

TAKAVADA MAPFUMO
versus
PREMIER SERVICE MEDICAL INVESTMENTS (PVT) LTD
and
DEPUTY SHERIFF
and
RANGANAYI CHARLES MUBVUMBI

HIGH COURT OF ZIMBABWE
UCHENA J
HARARE 9 June 2009 and 25 November 2009

Opposed Application

C Chipere, for the applicant
D Mutimba, for the first respondent

UCHENA J: The applicant was the first respondent's employee since 1 August 2005. He resigned from the first respondent's employment on 31 May 2007. The first respondent is a dully registered company, which runs a voluntary motor vehicle scheme for its employees. The applicant refused to join the scheme, but the first respondent bought a motor vehicle which the applicant used as its employee.

When the applicant resigned from the first respondent's employment he presented a document to the first respondent's Human Resources Manager, and Finance Manager, in which he sought an agreement through which he would buy the first respondent's motor vehicle he had been using. The document dated 8 June 2007 reads:

“Motor Vehicle Repayment Mazda B2500 728-511 J

I Dr Mapfumo Takavada do hereby certify that I intend to settle my outstanding bill of my motor vehicle loan, amount being one hundred (sic) thirty million and five hundred thousand dollars. (This being car value less 50% deduction). By making an initial deposit of ten million dollars into Stanbic Bank Acc PSMI Head Office 01400 25396501 on the 9th of June 2007, and to complete the balance by two installments into the same Account before the 20th of July 2007. Meanwhile the car will be parked at PSMI car Park as from 9th of June 2007 until the full payment is made.

In the event of me failing to settle the balance before the agreed date, the company will reimburse me my repayments and repossess the vehicle”

The applicant signed the hand written agreement on his own behalf. Messers N Savado Corporate Human Resources Manager and V Chaipa Corporate Finance Manager, signed it on behalf of the first respondent.

The first respondent by letter dated 27 June 2007 advised the applicant that it was cancelling the agreement. The critical part of the letter reads:

“I would like to draw your attention to the following facts concerning the above mentioned vehicle which you have been using:

Subsequent to the review of records, in our possession, it has been revealed that you did not sign the original motor vehicle scheme that was promulgated in 2005 and as such you have not been making monthly payments in respect of the above mentioned vehicle which renders it a company vehicle.

...

In view of the above mentioned reasons, the directorate has reached the decision to withhold the vehicle, as it is company property.” (See annexure B to the respondent’s opposing affidavit.)

The applicant then applied for an order compelling the first respondent to hand over the motor vehicle to him.

The following facts are common cause

1. That the applicant did not join the motor vehicle scheme, when he took employment with the first respondent on 1 August 2005.
2. That he therefore did not make monthly contributions towards the purchase of a motor vehicle as required by the motor vehicle scheme.
3. That the agreement signed by the parties does not represent the truth on the applicant having paid deductions of 50%, for which a deduction could be made from the value of the motor vehicle, or entitle the applicant to refund of repayments if he failed to pay the agreed installments by the agreed date.
4. That the applicant did not surrender the motor vehicle to the first respondent by the agreed date.
5. That when the first respondent discovered that the applicant had misrepresented that he was a member of the motor vehicle scheme, it cancelled the agreement by letter dated 27 June 2007.

6. The first respondent then allocated the motor vehicle to the third respondent who is a member of its motor vehicle scheme with a view of selling it to him.

The issue to be decided is whether or not the applicant misrepresented that he was a member of the first respondent's motor vehicle scheme. The agreement he presented to the first respondent puts that issue beyond doubt. He talks of "settling my outstanding bill of my motor vehicle loan". He further states in it that the value he indicates is a result of a (50% deduction). This demonstrates willful and fraudulent misrepresentation. There is no doubt that he was deliberately misrepresenting facts so that he could be allowed to buy the motor vehicle.

The question to be answered is, would the first respondent have entered into the agreement if the applicant had not misrepresented the facts. In my view it would not because in terms of the agreement annexure F to the applicant's founding affidavit, the agreement was premised on 50% of the price having been paid through deductions. No such deductions were made. The price of the motor vehicle as per the agreement was due to part of the original value of the motor vehicle having been already paid. No such payments had been made. The applicant also misrepresented that there was a prior agreement through the motor vehicle loan scheme, on which annexure F was premised, when no such prior agreement existed.

I am therefore satisfied that the first respondent is entitled to cancel the agreement.

The applicant deliberately misrepresented facts on which he premised his application. When the deceit was discovered he did not as was expected give up. He instead persisted in what must have been an apparently hopeless application. On being advised that the motor vehicle had been allocated to the third respondent he joined him into the application. If he had reflected on the deceit he had used to get into the agreement he would not have persisted. He caused the respondents to incur unnecessary expenses. He must pay their costs on the legal practitioner and client scale.

In the result the applicant's application is dismissed with costs on the legal practitioner and client scale.

Mtombeni, Mukwasha, Muzawazi & Associates, applicant's legal practitioners.

Matimba & Muchengeti, first and third respondents' legal practitioners.