

REPORTABLE ZLR (45)

Judgment No. SC 53/06  
Civil Appeal No. 23/05

ELLEN RUPARANGANDA v (1) DEMETRIUS  
JOHN PETRAKIS (2) PLATION ANTHONY ATHIENITIS (3)  
REGISTRAR OF DEEDS

SUPREME COURT OF ZIMBABWE  
CHEDA JA, GWAUNZA JA & GARWE JA  
HARARE, SEPTEMBER 18, & NOVEMBER 20, 2006

*H Zhou*, for the appellant

*R M Fitches*, for the first and second respondents

No appearance for the third respondent

CHEDA JA: The first and second respondents were the registered owners of an immovable property known as stand No 67 of Rolf Valley of Lot 17 of Rolf Valley of Rietfontein in the district of Salisbury held under Deed of Transfer No 2187/80 (“the property”).

In or about March 1999, the above property was transferred into the name of one Ellen Chivasa Rukayi hereinafter referred to as “Rukayi”, by Deed of Transfer No 6997/99 allegedly by the first and second respondents. This transfer followed an agreement of sale of the said property dated 28 November 1997 in which it was recorded that Rukayi was the purchaser, and the first and second respondent were the sellers.

On 18 March 1999, Rukayi entered into an agreement of sale in which she sold the property to Ellen Rugaranganda (hereinafter referred to as “Rugaranganda”) and Gilbert Rugaranganda.

By Deed of Transfer No 2863/99, the property was transferred to the names of Ellen Rugaranganda and Gilbert Rugaranganda by Rukayi.

Sometime in December 2003, while enquiring about rates payable for stand 67 and 68 which are joint properties, the respondents discovered that stand number 67 had been transferred to Ellen Chivasa Rukayi, and that a certified copy of the Deed of Transfer No. 06997/98 had been used.

The first and second respondents declared that they had never sold their property to anyone, that they did not know Rukayi, and the Title Deeds of stand No 67 was still in their possession. They did not know how the property had been sold to Rukayi and later to the Rugarangandas. They reported the matter to the Zimbabwe Republic Police.

Up to the time of the hearing of the case at the High Court, the police had not been able to locate Rukayi. Only Ellen Rugaranganda was located at No 36 Zambezi Flats, Block 6 Quendon Road, Mabelreign, Harare.

The respondents applied for cancellation of the sale and transfer of their property to Rukayi and the Rugarangandas and said the transfers had been

obtained fraudulently and that Rukayi had no good title of the property to pass to the Rugarangandas.

The High Court granted the order sought by the respondents and ordered that the transfers of stand 67 to Rukayi and the Rugarangandas be cancelled.

Ellen Rugaranganda has now appealed against that judgment.

In support of their application to the High Court, the two respondents submitted the following information -

1. They have never parted with the Title Deeds of stand 67. The Title Deeds have always been and are still in their possession.
2. The signatures on the agreement of sale of stand 67 to Rukayi are not theirs.
3. The signatures on the Power of Attorney to make transfer are not theirs.
4. The signatures on the Declaration of Seller are not theirs.
5. A copy of the Title Deeds was used to make transfer because their Title Deeds (originals) are still in their possession.

A quick look at the signatures of the respondents on their affidavits filed in the application and on the other documents, including their wills which were filed with their legal practitioners long before this case, shows very clearly that they are not the ones who signed the agreement of sale or power of attorney. The difference is so clear that it does not even need an expert to tell the court that the signatures are different, as the applicant sought to argue.

Ruparanganda's evidence stands alone in this application and is not supported by any other evidence, besides the documents on which the signatures of the respondents are clearly forged. Rukayi cannot be found. She is not available to say how she obtained the property of the respondents. There is no affidavit from her.

The submission by the appellant that the respondents should have noted and responded to the advertisement in the Herald concerning the application to replace lost Title Deeds does not assist the appellant. The respondents did not even need to be on the look out for such an advertisements because they had not lost their Title Deeds.

The appellant has not even bothered to produce or obtain affidavits from the witnesses to the signatures on the agreements to say that the respondents are the persons who signed the agreements.

The affidavit of Delwin Chanakira does not take the matter any further. What he says about Mrs Dos Santos is his impression whose basis is not clear. If he

heard anything from Dos Santos it would still be hearsay as there is no affidavit from Mrs Dos Santos.

Rukayi has remained out of the picture, and it seems deliberately. She is not available to assist.

What remains clear so far, according to the documents filed, is that the respondents never signed any documents authorising the sale and transfer of their property to Rukayi who passed it on to the appellant.

Accordingly the High Court was correct in holding that Rukayi had no good and lawful title to pass on to the appellant, since the signatures of the respondents were forged.

Accordingly the appeal is dismissed with costs.

GWAUNZA JA: I agree.

GARWE JA: I agree.

*Gill, Godlonton & Gerrans*, appellant's legal practitioners

*Scanlen & Holderness*, first and second respondent's legal practitioners