

WILLIAM MAHACHI
and
RABECCA MAHACHI
versus
BERNARD CHAZOVACHII
and
CITY OF MASVINGO
and
THE REGISTRAR OF DEEDS
and
THE MESSENGER OF COURT, MASVINGO

HIGH COURT OF ZIMBABWE
CHIWESHE JP & MAKONI J
HARARE, 19 November 2013 and 10 June 2015

Civil Appeal

The appellant: In person
R. Makaanzi, for the 1st respondent

MAKONI J: This is an appeal against the judgment of the magistrate court dated 18 March 2013 wherein the magistrate granted an order of specific performance to the first respondent. The appeal involves a dispute between the appellants and the respondent over whether the first respondent performed his obligations in terms of an agreement of sale and is therefore entitled to transfer.

The facts of the matter are largely common cause. The appellants and the first respondents entered into an agreement of sale whereby the appellants sold to the first respondent their immovable property being house number 4486 Rujeko Township in Masvingo for the sum of \$16 800.00. The first respondent paid an amount of \$2 800.00 in cash. The balance of \$16 000.00 was paid by way of transfer from the first respondent's investment account with Angles Investment (Pvt) Ltd (the company) into the appellant's account with same company. The appellants were not able to redeem their money from the company as it collapsed some eleven months after the transaction. The appellants had

however benefitted from their investment for 3 months before the company collapsed. The company was operating in contravention of s 55(1) of the Banking Act [*Chapter 20:20*].

It was the appellant's contention that the clause of the agreement relating to the payment of \$14 000.00 was void for illegality and no legal consequence may flow from it. The court *a quo* found for the first respondent.

The grounds for appeal in this matter were inelegantly framed such that one has to extract from them what the appellant's complaints are.

The main ground of appeal is that the magistrate erred by enforcing a contract tainted with illegality. The court *a quo*, once it had made a finding that the first respondent's investment with the company was illegal, could not enforce the agreement.

What is clear from the papers is that the first respondent transferred his investment in the sum of \$14 000.00 to the appellant's investment account. The first respondent by doing so, discharged his obligations in terms of the agreement of sale. The appellants were issued with an investment certificate by the company. They made withdrawals of the interest earned by their investment before the collapse of the company. They instructed their agent J. Mark Properties to make arrangements for the transfer of the property to the first respondent. The first respondent paid the transfer fees to the agent.

R H Christie in *Business Law in Zimbabwe* 1998 at p 142 gives the requirements of valid agreement of sale when he states:

“The general requirements for the formation of a contract of sale are no different from those applicable to any other contract, but for the contract to be identifiable as sale there must as noted above, be an agreement to exchange property for a price. If either of these two constituents is lacking there is no sale ...”.

The property must be defined with sufficient certainty and it must be clear that the parties are in agreement on what it is that is being sold. The price must be expressed in money and must be either fixed by or ascertainable from the contract. See also *Globe Electrical Transvaal (Pvt) v Bruntube and Ors* 1970(3) SA 99 E.

In *casu*, the contract of sale was perfecta when the parties agreed on the merx and the price. The respondent performed his part of the agreement by paying the purchase price in terms of the agreement. There is no imputation of fraud on the part of the respondent in introducing the appellants to the investment company. Both parties genuinely believed that the company was operating in terms of the law.

The appellants allowed the first respondent to effect necessary improvements to the property and he developed it from a four to an eight roomed house. They began to raise issues of illegality some eleven months down the line.

I am unable to find fault with the reasoning of the magistrate. As he rightly concluded, the appellant's remedy lies in suing the company.

In the result the appeal is dismissed with costs.

CHIWESHE JP agrees:

Saratoga Makausi Law Chambers, respondent's legal practitioners