

CABINET MACHINGAMBI  
and  
PATRICIA CHIMBALAMI  
and  
SIMBAI MANGENA  
and  
WALACE MATEMAYI  
and  
MISHECK NJANI  
and  
BRILLIANT MACHINGAMBI  
and  
ALLEN MAWENI  
and  
TONY KAPASARE  
and  
KENNEDY MAHAFU  
and  
JOHN LIKUKUMA  
and  
BEAUTY SHOSHORE  
and  
MEMORY KANDIRA  
and  
JUSTIN MUDIMU  
versus  
DOUGLAS NYAUDE  
and  
D MNETSI ENTERPRISES  
and  
REGISTRAR OF DEEDS

HIGH COURT OF ZIMBABWE  
BHUNU J  
HARARE, 15 July 2009 and 14 July 2010

*T Kanengoni*, for the applicants  
*T Mpofu*, for the respondents

### **Opposed Application**

BHUNU J: The thirteen applicants are members of Printers Housing Cooperative Limited. It is common cause that sometime around 2005 they concluded individual standard

form contracts of sale with the first respondent Douglas Nyaude a registered estate agent practicing under the style of Graham and Douglas, Real Estate Agent. The contracts were in respect of the sale of certain pieces of immovable properties mentioned in their respective contracts.

In terms of the standard form contract the purchase price was to be paid in installments. The relevant clause provided as follows:

“MODE OF PAYMENT:

- i) a deposit of ..... payable as follows
  - \$ ..... upon signing thereof.
  - \$ ..... payable on ....
- (ii) The balance of ... plus 30% interest per annum payable in monthly installments of not less than \$ ..... over a period of 24 months with the first installment payable on ....”

Occupation was supposed to take place upon the completion of servicing of the properties. The applicants proceeded to pay their respective deposits and installments in terms of their agreements. Owing to rampant inflation the seller found it impossible to service the land from the proceeds of the sale. As a result the first respondent unilaterally increased the purchase price to cover the increased costs of servicing the stands. That much is not in dispute.

The bone of contention is whether or not the applicants subsequently ratified the unilateral increase thereby compromising their position.

According to the first respondent a meeting of stake holders was convened on 7 October 2006 to chart the way forward. At that meeting he alleges that it was resolved that:

“Some time in April D Nyaude increased the purchase price to \$159,000,000-00 (REVALUED), per square metre and then communicated to all stand owners. At the meeting he apologized for communication breakdown and the apology was unanimously accepted by all stakeholders who attended the meeting.

Due to the fact that two hundred and seventy eight stakeholders were not paying the proposed purchase price as at April 2006 the stakeholders present at the meeting unanimously resolved that:-

1. The ratification of April increase
2. All stake holders should pay all their arrears of the purchase price as at April on or before 31 October 2006.
3. If one fails to pay by 31 October 2006 the stand shall repossessed (sic) and sold to enable to the completion of the project.
4. A meeting shall be held during the first week of November to check on:-

- 1.1 Progress on site up to that date.
- 1.2 Payment position by those who had not paid the April increase that had been ratified.
- 1.3 Way forward.

Signed.....  
G. Batani  
PROJECT MANAGER.”

The applicants deny that they are bound by the above resolution and insist that the price was unilaterally increased without their consent. The fundamental dispute to be resolved is therefore whether or not the applicants are bound by that resolution. Whether or not the applicants consented to the variation of the price stipulated in their original contract of sale is a factual dispute incapable of being resolved on the papers.

On the papers it cannot be ascertained whether or not the applicants were present at the stakeholders meeting which allegedly unanimously ratified the unilateral increase of the original purchase price. From the tone of the alleged minutes of that meeting we already know that not all stakeholders or stand owners attended the meeting. If they were not present it cannot be ascertained on the papers whether that meeting had the authority to legally bind the applicants in their absence. I also note in passing that the minutes do not appear to have been signed or authenticated by anyone purporting to represent the owners or stakeholders let alone the applicants. The validity or otherwise of the minutes is however a question of evidence.

The resolution of the above factual disputes is in my view central to the determination of the legality or otherwise of the cancellation of the applicants’ respective contracts of sale on allegations of breach of payment of the purchase price.

In the interest of justice it is necessary that the matter be referred to trial for the resolution of the factual disputes in this case. It is accordingly ordered:

1. That this matter be and is hereby referred to trial.
2. That the papers already filed shall stand as pleadings with parties being granted leave to file any supplementary pleadings.
3. That the parties shall observe all procedural requirements before proceeding to trial.

*Chikumbirike & Associates*, applicants’ legal practitioners.  
*Mbidzo Muchadehama & Makoni*, respondents’ legal practitioners