

PASSMORE MATANHIRE
versus
MARTIN SIBINDI

HIGH COURT OF ZIMBABWE
KAMOCHA J
HARARE 25 MARCH AND 7 APRIL 2004

OPPOSED COURT APPLICATION

Ms *Makoni*, for applicant
Respondent in person

KAMOCHA J: On 20 September 1995 the applicant and 1st respondent entered into an agreement of sale of stand number 69 of remainder of Lot 12 Tynwald, Harare. The purchase price was \$50 000.00 payable upon signature of the agreement and the amount was to be released to the seller notwithstanding that subdivision had not been registered. Alternatively an advance payment of \$20 000.00 was to be paid upon signature of the agreement and the balance of \$30 000.00 with interest was to be paid in full by September 1996. Having chosen the alternative mode of payment the applicant paid the full purchase price by 17 October 1995 i.e. a month following the month the agreement was signed.

Applicant submitted that the 1st respondent should have tendered transfer of the stand to him within a reasonable period once subdivision had been registered. But respondent had not done so until this date—a period of over 8 years. The delay was clearly inordinate and inexcusable. There was even no good reason why that had not been done. Applicant further stated that he had paid the full purchase price over 8 years ago and was, therefore, entitled to have the property transferred into his name.

First respondent argued that this matter should have come to court by way of summons not by court application. I am not with him on that point as I do not see any material dispute which warrants that the matter be referred to trial. The issues that are for determination are capable of being solved on the papers filed of record. It is clear from the papers filed of record that the purchase price was indeed paid in full a month after the agreement of sale

was signed. Thereafter the 1st respondent should have tendered transfer of the stand to the applicant within a reasonable period once sub-division had been registered. First respondent ought to have ensured that sub-division had been done within a reasonable period. He, in my view, intentionally and designedly or negligently failed to ensure that sub-division has been registered. His explanation was that there were "delays and bottle necks" at the Surveyor General's office. I am inclined to agree with the applicant that even if there were delays at the Surveyor General's office they would not have taken as long as 8 years if respondent was keen to have the sub-division registered. What seems to be true is that he did not take a keen interest in ensuring that sub-division is registered. I am fortified in this finding by his attitude that applicant should have gone ahead and developed the property since about seven other purchasers had done so and are even living on the properties without registration of the subdivision.

The 1st respondent went on to state that he in fact had applied for registration of the sub-division long back and paid for a fee for the special treatment of the applicant's application. What is significant to note is that in one breath he claimed that the applicant was not entitled to the transfer of the said property and yet in the next (breath) he alleged that he had made an application to the Surveyor General to have the subdivision registered in the applicant's name. His suggestion, therefore, that the full purchase price had not been paid is clearly false.

First respondent further alleged that the property has since been re sold. He, however, produced no proof of sale to a third party. In the absence of proof this court cannot accept his *ipsa dixit* that the property was indeed sold to a third party.

Having found that the applicant paid the full purchase price a month after the sale agreement was signed I see no reason why he should not be granted the order he seeks.

In the result, it is ordered that an order be and is hereby granted in terms of the draft.

