

CHRISTMAS GIFT (PVT) LTD

Versus

JAMES KIYELA MOYO MAFOHLA

And

LIKOBA MAKASENGA a.k.a. RACOBBA MAKASHINGA

And

HARUBVI MBEDZI

And

ALOUISA MUKARATI

And

POTE STEPHEN CHAMBOKO

And

PATRICK DZIVA

And

THOMAS MUNANGA

And

ONESIMO MUZANAGO

And

THE REGISTRAR OF DEEDS, BULAWAYO

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 4 AND 7 OCTOBER 2010

Kara for applicant
C Mashoko, for respondent
Urgent Chamber Application

KAMOCHA J: A default judgment was issued by this court on 8 July 2010. Its terms were as follows:-

“It is ordered that:-

- (1) It be and is hereby confirmed that the plaintiffs have, in terms of section 4 of the Prescription Act, Chapter 8:11, acquired by prescription the undivided portion of the land bounded by Regina Mundi Secondary School to the north, Christmas Gift Extension to the east, Harare Road to the west and Grays Road, to the south – measuring approximately 229 hectares and constituting about 15% of the total land area of the Remainder of New Christmas Gift situate in the district of Gwelo held by defendant under Deed of Transfer number 820/1951 dated 12th June 1951.
- (2) The defendant be and is hereby ordered and directed to take all the steps necessary to formally subdivide the said portion of land as an individual unit from the Remainder of New Christmas Gift, in accordance with the provisions of the Regional, Town and Country Planning Act, Chapter 29:12, and of the Land Survey Act, Chapter 20:12 pertaining to the subdivision of land, within (30) days of the date of this order.
- (3) The defendant be and is hereby ordered and directed to transfer to the plaintiffs the sub-divided unit of land in terms of the Deeds Registries Act Chapter 20:05, upon the completion of the formal subdivision.
- (4) The costs of this suit be borne by defendant.”

The 8 respondents were plaintiffs in the above matter which was case number HC 1985/09. It admits of no doubt that service of summons in that matter was not properly effected. Summons was served at 100 Seke Road Graniteside, Harare instead of 7 Allan Wilson Avenue, Belgravia, Harare.

For this and other reasons the defendant who is the applicant in this matter filed an application for the rescission of the default judgment and simultaneously filed an urgent chamber application seeking an order in these terms.

“It is hereby ordered that:-

1. Pending the finalization of the application for rescission of the judgment granted in case number HC 1985/09 to be instituted by the applicant against inter alia:-

JAMES KIYELA MOYO MAFOHLA
LIKOBA MAKASENGA a.k.a. RACOBIA MAKASHINGA
HARUBVI MBEDZI

ALOUISA MUKARATI
POTE STEPHEN CHAMBOKO
PATRICK DZIVA
THOMAS MUNANGA
ONESIMO MUZANAGO

The above respondents being the 1st to the 8th herein. Such respondents be and are hereby interdicted from transferring alienating or in any way disposing or dealing, or attempting to transfer alienate, or dispose certain piece of land measuring approximately 229 hectares being 15% of the total land area of the remainder of New Christmas Gift situate in the District of Gweru, held by Christmas Gift (Pvt) Limited under Deed of Transfer number 820/1951 dated 12 June 1951.

2. Pending the finalization of an application for rescission of the order granted in case number HC 1985/09, the applicant's obligations in terms of paragraphs 2 and 3 of the aforesaid order granted in case number HC 1985/09 are hereby suspended."

The above order, if granted, does not seem to be prejudicial to the respondents at all. A perusal of the application for rescission clearly reveals that there is a need for the parties to argue it before the respondents enforce the terms of the order granted in case number HC 1985/09

In the result I would grant the provisional order in terms of the above draft.

Hussein Ranchhod & Co applicants' legal practitioners
Jumo Mashoko & Partners respondents' legal practitioners