

ANYWHERE JONASI

Versus

DAIMENI SAILASI

And

THE METHODIST CHURCH IN ZIMBABWE

And

THE REGISTRAR OF DEEDS BULAWAYO

IN THE HIGH COURT OF ZIMBABWE

KAMOCHA J

BULAWAYO 28 JULY 2015 & 24 NOVEMBER 2016

Opposed Court Application

L. Mashayamombe for applicant

J. Nyarota for 1st & 2nd respondents

No appearance from 3rd respondent

KAMOCHA J: The applicant in this matter was seeking for an order of this court in the following terms:-

“It is ordered that:-

- (a) the agreement of sale between first and second respondent be and is hereby set aside;
- (b) the first respondent be and is hereby ordered to comply with the terms and conditions of the first refusal agreement entered between himself and the applicant;
- (c) the third respondent be ordered not to register transfer of the property in second respondent’s name before first respondent exercise the provisions of order two above;
- (d) if third respondent had already transferred the above property into second respondent’s name, it be and is hereby directed to reverse such transfer forthwith.”

On 1 June 2013 the parties entered into a lease agreement for a duration of two years from 1 June 2013 to 1 June 2015.

HB 328/16
HC 1602/14
X REF HC 2318/14

No right of pre-emption was created at the time the lease agreement was entered into. However, during the duration of the lease the lessor Daimen Sailasi, hereinafter referred to as "Sailasi" experienced serious financial constraints. He had to seek financial assistance from his tenant Anywhere Jonasi – "Jonasi" who rescued him. In a show of gratitude and appreciation Sailasi addressed the following letter to Jonasi on 14 February 2014.

"No 13 Nesbit
Redcliff

14 February

Dear Mr Anywhere Jonas,

Re: Assistance rendered

In view of the assistance you have rendered and the latest developments on my side, I am giving you the first preference to the above property which you are occupying.

I am yet to put it on the market, but would like you to come up with offers that are reasonable after checking the market value of structures within the area. Emphasis added

Looking forward to hearing from you soon.

Daimen Sailasi"

The financial assistance rendered did not seem to clear his indebtedness whereupon he addressed another letter to his tenant on the same day seeking further financial help. The letter reads as follows:-

No 13 Nesbit Avenue
Redcliff

14 February 2014

Mr A. Jonas,

Re: Acknowledgement of assistance

HB 328/16
HC 1602/14
X REF HC 2318/14

This is an acknowledgement of the financial assistance you have rendered to enable me to clear my debt and retrieve my title deeds.

While I appreciate the effort, the figure fell short of the required amount due to charges the lawyers deducted and interest that had accrued.

I therefore appear (sic) to you for further \$2 500,00 to finally settle the debt before it accrues further interest.

Your assistance on this matter will be greatly appreciated and I remain committed to offering you first preference to buying the property. (Emphasis added)

D. Sailasi”

Jonas the tenant reacted to his landlord’s above letters on 26 February 2014 in the following terms:-

“26 February 2014

Mr D. Sailasi
718 April Close
Hintonville, Chegutu

Dear Sir,

Re: Offer to buy house – 13 Nesbit Drive, Redcliff

Following our discussion over purchase of the afore mentioned property, and I being a sitting tenant, hereby make a proposal and avail myself of an offer to buy upon the following terms for consideration:-

- (1) while the house was valued at US\$45 000,00 in 2012 and considering the deterioration thereafter, and a quotation of US\$4 500,00 for repairs, I willfully offer the sum of US\$ 40 000,00 payable as follows:-
 - (a) Deposit of US\$10 000;
 - (b) Monthly instalments of US\$2 500,00 per month for 12 months; or
 - (c) Monthly instalments of US\$1 250 per month for 2 years; or
 - (d) Rent to buy at US\$600 per month for next five years.

Wherefore, I should be glad to hear from you by return, if this proposal is acceptable to you.

I hope and trust you will give this proposal your kind consideration.

Thanking you in advance.

Yours sincerely

A. Jonasi

Sailasi did not respond to his tenant's letter and proposals who had to address another letter to him on 15 April 2014 as a reminder. He expressed his willingness to further assist him financially provided the parties mutually formalize a clear agreement for security reasons in the form of either: (a) Title Deeds; (b) whether or not advance payment attracts interest or not; (c) nature of payments or

- (1) Provisions of the agreement and its effects.
- (2) Conditions pertaining to agreement
- (3) Purchase/borrower's rights
- (4) Seller/owner's rights

The above correspondence between the parties reveals that the parties believed and understood that at least verbal binding right of pre-emption between them had been created. The landlord repeated that he was committed to offering the tenant a preferential right to buy the property in the event he decided to sell it. Meaning that he was bound to make an offer to the tenant when he decided to sell the property.

Sailasi has turned round and alleged that the agreement was invalid for the reason that it was not incorporated in the lease agreement. He clearly has decided to be ungrateful for the assistance rendered to him when he desperately needed financial help.

He went on to deny receiving the letter of 26 February 2014 quoted in *extenso supra*.

The tenant alleged that his landlord had failed to offer the property for sale to him when he decided to sale it. He did not even tell him that he had put the property on the market for sale at \$34 000,00. The landlord hotly disputes that.

The Methodist Church In Zimbabwe purchased the property for \$34 000,00 on 13 June, 2014. It claimed to be an innocent buyer. It vehemently denied in its supporting affidavit by its representative that it was made aware that the applicant had a right of first refusal. It averred that it would not have purchased the property if it had been made aware at that stage that there was a potential dispute over the property.

The applicant alleged that the church through its representatives was not a *bona fide* purchaser. This is a serious dispute of fact.

In my view there are disputes of facts which cannot be resolved on the filed papers even if this court were to take robust approach. The disputed facts are quite prominent.

Consequently, I would dismiss this application and direct that the matter be referred to trial with the papers filed of record thus far standing as pleadings.

Wilmot & Bennet, applicant's legal practitioners
Messrs Masawi & Partners, respondent's legal practitioners