ELIZABETH READ

VERSUS

MAIKOL PHIRI

AND

JENNIFER PHIRI

AND

REGISTRAR OF DEEDS

HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 28 AND 31 MARCH 2011

Miss E. Sarimana, for the applicant
N. Mlala, for 1st and 2nd Respondents

JUDGMENT

CHEDA J: This is an application for the confirmation of a provisional order granted by this court on the 15th of March 2006.

The interim relief granted was couched as follows:

INTERIM RELIEF GRANTED

''Pending the determination of this matter, it is ordered: -

1. That First and Second Respondents be and are hereby ordered not to evict or attempt to evict Applicant and all those claiming under her, from Stand 604, Victoria Falls.

2. That First and Second Respondents be and are hereby ordered not to transfer Stand 604, Victoria Falls to any person other than Applicant and are ordered not to register any mortgage bond against the Title Deed as security in favour of any person.

3. That Third Respondent be and is hereby ordered not to: -
   a) effect transfer of Stand 604, Victoria Falls belonging to First and Second Respondents held under Deed of Transfer No. 2210/05 from them to any person other than Applicant; and

   b) register any mortgage bond against the Title Deed of Stand 604, Victoria Falls in favour of any person.''

The final order sought was couched as follows:

TERMS OF FINAL ORDER SOUGHT

''It is ordered that:

1. That First and Second Respondents be and are hereby ordered to transfer Stand 604,Victoria Falls from them to Applicant on condition that Applicant pays the balance of the purchase consideration of $20 000.00 and pays the costs of transfer.

2. That First and Second Respondents be and are hereby ordered to do what is required of them to give effect to the aforesaid transfer, to apply for the necessary authorities, certificates, etc, and to sign all required documentation to effect the transfer, within 14 days of the date on which this order is served on them.

3. That should First and Second Respondents fail to do what is required of them: -

a) Applicant be and is hereby given leave to act on behalf of First and Second Respondents to achieve the transfer; and

b) the Deputy Sheriff, Bulawayo be and is hereby authorised to sign the required documentation on behalf of First and Second Respondents.

4. That First and Second Respondents be and are hereby ordered to pay the costs of this application on the attorney/client scale.''

The background of this matter whose facts are largely common cause are that applicant and 1st and 2nd respondents entered into an agreement on the 6th of December 1995 in terms of which applicant was given an option to purchase stand 604 Victoria Falls (thereafter referred to as ''the property'') The agreed purchase price was $100 000 of which $80 000 was paid upon signature of the parties and the balance of $20 000 upon transfer of the property to applicant.

The option was exercisable at any time after respondents became the owners of the property in terms of clause 2 of the agreement. At the time of signing of the agreement the property was yet to be transferred from the Municipality of Victoria Falls to respondents and the said transfer was only effected on the 5th of August 2005.

Respondents have sought to cancel the agreement on the basis that they misunderstood the terms and conditions of the agreement and secondly that they were of the view that they were not supposed to sell the property which they had no title to. At the same time applicant together with her husband Adrian had loaned respondents $10 000 which they

now wanted to set off against the $20 000 balance to respondent. Respondents disagree with this arrangement. Respondents further argued that the balance of $20 000 is no longer valuable to them as at it has been eroded by inflation.

The question then is what is respondent's defence in resisting the transfer of this property to applicant. I find no justifiable reason at all other than the obvious inflationary painful result of the prejudice suffered by those who sold their properties in Zimbabwean currency at the time the hard economic situation prevailing was fluid and galloping. This, however, is not a justifiable reason in law to breach a contract. Legally speaking applicant has complied with all the requirements of a legitimate contract she entered into with the respondents.

The contract is a valid one and as such must be enforced. This contract has all the hallmarks of a contract with an option to purchase see *Film and Video Trust v Mahovo Enterprises Ltd* 1993 (2) ZLR 191 H.

Respondent's attempt to frustrate and prevent applicant's right to enforce the agreement has no legal support other than moral sympathy. For that reason it is rejected.

Accordingly, the provisional order is confirmed as prayed.

Messrs Coghlan and Welsh, Applicant's Legal Practitioners
Mahamba Legal Practitioners, 1st and 2nd Respondent's Legal Practitioners c/o *Majoko and Majoko*

ADDENDUM

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N. Mlala, for 1st and 2nd Respondents

CHEDA J: The judgment in the above matter was delivered on the 31 March 2011.

Applicant had applied for an amendment of the interim order which I should have effected in my judgment referred to, but, due to an oversight I omitted to do so. The following amended is effected hereinunder in terms of Rule 449 of the High Court rules:

"(1) That first and second Respondents be and are hereby ordered to transfer Stand 604, Victoria Falls from themselves to Applicant."

The initial order is no longer legally enforceable by operation law.

Messrs Coghlan and Welsh, Applicant's Legal Practitioners
Mahamba Legal Practitioners, 1st and 2nd Respondent's Legal Practitioners c/o *Majoko and Majoko*