

DERECK MADZUKWA
versus
HOMELINK (PVT) LTD
and
AKODAC CONSULTANCY SERVICES (PVT) LTD
and
REGISTRAR OF DEEDS

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 16 September 2015 and 23 September 2015

Exception

Plaintiff in default

Ms R Mukozho, for the 1st defendant

TK Hove, for the 2nd defendant

MATHONSI J: The plaintiff instituted summons action against the 3 defendants for payment of a sum £ 22 000-00, alternatively an order setting aside any agreement of sale involving stand 5951 Warren Park Township Harare and directing the registrar of deeds to reverse any transfer of that property from the plaintiff to a third party.

The plaintiff's declaration is completely meaningless. After describing the parties in the first 4 paragraphs of his declaration the plaintiff plead as follows:

- “5. Sometime in August 2005, the plaintiff and 1st defendant got into a bilateral loan agreement wherein plaintiff was loaned £48 863-56 (Forty Eight Thousand Eight Hundred and Sixty Three and Fifty Six Pounds) for purchase of Stand Number 5951 Warren park Township , Harare.
6. Plaintiff paid £ 22 000-00 (Twenty Two Thousand Pounds) towards the repayment of the debt.
7. In December 2007 the plaintiff was relieved of his duties at the company he was working for and was forced to relocate home from the United Kingdom.
8. Upon his arrival, plaintiff failed to secure meaningful employment and all this was communicated to the first defendant.
- 9 Wherefore, the plaintiff's claim is against defendants for...”

Clearly therefore no basis for the claim has been pleaded and no cause of action has been disclosed. If the plaintiff lost his employment in the United Kingdom and was unable to secure employment in Zimbabwe, so what? This certainly cannot found a claim.

More importantly other than stating that the second defendant's further particulars are unknown and that it operates a business at Harare Central Sorting Office at the Corner of Airport Road and Dieppe Road in Graniteside Harare, the summons and declaration do not relate to the second defendant at all. Nothing more is said about the second defendant yet the plaintiff prays for an order against "defendants" presumably including the second defendant. Justifiably, the second defendant has excepted to the plaintiff's summons as follows:

- "1. The second defendant hereby excepts to the plaintiff summons as amplified by the declaration and the further particulars as follows:
 - 1.1 The summons and declaration do not make the necessary averments in fact and in law to establish a cause of action either based in delict or in contract against second defendant;
 - 1.2 The summons and declaration do not specify the role played by the second defendant
 - 1.3 The plaintiff purport (sic) to make a claim based on contract, yet second defendant is not a party to the said contract."

Prior to filing the exception and in compliance with r 140 of the High Court of Zimbabwe Rules, 1971, the second defendant requested the plaintiff to rectify the defect in the pleading. The plaintiff did not comply probably because, in its present form, the pleading may be difficult to resuscitate.

I conclude therefore that the exception is meritable as there is nothing that the plaintiff can do to save the pleading in the absence of a cause of action against the second defendant.

In the result, it is ordered, that

1. The exception of the second defendant is hereby upheld
2. The plaintiff shall bear the second defendant's cost.

Maungwa & Associates, plaintiff's legal practitioners
Sinyoro & Partners, first defendant's legal practitioners
TK Hove & Partners, 2nd defendant's legal practitioners