

SARAH MUKARATI

VERSUS

PERCY HATIVAGONI SVIKIRO

AND

CITY OF KWEKWE

IN THE HIGH COURT OF ZIMBABWE
CHEDA AND NDOU JJ
BULAWAYO 19 NOVEMBER 2007 AND 17 JULY 2008

Mr Ndove for the appellant
Mr Tsvangirai for the respondent

Judgment

CHEDA J: This is an appeal against the decision of the magistrate court sitting in Kwekwe.

The brief facts of the matter which are largely common cause are that first respondent is the holder of a right, title and interest in stand number 147/9 Mbizo, Kwekwe [herein referred to as “the property”]. Since 1996 to 2001 when the matter was first heard, first respondent has never resided in that property.

It is also not in dispute that throughout the relevant period, first respondent had assigned the running of this property to one Pinkton Mutage [herein after referred to as “Mutage”]. While appellant and her daughter Sylvia Mukarati happened to be looking for a property to purchase, they came across Mutage. Mutage had the responsibility of maintaining the property, paying rates and rentals, electricity leasing out the property to third parties and even negotiating with creditors as is shown in the record of proceedings. It is through the negotiations between Sylvia on behalf of her mother appellant and Mutage that an agreement of sale was entered into with second

respondent being the local authority under whose authority the property is situated issued out a form, as is the procedure when one is purchasing a property under their authority. The said Mutage gave appellant and her daughter vacant possession on the basis of the agreement of sale.

First respondent argued that this matter was not properly before the court as the appeal was filed out of time and the application for condonation for the late noting of appeal was not granted. While this may be so, this court has a discretion in applying the rules of the court where justice demands that this be so.

In my view application of these rules can be dispensed with depending on the circumstances of each case in order to render justice between the parties. In the present case Mutage was dealing with appellant, who is described as an old woman of 84 years and frail as compared to himself and first respondent.

The issue which falls for determination is whether or not Mutage was first respondent's agent. Appellant and her daughter Sylvia were dealing with Mutage throughout the negotiations. Although he denied it, the trial court made a finding that appellant had successfully negotiated the purchase of the property, with Mutage. In other words Mutage had implied authority to deal with this property.

I find that the finding by the learned trial magistrate was correct and having made this finding it would have been inescapable for it to conclude that Mutage had authority to negotiate and enter into an agreement to sell first respondent's property.

Appellant was made to believe that Mutage had authority to sell her the property Mutage acted as if he had authority to sell the property and his actions misled appellant. Appellant relied on Mutage's actions to her prejudice.

Judgment No. HB 66/08
Case No. HCA 2099/03

I confirm the unreliability of first respondent as a witness.

In light of the above, or the appeal is upheld with costs.

Messrs Maronedze, Mukuku, Ndove and partners, appellant's legal practitioners
Danziger and partners, respondents' legal practitioners