

EDITH GARAKARA
versus
FARAI NGORIMA

HIGH COURT OF ZIMBABWE
KARWIJ & BHUNU J
HARARE, 30 March 2010 and 15 September 2010

Mr *Gijima*, for the appellant
Mr *Nzero*, for the defendant.

Civil Appeal

BHUNU J: This is an appeal against the magistrate's ruling sitting at Kadoma dismissing the appellant's application for rescission of judgment on 15 December 2008.

The respondent Farai Ngorima is the registered owner of a certain piece of immovable property known as house number 3795 Ingezi Township Kadoma. He purchased the house from the late Monica Ruvimbo Dzinamarira on 7 March 2007 for \$27 000 000-00. The property was registered in his name on 17 April 2007 under deed of transfer 000198/007 with the seller acknowledging that the whole of the purchase price had been paid.

It is common cause that after the respondent had purchased and obtained title of the said property on 17 April 2007; the appellant subsequently purchased the same property from Monica Dzinamarira and obtained cession of the same property at the Municipality of Kadoma's offices on 13 July 2007. Clause 3 of the cession agreement between the appellant and Dzinamarira reads:

“3. The cessionary shall take possession of the said property thereon on the 13th July 2007 and all risk, profit and loss in the property shall pass to him subject to the aforesaid Municipal consent being granted.”

It is clear that by the time the appellant purported to buy and obtain cession of the disputed property on 13 July 2007, the respondent had already bought and obtained title of the same property in the deeds registry on 17 April 2007. The act of registration had the legal effect of divesting Monica Dzinamarira of any rights and title she might have previously had in the property. Thus when she purported to sell and cede the same property to the appellant

she had nothing to sell or cede as she had been divested of any rights and title in the property. The second sale and cession was therefore a sham and of no force or effect.

What this means is that the appellant was cheated into buying property and obtaining cession from a person who did not own the property. Common sense dictates that Monica Dzinamarira could not and did not transfer any rights and interest in the disputed property to the appellant for the simple reason that she had no such rights and interest to transfer to her.

Jurisdiction

The applicant has taken issue with the trial magistrate's jurisdiction on the basis that the value of the property exceeds the Magistrates Court jurisdiction. It is correct that the Magistrates' court is a court of limited jurisdiction. Parties can however consent to the jurisdiction of the magistrate's court. In this case it is common cause that it is the appellant who first took the matter to the Magistrates' court under case number 405/07 seeking transfer of the same property. She cannot therefore, be heard to complain that the magistrate had no jurisdiction when she is the one who first approached that court for relief in respect of the same property. She must therefore, be deemed to have acquiesced or consented to that court's jurisdiction.

The appellant's reliance on the case of *Guga v Moyo & Ors* 200 (2) 458 is misplaced. That case dealt with a situation where transfer had not been effected to the first purchaser. In this case transfer had already been effected to the first purchaser.

Conclusion

We therefore come to the unanimous conclusion that the magistrate was correct in dismissing the appellant's application for rescission of default judgment for want of reasonable prospects of success on appeal.

“It is accordingly ordered that the appeal be and is hereby dismissed with costs”.

KARWI J agrees