

JOHNSON MASHAILE
versus
ANGELINE MAJECHA

HIGH COURT OF ZIMBABWE
UCHENA J & MWAYERAJ
HARARE, 16 June 2015, 15 July 2015

Civil Appeal

Appellant in person
Respondent in person

MWAYERAJ: Irked by the decision of the court *a quo* the appellant lodged this appeal against the whole judgment of the court *a quo*. The court *a quo* granted an order in favour of the respondent as follows:

- (a) The application for eviction be and is hereby granted.
- (b) The respondent and all those claiming interest through him be and are hereby ordered to vacate house number 3051 ZBS Gaza Township, Chipinge by 31 October 2014.
- (c) No order as to costs.

The court found that at the material time the appellant who had been given notice to vacate the premises in question had no basis for resisting ejection. The appellant was not paying any rentals or utility bills at the property in question. He was not the owner of the property. The court further found that the respondent was the owner of the property which had been purchased on her behalf by her mother from Shepherd Mutate. The court found that all documents supported that the respondent was entitled to evict the appellant.

The appellant relied on the following grounds of appeal:

- (a) The learned magistrate erred in that he did not consider the appellant's merits.
- (b) The learned magistrate erred in that he cast a blind eye on the appellant's

opposing affidavit.

- (c) The learned magistrate erred in that he did not consider that the property in question was not properly acquired by the respondent and that the respondent did not produce any proof, rights and power over the said property.
- (d) The learned magistrate misdirected himself in totally dismissing the applicant's prayer thereby granting the respondent who is not the legal owner of the said property.

The facts of this case are largely common cause. It is clear from the record that the court *a quo* was faced with application proceedings. The respondent (applicant then) clearly placed before the court evidence that house number 3051 ZBS Gaza Township Chipinge was sold by Shepherd Mutate ID No. 42-100436-S-44 to Joyline Mtisi ID No. 75-052930W13.

It was abundantly clear from the affidavit by Shepherd Mutate on p 16 of the record that he sold the property for \$62 000-00 cash and was paid in full. In that affidavit Shepherd Mutate transferred his rights to the buyer "I have sold it for \$62 000-00 cash. The amount has been paid in full. I am transferring all Rights to the owner of the HOUSE TO THE BUYER" underlining my emphasis.

This sale transaction was witnessed by Dere Majeche ID 63-983585 Z 75 and Wilson Majeche ID 75-337932 K 75. Equally the buyer Joyline Mtisi ID No 75-052930 W 13 deposed to an affidavit on p 14 of the record confirming she bought the house for and on behalf of her daughter the respondent (Angeline Majeche) on 13 December 1991.

All evidence of the sale of property was placed before the court *a quo* and it remained uncontroverted. The appellant who was in a caretaker role when so requested by Shepherd Mutate in 1998 before the sale and transfer of the right in the house had no basis on which to remain in the house. In fact it is apparent from the record that the appellant after sale of the house paid rentals to the respondent and when he decided to stop notice to vacate was duly given page 15 of the record. It was after non compliance with the notice to vacate that eviction proceedings were instituted. The appellant in opposition simply resisted ejection without substantiation or giving reason for his hold over. No supporting affidavits or documents were attached to the opposition. In the face of clear evidence of sale of the property that is the house and passing of title by Shepherd Mutate who as the original owner and had rights to dispose of the property, the

court *a quo* properly exercised its discretion. The ejection order is well anchored on evidence adduced on record.

The appellant has no basis upon which to remain in the respondent's property. The appellant cannot seek to represent a deceased estate for which he is not an executor. In any event the property as portrayed in a crystal clear manner is owed by the respondent by virtue of sale agreement and it thus is not part of a deceased estate.

The appeal lacks merit and must fail.

Accordingly, it is ordered that the appeal be and is hereby dismissed with costs.

UCHENA J agrees:.....