent is willing to compensate the applicant, its position is that it can only reimburse what the applicant paid for the property which is ZW\$44 620.00.

Mr *Chimiti* who appeared for the applicant argued that the applicant must be placed in a position he would have occupied had the breach not occurred. The applicant claims USD58 666.66 being an average from three quotations. The three quotations were all done in July 2021. The quotations are pegged in United States dollars with the equivalent of Zimbabwean dollar. The applicant relied upon the case

of *Rowland Electro Engineering (Pvt) Ltd v Zimbank 2007 (1) ZLR 1 (H)* where the court stated that;

“The rationale for awarding damages to an aggrieved party based on a breach of contract is to place that party in the position he would have occupied had a breach not occurred by the payment of money and without causing undue hardship to the defaulting party. A comparison is made between the patrimonial position that the plaintiff would have occupied had the breach not occurred and the position that exists as a result of the breach. The plaintiff would therefore be entitled to the difference where the former exceeds the later.”

Indeed that is the position of the law for a long time. In *Victoria Falls and TV1 Power Company Limited v Consolidated Langlasgite Mines Limited 1915 AD 122* the court held that:

“The sufferer by such breach should be placed in the position he would have occupied had the contract been performed, so far as that can be done by the payment of money, and without undue hardship to the defaulting party”

Mr *Moyo's* argument was that damages were to be assessed at the date performance was due and not the date of judgment. He cited in support the case of *Marume and another v Murangnwa HH 27/07* where it was also held that inflation was not a basis for calculating contractual damages.

It is trite law that damages are claimed only for financial loss per INNOCENT MAJA-The Law of Contract in Zimbabwe 2015 page 131. The onus to prove financial loss rests with the applicant. In other words the applicant must prove the actual damages suffered. In *casu* the applicant has only shown the value of the property he intended to buy, not even at the time performance was expected but some two years later. He paid in Zimbabwean dollars and he is now claiming damages with the value in United States dollar. The applicant is certainly trying to unjustifiably capitalize on the breach by the respondent. In the circumstances he can only be entitled to a reimbursement of the money he paid.

DISPOSITION:

1. The application succeeds to the following extent;
 - a) The respondent be and is hereby ordered to pay the applicant the sum of
ZWL44 620.00
 - b) Respondent is to pay costs of suit.

Machaya and Associates, applicant's legal practitioners
Gambe Law Group, respondent's legal practitioners