

NEWMAN MUROVE MAPFUNDE

Versus

CHRISTOPHER MANGISI

And

MANGISI AND ASSOCIATES

And

BULAWAYO CITY COUNCIL

And

LOUSIA MANGISI

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 9,10,11,15, 16 SEPTEMBER 2008 & 29 SEPTEMBER 2001

S. S. Mazibisa for plaintiff
1st and 2nd defendants in person
2nd defendant acting through 1st defendant
No opposition from 3rd defendant

Civil Trial

KAMOCHA J: This matter was initiated by way of an urgent chamber application wherein the plaintiff was granted a provisional order in the following terms:-

- “(i) that 1st and 2nd respondents be and are hereby interdicted from reselling and transferring right, title and interest in flat number 42064/13 Makokoba to any person save for the applicant.
- (ii) That the respondents be and are hereby interdicted from processing any transfer of the right, title and interest in flat number 42064/13 Makokoba to any person save for the applicant.”

The terms of the final order the plaintiff sought were these:-

- “(1) that the respondents be and are hereby ordered to take all necessary steps to transfer right, title and interest of flat number 42064/13 Makokoba, Bulawayo to applicant within five (5) days of confirmation of order.
- (2) Failing compliance with (1) above the Deputy Sheriff be and is hereby authorized to sign the relevant papers for the effecting of transfer to applicant.
- (3) That the 1st and 2nd respondents jointly and severally pay costs of this suit one paying the other to be absolved at an attorney-client scale.”

The parties, however later agreed that the whole application be referred to trial and obtained a court order by consent to that effect.

A further agreement was reached, before the trial commenced, that there were only two issues for the determination of the court namely,

- “(a) whether there was a valid contract of sale between the parties in respect of flat number 42064/13 Makokoba, Bulawayo; and
- (b) Whether the 4th defendant has a right to stop the sale or transfer of the property in dispute.”

The 4th defendant sought and was granted an order by consent for joinder as the 4th defendant.

In his evidence the plaintiff told the court that he lived at flat number 42064/13 Madlela Flats, Makokoba, Bulawayo – “the flat” and was employed as a driver by Homage Funeral Services. He had retired from the Zimbabwe Republic Police after 26 years service on 9 February 2001.

On 27 July 2001 he saw an advert in the Chronicle Newspaper, inserted therein by the 1st and 2nd defendants inviting offers for the purchase of flat number 42064/13 Madlela Flats Makokoba, Bulawayo. He phoned one of the numbers supplied to the Newspaper and spoke to a lady who directed him to the second defendant Mangisi and Associates. He proceeded there and on arrival he saw the lady he had spoken to over the phone at the reception. He identified himself to her and she took him to the first defendant Christopher Mangisi whose office was on the same floor as Mangisi and Associates. The witness did not know Mangisi before that day.

The plaintiff introduced himself and informed Mangisi that he was interested in buying the flat which had been advertised in the Chronicle Newspaper and requested to go with Mangisi to view it.

Mangisi acceded to the request and drove the plaintiff to Makokoba to show him the flat. On arrival they found a young man of about 20 years who opened the door to the flat. They entered the flat for viewing purposes. The plaintiff noticed that the flat had two broken windows.

Mangisi told the plaintiff that that was the flat that he was selling for \$215 000,00. The plaintiff negotiated for the reduction of the purchase price to \$210 000,00. The reasons being that he would be paying cash for the flat and that he would also replace the broken windows. Mangisi accepted the reduced purchase price of \$210 000 cash.

Mangisi then drove the plaintiff back to Mangisi and Associates where they discussed about how payment was going to be effected. The plaintiff told Mangisi that he was a pensioner who had just received a lump sum. Mangisi was pleased with that and gave the plaintiff his business card. He then called in his wife the 4th defendant and informed her that he had accepted the reduced purchase price of \$210 000 for the flat since plaintiff would be paying cash for it. The wife said there was no problem in the light of that.

The plaintiff told the couple that he needed to use \$40 000. He suggested that he would write a cheque in the sum of \$250 000 in the name of Christopher Mangisi to be withdrawn from POSB. Christopher Mangisi and his wife would keep the \$210 000 and give the plaintiff the \$40 000 which he needed to use. The suggestion was acceptable to Mangisi.

He was then asked to fill in a form of offer to purchase which he duly filled in and signed on that same day 27 July 2001. The form was filed of record as annexure "A" at page 8 of the bundle of documents. The form shows that the plaintiff offered to purchase the flat for \$210 000 cash.

After the form had been filled in the plaintiff left it at Mangisi and Associates and proceeded to POSB and made a cheque withdrawal in the name of Mangisi and Associates. He was told by the bank officials to return and collect the cheque on 31 July 2001. He went and advised Mangisi accordingly.

On 31 July 2001 he went to Mangisi and Associates before proceeding to collect the cheque and informed Mangisi that he was going to collect the cheque. Mangisi told him that that was in order. He proceeded to the bank and collected the cheque. See page 9 of the bundle of documents.

He returned with the cheque to Mangisi who called his wife and secretary. He instructed the secretary to issue plaintiff with two receipts which were issued to the plaintiff in the presence of Mangisi and his wife the 4th defendant. The two receipts were filed of record at page 11 of the bundle of documents. They are both on Mangisi and Associates letter heads. Both receipts reflect that the plaintiff had purchased flat number 42064/13 Madlela Flats on 31 July 2001 and he had paid the purchase price of \$210 000 in full.

After the payment in full was made the plaintiff asked for the form of offer to purchase but Mangisi told him that the form was no longer relevant since he had paid the purchase price in full but the plaintiff suspected that Mangisi was hiding it as he (Mangisi) had not signed it.

He then asked Mangisi when he was going to take occupation and was told the end of September 2001. He then advised Mangisi that he had been given a grace period by his former employer and was in no hurry to occupy the flat.

Surprisingly on 10 August 2001 Mangisi called him to his office and asked him if he could accompany him to the Mzilikazi Housing Office. It turned out that that was the day the flat was transferred into Mangisi's name. From there he drove the plaintiff to house number 33297 Entumbane where he introduced him to the occupants as his friend.

After going round and round in circles Mangisi finally told the plaintiff that the people occupying the flat were refusing to vacate despite the fact that they had been given notice to vacate. He went on to tell the plaintiff that he had no money to pay a lawyer to have them evicted. It was then that it dawned to the plaintiff that Mangisi was calling him to his office to tell him that.

The plaintiff was naturally not amused by that. He got angry and in a feat of anger he told Mangisi that he was no longer interested in the flat and demanded his \$210 000 back. As expected Mangisi, said he no longer had the money as he had already used it to purchase a car and to clear his other debts.

The next day after his anger had cooled down he went back to Mangisi who took him to some legal practitioners known as Hara & Moyo Legal Practitioners and introduced him to Mrs Moyo. He told the lawyer that plaintiff was the new owner of flat 42964/13 Madlela Flats, Makokoba. Mangisi informed the lawyer that he had no money to pay for the evictions of the tenants there from.

The plaintiff then agreed to pay on behalf of Mangisi for the evictions of the tenants. He paid \$100 000,00 to Moyo – Hara & Partners on 21 August 2001 and was given a receipt annexure "E" at page 13 of the bundle of documents. The plaintiff further paid a sum of \$31

797,50 on behalf of Mangisi on 28 March 2002 for the eviction of a tenant known as Isaac Moyo who was eventually evicted at the end of September 2002.

The receipt was filed of record at page 15 of the bundle of documents. Mangisi was given the receipt and was happy that Isaac Moyo was evicted.

Mangisi and his wife were aware that the plaintiff would take occupation of the flat after Isaac Moyo's eviction at the end of September 2002. He actually informed them when he took occupation.

Trouble started when plaintiff requested that the flat be transferred into his name. Mangisi began to demand a further payment of \$900 000 and stated that his wife was asking for that amount because of inflation as the Zimbabwe dollar was losing value. He refused to effect cession before that amount was paid.

The plaintiff went to inform Ms Moyo the lawyer about the new developments and she referred him to his current legal practitioners because Mangisi was her client. His legal practitioners addressed a letter to Mangisi and Associates on 11 October 2007 pointing out to them that their refusal to transfer the property into the name of the plaintiff was wrongful and unlawful. They were advised that the position they had taken was illegal and malicious and were warned that failure to make appropriate arrangements to effect transfer within 7 days would lead to litigation being instituted for which attorney and clients cost would be claimed.

The plaintiff told the court that he had stayed at house number 33297 Entumbane for 11 months whilst Mangisi was battling to evict the tenants from the flat. Mangisi had asked one Alex Mazula to accommodate the plaintiff pending eviction of the tenants from the flat. The plaintiff paid rentals directed to Alex Mazula.

After the evictions of all the tenants from the flat plaintiff took occupation as its owner. Mangisi and his wife never demanded for rentals from him. He has been paying rates and taxes ever since he took occupation of the flat as the owner.

As regards the claim of the wife who was joined as 4th defendant the plaintiff contended that she had no legal basis for her claim. She was not a party to the agreement between her husband and City of Bulawayo. She was not a co-owner of the flat. Documents at the Council offices only reflect the name of Christopher Mangisi. Her name does not feature at all. For instance plaintiff produced a City of Bulawayo Tax Invoice in relation to the flat which bears the name of Christopher Mangisi only.

The 4th respondent's cross-examination of the plaintiff established that she was well aware of the sale of the flat. She was the one who actually approved the reduced price of \$210

000 as the plaintiff was paying it in full. When she suggested that Ms Moyo was not her lawyer the plaintiff reminded her that when he showed her and her husband receipts reflecting the payments she had made to the lawyers for the evictions of the tenants from the flat she was happy like her husband.

Her suggestion that she had not consented to the sale of the flat is clearly false and must be rejected. The court finds that she actively took part in the sale of the flat. Each time a decision was to be taken she was there. She made the final decision that the flat should be sold at the reduced price of \$210 000 as payment was in full. She was present when plaintiff brought the cheque for \$250 000 to Mangisi & Associates and was present when the plaintiff brought the receipt for the payments made to the lawyers as eviction fees. Consequently she has no right to stop the sale of the flat to the plaintiff.

The plaintiff's testimony was given clearly and in a straight forward manner. He was worth to be believed. The same cannot be said about both Mangisi and his wife who were patently untruthful right through their evidence.

For instance Mrs Mangisi wanted the court to believe that she was not aware of the sale of the flat and had not even met the plaintiff before meeting him at the police station. She further suggested that she did not know that the lawyer's fees to evict the tenants came from the plaintiff when the evidence clearly shows that she was fully aware of that fact.

Mangisi himself was worse than his wife as he was not only untruthful but was also extremely evasive. He was an unbridle liar – who said the flat was advertised in the newspaper by mistake. He also wanted the court to believe that receipts showing that plaintiff paid the purchase price in full on 31 July 2001 were also written in error by his private secretary Ms Martha Zengeni. He did not spare his erstwhile legal practitioner whom he accused of leaving out material facts in the pleadings. Mangisi and his wife are not worth to be believed. Where their evidence conflicts with that of the plaintiff which was well given I prefer the plaintiff's evidence to theirs which is accordingly rejected. Their defence witness Martha Zengeni did not take their case any further.

The court has not difficulty in finding that there was clearly a valid contract between the parties.

In the result, I would grant an order in terms of the final order sought which is at page 2 of this judgment.

Cheda & Partners, plaintiff's legal practitioners