SPORTS AND RECREATION COMMISSION
versus
LAINA NHERA
and
R W MANYATI
and
THE REGISTRAR OF DEEDS

HIGH COURT OF ZIMBABWE
KUDYA J
HARARE, 7, 13 and 14 May and 1 July 2009

**Civil Trial**

*L Mazonde*, for the plaintiff
Ms *N D Munharira*, for the first defendant
*N Chikono* for second defendant

KUDYA J: The plaintiff is a body corporate established in terms of s 3 of the Sports and Recreation Act [*Cap 25*:*15*]. It issued summons against the first defendant for the transfer of Stand 120 Bindura Township, Bindura measuring 4 312 square metres held under Deed of Transfer Number 10170/2003 and in the alternative sought damages from the second defendant in the sum of US$46 594-00 for concluding the sale agreement without the first defendant's authority. Both the first and second defendant opposed the claims.

On 19 March 2009 the following two issues were referred to trial:

1. Whether or not the second defendant had authority from the first defendant to sell stand number 120 Bindura Township, Bindura to the plaintiff; and

2. Whether or not, in the event that it is found that the second defendant had no authority to act on behalf of the first defendant in the sale of the property, the second defendant is liable to pay damages to the plaintiff and if so, the quantum thereof.

The plaintiff called the evidence of four witnesses while the first defendant called the evidence of one witness and the second defendant testified on his own behalf. A total of ten documentary exhibits were produced during the trial.

It was common cause that the plaintiff was a tenant of the first defendant on the immovable property in issue for the period 1 January to 31 December 2007. The lease agreement, exhibit 1, was facilitated by Manyati Enterprises (Privatet) Limited, a company owned, amongst others, by its managing director, the second defendant. Manyati Enterprises

(Pvt) Ltd, herein referred to as the estate agent acted as the managing agent of the first defendant. It communicated all rent increases and received all rentals paid on behalf of the first defendant.

Shepherd Chamunorwa Mukanhairi, the provincial co-coordinator of the plaintiff based in Bindura represented the plaintiff in the lease agreement while the first defendant was represented by the estate agent. It was common cause that initially on 30 November 2007 by exhibit 2, the owner of the property communicated through her estate agent that she was not going to renew the lease agreement. On 12 December 2007 the estate agent invited the plaintiff through Mukanhairi to make an offer for the purchase of the immovable property in question. Mukanhairi produced exhibit 3, the offer and acceptance form drawn on the letter head of the estate agent. Exhibit 3 sets out the full details of the plaintiff and the description of the immovable property in issue. Under purchase price and terms was written "50 billion negotiable". Payment was proposed to be by way of bank transfer in two installments over thirty days and occupation was to be as soon as the last payment was made. Mukanhairi appended his signature under buyer and an employee of the estate agent signed as the negotiator. Exhibit 3 also recorded the bank details of the estate agent.

Mukanhairi stated that the second defendant told him that the owner was selling the property for $50 billion and made the offer to the plaintiff because of the excellent working relationship between their two organizations. The witness was given exhibit 3 as a letter to show to his superiors in Harare that the property was for sale. The tenure of his testimony was that he understood exhibit 3 as an invitation to treat and not as an offer. He clearly stated that exhibit 3 signified the engagement of the plaintiff by the second defendant in negotiations for the purchase of the property. The witness referred exhibit 3 to his superiors in Harare and he facilitated discussions between the second defendant and Mrs Kabanda, ("Kabanda") the plaintiff's Director of Corporate Services. The two held several meetings in his absence.

The witness later falsely claimed that the second defendant made a firm offer of $50 billion in exhibit 3. Exhibit 3 indicated that the figure was negotiable. It seems to me that the document was supplied to the witness as an invitation to the plaintiff to make an offer. That was the nett effect of the witness' testimony which was also confirmed by the fact that thereafter Kabanda entered into negotiations with the second defendant on the purchase price of the property. If exhibit 3 constituted an acceptance of an offer, there would have been no reason for protracted meetings between Kabanda and the second defendant. In any event, the

witness stated that he had no mandate to contract on behalf of the plaintiff. At all material times the witness understood that the second defendant was acting as an employee of the estate agent.

Nyasha Patience Kabanda stated that her duties entail, amongst others, negotiating for the purchases of immovable properties for the plaintiff. She regarded exhibit 3 as an agreement of sale. Notwithstanding this opinion, she still saw it befitting to negotiate for the purchase of the immovable property with the second defendant who was seeking offers in the region of $100 billion. She offered him $95 billion. He agreed and prepared the agreement of sale. The agreement was to be executed at the plaintiff's offices on 15 January 2008. The second defendant arrived in Harare after working hours and she met him in the street at the intersection of Central Avenue and Fourth Street close to the premises of the Central African Building Society. She was in the company of the Director of Sport Development Joseph Muchechetere. He had the copies of the agreement of sale, exhibit 4. They discussed the methods of payment by bank transfer to the second defendant's bank account. Thereafter he introduced the owner's son Jorum Mteliso, who had been standing a distance away, to them. The second defendant signed the agreement as did his witness, Jorum. She also signed but collected the documents for the signature of the Finance Manager, Mr Mpofu who would witness for the plaintiff. She lodged the copies, as requested by the second defendant, with his legal practitioners in Harare.

On 17 January 2008 she received exhibit 5, a text message from the cellular phone number 263912422587 at 7:15 am. It had purportedly been dispatched by the owner's son and intimated that the Bindura property deal had to be stopped as Miss Nhera required $180 billion and not $95 billion. She telephoned the second defendant and objected to the purported cancellation of the agreement. She wrote exhibit 6 to him on 22 January requesting for his bank details to process payment through real time gross settlement. She also requested the title deed to facilitate transfer and threatened legal action if her demands were not met by 29 January. The letter was received by the second defendant on 26 January.

On 8 February the plaintiff effected a telegraphic bank transfer of $95 billion, exhibit 7, into the estate agent's account using the information in exhibit 3.

She produced exhibit 8, the valuation report of the property in question that was compiled by Lydia Hwengwere, an evaluator with the Ministry of Local Government and Housing, on

28 April 2009. She valued the property at US$ 46 594-00. The plaintiff sued the second defendant in his personal capacity because he was the alter ego of the estate agent.

She was questioned by the first defendant's counsel. She maintained that the invitation to treat constituted the first agreement but had agreed to pay a higher purchase price because of the inflationary environment that existed at the time. She did not see the second defendant's mandate to sell the property but believed his mere say so because he was the managing agent of the first defendant. She misled the court that the plaintiff paid the purchase price within the three week period stipulated in the agreement of sale. The payment was made some two days after the deadline that was set out in the purported agreement of sale. She revealed that the identity of Jorum and his relationship to the owner of the property was disclosed after the signatures had been appended to the agreement of sale. The plaintiff delivered the signed agreements to the estate agent's conveyancers ostensibly for transfer of title even though the purchase price had not been paid.

Under questioning by the second defendant's counsel she revealed that she only saw exhibit 3 after she had signed the agreement of sale of 15 January 2008. She was aware that the first defendant was abroad. She did not verify with the second defendant his mandate to dispose of the property. She was misled by his conduct into believing that he had the mandate to sell the property. She dealt with the second defendant as the representative of the owner and not as the alter ego of the estate agent.

She admitted that though the agreement stated that it was executed in Bindura, all the parties signed it in Harare. She, together with the second defendant and his witness, signed the agreement at the rendezvous near CABS while her witness Mr Mpofu did so at the plaintiff's offices on another day. She agreed that the second defendant returned the amount on 22 February 2008 as depicted in exhibit 9 but the plaintiff refused to accept the cheque. He brought it to the plaintiff's offices as shown in exhibit 10 dated 10 March 2008 and the witness saw it on 17 March 2008. Exhibit 10 indicated that the money had been wrongly deposited into the estate agent's account and reiterated that the agreement of sale had been cancelled on 17 January 2008 after it emerged that the first defendant had not mandated her son to sell the property. He warned them to retrieve their cash before it was eroded by inflation. She was evasive on whether the return of the money signified acceptance of the purchase price. While in her evidence in chief she indicated that she only met the second defendant on 15 January she recanted and accepted that she had also met him on 7 January at the same place. She did

not dispute that on 7 January the second defendant had arranged for her to meet with the owners' son at a later date.

She denied that the second defendant and his witness had signed the agreement before he met her. She denied requesting the agreements so that they would be perused at her offices and said she took all copies at the second defendant's request for her to deposit them with his conveyancers.

She maintained that the cell number in exhibit 5 belonged to the second defendant despite his denials. She also denied that the second defendant raised the issue of title deeds and power of attorney at that meeting and that she had not signed the agreement because the son had intimated that he was going to ascertain his mother's attitude to the purchase price offered by the plaintiff. She prevaricated on whether she took the agreements to the conveyancers to fulfill the second defendant's request or whether she did so for transfer to be effected.

She intimated that when the second defendant returned the money she did not know what it was for yet exhibits 9 and 10 clearly spelt out that the second defendant was not accepting the purchase price that had been deposited into the account of the estate agent.

In re-examination she stated that the son did not join in or participate in the discussion she had with the second defendant. He was 5 m away and only moved closer for the signing ceremony.

She was an evasive and unsatisfactory witness who had no qualms in falsifying her testimony.

Joseph Muchechetere accompanied Mrs Kabanda to the meeting of 15 January 2008. The second defendant arrived after 5 pm. After some minutes they were joined by the owner's son. The second defendant and the owner's son then appended their signatures to the agreement. The former handed them to Mrs Kabanda. She did not sign them but took them to her office. No discussion about title and power of attorney or authority to sell took place. All that was asked of Mrs Kabanda was to deposit the agreement with the second defendant's lawyers. He maintained his version under cross examination by the first defendant's counsel.

To the second defendant's counsel he denied that the reason proffered for taking the documents to the plaintiff's offices was for the approval of the purchase by the Finance Manager before Mrs Kabanda could sign the agreement. He maintained that the agreement was taken by Mrs Kabanda because the second defendant and his witness were in a hurry to

return to their respective towns even though it would not have taken the plaintiff's witnesses more than 5 minutes to append their signatures to the agreement.

The last witness for the plaintiff was Lydia Hwengwere, a principal technician in the Department of Evaluation and Estates Management in the Ministry of Public Works. She complied exhibit 8 and valued the property at US$ 46 594-00.

Mukanhairi prevaricated on whether exhibit 3 was a contract of sale or an expression of an intention to sell. His averment that it was an agreement to sell the property at $50 billion was not borne out by the document. The price of $50 billion negotiable was not a certain figure. I find that he believed that it was merely an intention to sale. After all he referred it to Mrs Kabanda because he did not have the authority to negotiate and contract on behalf of the plaintiff.

Mrs Kabanda was not a truthful witness. She falsely claimed that exhibit 3 constituted the first agreement of sale between the plaintiff and the first defendant. An analysis of exhibit 3 shows that it did not indicate who the seller was or show the purchase price. I agree with the second defendant's version that it was an invitation to treat that was produced by the estate agent to call on interested parties to make an offer. In any event, Mrs Kabanda could not be heard to say that it was an agreement of sale when she categorically revealed under cross examination that she saw it after the execution of the agreement of sale exhibit 4. She at first denied that she held a meeting with the second defendant on 7 January 2008 at the same rendezvous that they met on 15 January. Her evidence that she signed the agreement of sale exhibit 4 at that place was contradicted by Muchechetere. She took all the copies of exhibit 4 for discussion at the plaintiff's offices with her other colleagues and only appended her signature at her offices. She did not collect them to assist the second defendant, who was purportedly in a hurry, surrender them at his conveyancer to process transfer. She insisted on making payment in the estate agent's bank account after she was aware that the owner had not mandated the second defendant to sell the property and was not interested, in any event, in the offer that the plaintiff had made. Her actions demonstrate that she was snatching at an agreement of sale that she knew had not yet come into force.

The first defendant resides in the United Kingdom. She did not attend court as she was unable to travel to Zimbabwe. Her son Jorum Mteliso gave evidence. The property in issue was purchased in 2001 through the second defendant's company. In 2007 Jorum discussed with his mother about her relocation from Bindura to Marondera where he set up home. He

explored the idea with the second defendant who in November 2007 advised him that one of the sitting tenants was interested in buying the property for $50 billion. He advised him that he would discuss the offer with his mother. The second defendant again called him on 14 January 2008 before he had apprised his mother of the first offer and told him that the plaintiff was interested in buying the property for $95 billion. He agreed to meet the second defendant at CABS along Fourth Street and Central Avenue in Harare on the following day. He found him talking to the plaintiff's personnel and stood a distance away. The second defendant called him and introduced him. Thereafter the second defendant took him aside and requested him to append his signatures on exhibit 4. He alleged that he did not appreciate that he was signing an agreement of sale but appended his signature to obviate the possibility of visiting the second defendant again in the event that his mother agreed to the purchase price. He specifically told the second defendant to hold onto the agreements pending communication of the offer to and from his mother. He was introduced to the personnel from the plaintiff but he did not talk to them. That evening he communicated with his mother who declined the offer. He sent a short message service to the second defendant advising him of his mother's attitude. He denied ever instructing the second defendant to sell but asked him to explore the possibility. He did not discuss the issue of power of attorney and title deeds with the plaintiff's representatives.

He stuck to his version during the searching cross examination that he was subjected to by the plaintiff's counsel. He maintained that he had no mandate to sell the property. He was adamant that he did not instruct the second defendant to do so. He disputed sending the message in exhibit 5. He stated that all he dispatched to the second defendant was that his mother had not accepted the offer. When he was questioned by the second defendant's counsel it was not even suggested to him, as had been pleaded by the second defendant, that he had mandated the second defendant to sell the property.

Both Muchechetere and Mrs Kabanda confirmed his version that he did not confer with them about the offer at the CABS meeting. He was an eloquent witness. I did not accept his version that he did not know that he was signing an agreement of sale. He could not have and in fact did not miss the caption "Memorandum of Agreement" on exhibit 4. I accepted his explanation that he signed the agreement on the understanding that it would come into force only after her mother had accepted the plaintiff's offer. It appeared from his evidence that he trusted the second defendant and acted upon his promises. He did not know that the second defendant was playing the plaintiff against her mother by soliciting an offer from it and an

acceptance from her. In so doing, the second defendant was conforming to the nature of his profession, which was crisply put by De Villiers and Macintosh in *The Law of Agency in South Africa* 3 ed at p 241-2 in these terms:

> "An estate agent is, in practice, in somewhat different position from most other persons who render 'professional services'. He acts sometimes for the buyer and sometimes for the seller; unlike most other professional men, he has no professional rules which inhibit him from vigorously soliciting business from both buyer and seller. An owner of property, who has in fact not directed his mind to the sale of his property, may therefore be approached by an agent who already has a willing buyer for that property; and the 'seller' may well not realize that in 'allowing' the agent to introduce the buyer, he may lay himself open to the claim that he has employed the professional services of the agent and is liable for the agent's commission."

It seems to me, therefore, that Jorum was naïve but truthful in his testimony.

The second defendant is the managing director of the estate agent. His company acted as the estate agent for the first defendant in leasing the property. After the first defendant's son relocated to Zimbabwe from the United Kingdom in August 2007, he made certain reports to him which resulted in exhibit 2, the letter giving notice of termination to the plaintiff of the lease agreement. After he had written exhibit 2, the first defendant's son advised him to source the value of and solicit offers for the property as the first defendant was mulling the possibility of relocating to Marondera on her return from the United Kingdom. He valued the property at approximately US$50 000.00 which he equated to $50 billion in local currency.

An assistant in his office Safari Malunga generated exhibit 3 for Mukanhairi to satisfy the plaintiff that the property was for sale. He was inviting offers in the region of $50 billion. When Mrs Kabanda contacted him in January they met on 7 January to discuss the sale. He had set a reserve price of $100 billion. He advised her that the owner required the money to purchase a similar property in Marondera and informed her who his conveyancers were. They set another meeting for 15 January for her to meet the owner's son.

On the 15 January Jorum was the last to arrive. After the introductions Jorum conferred with him in private. Jorum had neither communicated with his mother about the sale nor possessed a power of attorney nor the title deeds to the property. Jorum agreed to sign the proposal form in the possession of the second defendant and they appended their signatures. Thereafter the second defendant handed the documents to Mrs Kabanda. He advised her of the difficulties that Jorum had in communicating with the seller and also that he needed a power of attorney and a copy of the title deeds from the seller. She insisted that the finance manager had

to scrutinize the agreements before she could sign them. He agreed to let her take the documents and keep them until Jorum had communicated with him about his mother's attitude to the offer and the power of attorney and title deeds. On receipt of Jorum's short message service he dispatched it to Mrs Kabanda on 17 January 2008 advising her that the deal was off. He was surprised to receive the signed copies of the agreement of sale when he visited his conveyancers. The plaintiff deposited $95 billion into the estate agent's account without his authority. That money should have been deposited with the conveyancers pending transfer. He produced exhibit 9 and 10 as proof that he did not accept the money. He drew a cheque in favour of the plaintiff for the same amount, which it did not liquidate.

He stated that at all material times he acted for the estate agent and not in his personal capacity. He agreed with the value assigned to the property by Lydia Hwengwere.

He was subjected to thorough cross examination by the plaintiff's counsel. He maintained that exhibit 3 constituted an invitation to treat. He was adamant that he had no authority to accept the offer of $95 billion from either the first defendant or her son. He was adamant that exhibit 4 was not an agreement of sale but a proposal form. He maintained that Mrs Kabanda was aware that it was a proposal that was subject to acceptance by the first defendant. On 17 January he had advised through the short service message and verbally that the proposed agreement was off the table. The basis of his personal liability was not canvassed with him during cross examination. All that I discerned was that the basis of the personal suit was that he was a director of the company.

In essence, the second defendant's testimony was that he neither possessed the authority of the owner or her son to dispose of the property nor concluded an agreement of sale with the plaintiff nor acted in his personal capacity in the negotiations he carried out with the plaintiff.

In his plea, the second defendant averred that he had been authorized by Jorum to sell the property. Jorum stated that he asked him to evaluate how much the house could be sold for. The abandonment of his plea demonstrated that Jorum told the truth. It seems to me that the second defendant, in anticipation of a sale, solicited an offer from the plaintiff in a bid to entice the first defendant to sell her property. It seemed to me that in his discussions with Mrs Kabanda on 7 January he must have apprised her of the involvement of Jorum in the sale, a fact she admitted, otherwise his presence on 15 January would be inexplicable. Jorum did not bring the title deed or the power of attorney; and Mrs Kabanda required the approval of the Finance Manager, who failed to attend the evening meeting. I find that the agreement reached

by the second defendant and Mrs Kabanda was conditional on two factors, that is, a positive response from the first defendant and the approval by the plaintiff's finance manager to the purchase price that she provisionally offered. This view is confirmed by the contents of the short message service that the second defendant transmitted to Mrs Kabanda. It seemed to me that the message stampeded the plaintiff into signing the agreement in the hope of holding the first defendant to the proposed purchase price.

From the totality of the evidence led, I find the facts, in brief, to be these. The first defendant, the registered holder of title in the property in question and a resident of the United Kingdom, appointed the second defendant's company to lease it out. Her son discussed with the second defendant the possibility of her relocation to Zimbabwe. The son requested the second defendant to provide him with the value of the house in anticipation of her further relocation within Zimbabwe from Bindura to Marondera. He solicited an offer from the plaintiff and enticed the son to obtain a response from his mother, who turned it down. The second defendant immediately notified the plaintiff of her decision. The plaintiff sought to hold the first defendant to the agreement reached with the second defendant and deposited the sum offered into the company account of the second defendant's employer. The second defendant returned the money but the plaintiff declined to accept it.

On the first issue, Mr *Mazonde*, for the plaintiff, correctly conceded that the second defendant did not have actual authority from the first defendant to sell the immovable property in question. He however submitted that he had ostensible authority to do so. He relied on the head note of *Reed NO* v *Sagers Motors* (*Pvt*) *Ltd* 1970 (1) SA 521 (RAD) which was quoted with approval in *Stewart* v *Zagreb Properties* (*Pvt*) *Ltd* 1971 (1) RLR 180 at 184D-F; *Seniors Services* (*Pvt*) *Ltd* v *Nyoni* 1986 (2) ZLR 293 (SC) at 298G-299B; *Mine Consultants & Supply Co* v *Borrowdale Motors* (*Pvt*) *Ltd* 1990 (2) ZLR 281 (SC) and *Gwafa* v *Small Enterprises Development Corporation & Anor* 1999 (2) ZLR 261 (S) at 263G-264A. In *Reed*'s case, *supra,* BEADLE CJ stated at 523 H-524A that:

> "If a principal employs a servant or agent in a certain capacity, and it is generally recognized that servants or agents employed in this capacity have authority to do certain acts, then any of those acts performed by such servant or agent will bind the principal because they are within the scope of his "apparent" authority. The principal is bound even though he never expressly or impliedly authorised the servant or agent to do these acts, nor had he by any special act (other than the act of appointing him in this capacity) held the servant out as having this authority. The agent's authority flows

> from the fact that persons employed in the particular capacity in which he is employed, normally have the authority to do what he did."

The learned CHIEF JUSTICE cautioned at p 524B-C that:

> "Whether an act is or is not within the scope of the apparent authority of an agent is, therefore, essentially a question of fact … A decision on the facts in one case, however, should never be relied on too strongly as a reason for the making of a finding of fact in another."

The facts in the present matter differ from the facts in *Reed's* case and all the other cases, cited above, which approved this legal principle. The present matter involves a sale by an estate agent who had express authority to lease the property. Mr *Mazonde* strenuously argued that where an estate agent who is mandated to lease then sells the property, the owner is estopped from disputing the sale because the general business of an estate agent encompasses both leasing and selling. His argument overstretched the general principle enunciated by BEADLE CJ. On the facts of this case, it is clear that the estate agent was employed to lease the property. The scope of his authority only extended to leasing it. Leasing and selling are as distinct as chalk is to cheese. A sale would be in breach of the scope of the estate agent's mandate. Ostensible authority would arise, on the facts, in those circumstances that are incidental to or arise from the leasing of the property such as the setting of rentals and the tenure of the lease. An estate agent who is mandated to lease a property would not normally have the authority to sell that property.

Accordingly I agree with Ms *Munharira*, for the first defendant, that the second defendant did not have ostensible authority to sell the property in issue. The plaintiff has failed to discharge the onus on it to show that the second defendant had the authority of the first defendant to sell the property in question.

As regards the second issue, Mr *Chikono,* for the second defendant, submitted that the second defendant had been wrongly joined in as a party to these proceedings. He contended that to the knowledge of the plaintiff at all material times the second defendant acted as an employee and agent Manyati Enterprises (Pvt) Ltd trading as MBB Consultancy Services. Mr Mukanhairi confirmed that the second defendant acted for and on behalf of Manyati Enterprises. The point was raised by the second defendant in his plea but the plaintiff ignored it. In his submissions, Mr *Mazonde* beseeched the Court to lift the corporate veil and find the second defendant liable in his personal capacity.

The general rule which was set out in *Salomon v Salomon & Co* (1897) AC 22 (HL) is that a company is distinct and separate from its shareholders. In *Van Niekerk v Van Niekerk & Ors* 1999 (1) ZLR 421 (S) at 427D-428B SANDURA JA set out the rare circumstances in which the corporate veil is lifted. These include fraud or other improper conduct in the establishment or use of the company. NDOU J in *Mkombachoto v Commercial Bank of Zimbabwe Ltd & Anor* 2002 (1) ZLR 21 (H) at 26D-E stated that:

> "In my view, the court has no general discretion to disregard the company's separate legal personality whenever it considers it just to do so. The court may "lift the veil" only where otherwise as a result only of its existence fraud would exist or manifest justice would be denied."

In fact, the plaintiff's declaration does not disclose its cause of action against the second defendant. It did not set out whether it was based on delict or contract. The pleadings differ with those in *Taunton Enterprises* (*Pvt*) *Ltd & Anor* v *Marais* 1996 (2) ZLR 303(H) where the plaintiff pleaded the cause of action as *inter alia* negligent misstatement causing economic loss. In the absence of a cause of action, the plaintiff faces the daunting task of justifying the piercing of the corporate veil. It has not disclosed the basis for lifting the veil. It did not plead fraud nor did it plead any facts which demonstrated the presence of manifest injustice.

On the facts, the second defendant did not have the mandate to sell the property. While he suffered under a misapprehension that the son of the lessor had such a mandate, when the purported agreement of sale was concluded, the plaintiff through Mrs Kabanda was aware that the agreement was conditional upon the acceptance of the offer by of the lessor. When the lessor declined the offer the second defendant immediately advised the plaintiff. The reaction of the plaintiff thereafter was akin to snatching at an agreement. In reality, no agreement of sale was concluded between the plaintiff and the second defendant upon which the plaintiff suffered damages. Thus while I would dismiss the claim against the second defendant on the failure by the plaintiff to plead a cause of action against him, it is also clear that he was wrongly cited.

Accordingly, the plaintiff's claims against the defendants are dismissed with costs.

*Gill, Godlonton Gerrans*, plaintiff's legal practitioners
*Legal Aid Directorate*, first defendant's legal practitioners
*Mhiribidi, Ngarava & Moyo,* second defendant's legal practitioners