

IMMACULATE BLESSING MABIZA  
versus  
IVON NGWIRA

HIGH COURT OF ZIMBABWE  
MATHONSI J  
HARARE, 26 FEBRUARY 2013 AND 06 MARCH 2013

Plaintiff in person  
Defendant in person

### **Civil Trial**

MATHONSI J: The plaintiff instituted proceedings against the defendant for payment of the sums of US\$2000-00 being money paid to the defendant towards the purchase of stand 574 Juru Growth Point (the stand) and US\$2000-00 for improvements effected on that property. In her declaration, she averred that the parties had entered into a written agreement about December 2008 in terms of which she purchased the stand for US\$4 500-00 which was to be paid by a deposit of \$2000-00 with the balance of \$2 500-00 being paid by March 2009.

The plaintiff further averred that, in breach of the agreement, the defendant increased the purchase price to \$9 000-00 even before the balance in terms of the agreement became due, thereby terminating the agreement. Meanwhile, in pursuance of the agreement, the plaintiff had taken occupation of the stand where a house had been constructed and installed electricity, plastered part of the cottage and constructed a blair toilet at a cost of \$2000-00 which she claimed from the defendant.

The defendant contested the claim stating in her plea, *inter alia*, that the agreement was illegal as the purchase price was to be paid in United States dollars without the authority of monetary authorities, that the consent of the local authority had not been secured and that the plaintiff should have sued her mother the beneficiary of the agreement. She however tendered payment of US\$2000-00 paid towards the purchase price averring that she had cancelled the agreement.

At the pre-trial conference held before a Judge, the issues were agreed as:-

1. Whether or not the plaintiff is entitled to claim from the defendant a refund of the purchase price and the value of improvements on the property in dispute, if so, what amounts are due to her.
2. Whether or not the winner is entitled to costs on the attorney and client scale.

At the trial, it was common cause that the defendant had refused the sum of US\$2000-00 paid towards the purchase price and this was done in November 2012. The only outstanding issues were therefore the claim for improvements and the costs of suit.

The plaintiff testified that when she took occupation of the house in January 2009, it was in terms of the agreement between the parties and she immediately installed electricity at the house at a total cost of \$1380-00. She also built a blair toilet at a cost of \$350-00, had the cottage plastered at a cost of \$150-00 and also installed burglar bars for \$150-00. She was therefore claiming \$2000-00 from the defendant. She did not explain why only that amount was being claimed when her figures add up to \$2030-00. She only produced a break-down of the claim but could not produce any receipt or invoice to support her claim.

Asked by the defendant why she was claiming \$2000-00 from the defendant when she had accepted an offer of \$1100-00 from the new purchaser of the stand as compensation for her improvements, she mumbled something to the effect that she has a price for the court and a different price for the new purchaser because with the latter they negotiated using current prices for building material. She maintained that she was pursuing her claim against the defendant because the new buyer had not paid for the improvements although he had promised to.

I am not satisfied that the plaintiff has made a good case for the claim of \$2000-00 for the improvements. If indeed she expended the sums set out in her evidence, she would have no difficulty in producing receipts and invoices to support her claim. To say that she has the receipts somewhere but was unable to bring them to court is simply disingenuous.

The defendant said that the plaintiff indeed effected the improvements she set out but was unaware of the value of these improvements. She however maintained that the value should be around \$1100-00 because that is the amount accepted by the plaintiff from the new purchaser after an inspection of the improvements. I agree. It occurs to me that the plaintiff has withheld

the receipts and invoices for the improvements in order to overstate her claim. It is also absurd to suggest that there is a figure for the court and another for the new purchaser. Although the new purchaser was not called to testify, it is common cause that he agreed that the improvements are worth \$1100-00 and is prepared to pay that amount.

To me, the unnamed new purchaser is a reliable barometer with which to measure the value of the improvements. After all, he is an independent third party not tainted by the dust of the contest between the current antagonists. I therefore conclude that the plaintiff is entitled to US\$1100-00 for the improvements.

The defences raised by the defendant in her plea appear to have been abandoned as the defendant did not raise them and they were not identified as issues for trial at the pre-trial conference. It is therefore unnecessary for me to determine them. Let it suffice to say that the agreement of sale produced in court was signed between the plaintiff and the defendant. It states that the defendant is the owner of the property and that she is the seller. For the defendant to allege that she was wrongly cited was dishonesty in the extreme.

I also take judicial notice of the fact that the defendant refunded the part payment of the purchase price thereby disentiing herself from reliance on the illegality argument.

Regarding the issue of costs both parties were represented by counsel for free at the initial stages of the proceedings. At the trial they were self-actors. It is therefore inconceivable that either of them incurred any legal costs. I am therefore unable to award costs in favour of any of them.

In the result, it is ordered that:-

1. Judgment be and is hereby entered in favour of the plaintiff against the defendant in the sum US\$1100-00 for the improvements effected on stand 574 Juru Growth Point.
2. Interest on that sum of US\$1100-00 at the rate of 5% per annum from the date of summons to date of payment.
3. Each party shall bear its own costs.