

HERBERT MUDZVOVA
versus
ROBERT MUDZVOVA
and
THE REGISTRAR OF DEEDS

HIGH COURT OF ZIMBABWE
MATHONSIJ
HARARE, 3 March 2015

Urgent Application

Ms V Dzingirai, for the applicant
First respondent in default

MATHONSI J: In HC 1541/15, the applicant and his youngest brother Happyson Mudzvova, have sued the two respondents seeking an order confirming the existence of a verbal sale agreement allegedly concluded in 2004 in terms of which Happyson purchased from their brother Robert, the first respondent herein, stand 2323 Chadcombe Township of stand 1257 Chadcombe Harare.

They also seek to interdict Robert from selling the said property and to evict him from it and transfer of the property to Happyson. In their declaration they averred that when Robert fell on hard times in 2004 he had approached them with an offer to sell the property which he holds by Deed of Transfer number 10676/2000 for a sum of \$120 000 000-00 Zimbabwean currency. The offer was duly accepted resulting in Happyson raising \$80 000-00 000-00 while the applicant raised \$40 000 000-00 to make the purchase price required by the first respondent who was promptly paid.

As the three are blood brothers, they did not bother to have the property transferred to the purchaser and also allowed the first respondent to continue residing at the property the only footnote being that Happyson brought their mother from her rural home to come and stay at the property as well. She still enjoys occupation up to now.

What has prompted this application is that the first respondent has advertised the

property for sale at an asking price of \$70 000-00 without the knowledge, authority or consent of the real owner under circumstances which suggest that he wants to swindle the owner of his house. A number of interested people have been coming to view the house and the applicant fears that the first respondent may dispose of the property anytime and effect its transfer to the purchaser to their detriment.

He has therefore, approached this court on a certificate of urgency seeking the following relief:

“TERMS OF THE FINAL ORDER SOUGHT

That you show cause to this Honourable Court, why a final order should not be made in the following terms:

- (a) That the 1st respondent be and is hereby interdicted from selling certain piece of property known as Stand 2323 Chadcombe Township of Stand 1257 Chadcombe pending finalisation of the applicant’s action filed in this court under Case Number HC 1541/15.
- (b) Each party to bear its own costs.

INTERIM RELIEF GRANTED

- (a) The second respondent registers a caveat on the following immovable property, certain piece of land situate in the District of Salisbury called Stand 2323 Chadcombe Township of Stand 1257 Chadcombe measuring 422 square metres registered under Deed of Transfer 10676/2000 in favour of Robert Mudzvova pending the finalisation of the applicant’s action filed in this court under Case No HC 1541/2015.”

It is surprising that the applicant only seeks the registration of a caveat when clearly the case that he has made is for an interdict against the first respondent preventing him from selling the property until the respective rights of the parties have been determined. The registration of a caveat will merely prevent the passing of transfer to the purchaser but not the sale of the property. At the end of it all, this court may find itself having to untangle conflicting claims which may include that of an innocent third party.

This court has a duty to regulate its process and will at all times move in to protect that process so that it is not rendered useless by the conduct of the parties before determination at the appropriate time. Quite often in recent history, litigants appearing before this court have shown a disdain to the process of the court and are invariably found stampeding to defeat such process. Where one party has filed court process seeking some form of relief it is only prudent that the other party should respect that process and await finalisation of the matter

instead of acting in a way that negates the process.

Ms *Dzingirai* who appeared for the applicant submitted that the difficulty she has, although conceding that the first price was to interdict the sale, was that she would be seeking an interim relief which is the same as the final relief. She could not conjure a final relief different from the interim relief. I am aware that authorities say that, namely that interim relief is meant to be precisely that and legal practitioners should be careful in framing the interim and final relief sought to avoid such incongruities: *Kuvarega v Registrar General & Anor* 1998 (1) 188 (H) A – B.

In my view this does not mean that the legal practitioner must prejudice the client, in this case the applicant, by requesting an order which does not fully protect the interests of the applicant in order not to appear seeking interim relief which is identical to the main relief and the same as the substantive relief. The thrust of CHATIKOBO J's pronouncement in *Kuvarega (supra)* was that an applicant is not entitled to substantive relief before proving his case as interim relief is granted on proof merely of a *prima facie* case.

Whereas in the present case, the applicant has established that he is entitled to what his legal practitioner wanted to secure on the return date of the provisional order, the court should not deprive him of that relief because the legal practitioner has had drafting challenges and failed to construct the draft order properly. It would be irresponsible for the court to fold its arms and do nothing when at the end of the day it will have to sit to determine a matter that has been filed. If the conduct of a party would result in the ultimate decision of the court being rendered academic, what is referred in common parlance as a *brutum fulmen*, the court should be quick to prevent such eventuality.

It was for that reason that I preferred to give reasons for the order to be made. The first respondent was served with the notice of set down but chose not to appear. Until such time that the respective rights of the parties have been determined in HC 1541/15 both the sale and transfer of the property should be prevented.

Accordingly, the provisional order is granted as amended.

Chivore & Partners, Applicant's Legal Practitioners