SHYLET MATASVA
versus
HOSIAH CHIPANGA

HIGH COURT OF ZIMBABWE
MWAYERA & MUZENDA JJ
MUTARE, 3 June 2020

Civil Appeal

Appellant in person
Respondent in person

MUZENDA J: The appellant noted an appeal on 3 December 2019 against the whole judgment of the court sitting at Mutasa on 23 October 2019. She outlined her grounds of appeal as follows:

GROUNDS OF APPEAL

1. The court *a quo* erred and misdirected itself when it failed to take into consideration the fact that the Chief in arriving at his decision had carried out an inspection *in loco* and appreciated the surrounding circumstances.
2. The learned magistrate grossly erred and misdirected himself by failing to comprehend the fact that communal lands are not permissible for sale in terms of Communal Lands Act.
3. The court *a quo* grossly erred when it ignored the material facts of the case that the land in question did not form part of the said homestead nor had the settler tilled the land before.
4. The court *a quo* erred by blindly ignoring the import of paragraph (m) of the permit which clearly (barred) respondent from having a right to occupy the land in question.
5. The court *a quo* erred and grossly misdirected itself by wholly and entirely relying on respondent's evidence without giving due weight and diligence to appellant's evidence and defence.

FACTS

On 15 August 2005 the respondent entered into a written agreement of sale with one Tendai Mutasa for the sale of property namely a rural homestead situated in Mwoyoweshumba Village in Watsomba constituted of a five roomed house, 2 thatched kitchen huts, a large field measuring 3 hectares and a utility blair ablution. After the respondent paid Tendai Mutasa, Tendai Mutasa introduced respondent to the village head who in turn endorsed and approved the sale of the improvements and entered respondent's name into the village head's register. The respondent clearly stated that he bought the structures/improvement at the homestead and Tendai Mutasa went on to give him the 3 hectares field which Tendai was using for farming. In 2017 the appellant interfered with the respondent over the use of the field arguing that subject fields belonged to her. Tendai Mutasa only owned the structures but not the land or fields, she argued to the respondent. The matter was taken to the Chief's Court by the respondents and Chief Mutasa decided that the fields belonged to appellant. Respondent appealed against the chief's judgment and took the matter to the court *a quo*. In terms of the rules the court *a quo* heard the matter afresh and ruled in favour of the respondent. It is the judgment of the court *a quo* which the appellant had brought before us for appeal. She is praying that the appeal to the court *a quo* by the respondent should be dismissed with costs.

The central issue for determination by this court is whether the court *a quo* erred in concluding that the seller had all the rights at law to sell the improvements to the respondent and donate for use the attached fields. It is true that it is not legally permissible in terms of the Communal Lands Act to sell communal lands without permission of the local authority, the District Administrator's office but it is equally legal for one to sell structures or buildings or improvements at a homestead situated in a communal set up. The respondent once he bought the structures and also that the sale had been ascended to; by the traditional leaders; granted permission to utilise the 3 hectare piece of land and previously used by the previous owner. Tendai in our view had the liberty to donate the land alleged to the occupant of the homestead. Tendai did not sell the 3 hectares to the respondent, he gave him the right to use it and that right of use was approved by the traditional leaders. We are unable to find any fault in the judgment of then court *a quo* and the appeal lacks merit.

Accordingly it is ordered as follows:

The appeal be and is hereby dismissed with costs.

MWAYERA J AGREES_____