

BERNARD JARAVAZA
versus
MBCA BANK LIMITED
and
THE SHERIFF OF ZIMBABWE
and
REGISTRAR OF DEEDS N.O
and
TRUENESS MUTAMIRE

HIGH COURT OF ZIMBABWE
TAGU J
HARARE 26 November 2020 and 10 February 2021

Opposed Application

T Zhuwarara, for applicant
C. Tachiona, for 4th respondent

TAGU J: On 31 July 2018 a notification from the Sheriff was served upon the applicant informing him that his immovable property known as 265 Hopely Township of Subdivision C of Hopely measuring 1925 square metres registered in the applicant's name had been sold to the highest bidder Trueness Mutamire for \$50 000.00. The applicant proceeded to file an application for objection to the confirmation of sale in terms of Rule 359 (1) (b) of the High Court Rules. At the hearing of the objection on 18 September 2018 the applicant referred to 2 valuation reports that were attached to the application wherein a willing buyer who wanted to pay \$80 000.00 for the said immovable property. The matter was then postponed to 20 September 2018 and a directive was given by the Sheriff that Clip Crunt Real Estate was to draft the agreement of sale between applicant and the buyer was to pay the sum of \$1 200.00 for the drafting of the said agreement of sale. A deposit of \$50 000.00 was to be made into the Sheriff's account pursuant to the agreement of sale before the 20th of September 2018. Clip Crunt Real Estate advised the applicant to deposit \$10 000.00 into its account before the drafting of the agreement of sale could be done. The applicant failed to raise the \$10 000.00. The Sheriff then proceeded to confirm the sale of the immovable property on 11 October 2018. It is the applicant's contention that the Sheriff handled this matter in a manner which is grossly irregular and irrational that a reasonable court acting judiciously could not have arrived at such a decision.

The applicant now wants this court to review the Sheriff's decision. The relief the applicant wants is couched in the following terms-

“IT IS ORDERED THAT

1. Confirmation of sale of Stand No. 265 Hopely Township of Subdivision C of Hopely measuring 1925 square metres be and is hereby set aside.
2. Transfer of the immovable property from the Applicant's name is hereby reversed.
3. That the matter be remitted to the Sheriff for hearing before a different sheriff.”

The fourth respondent is opposing the application. The fourth respondent is the buyer of the property in question. He was declared the highest bidder. The applicant raised an objection but failed to comply with the sheriff's direction. No agreement was prepared within the period stipulated by the Sheriff. The applicant had problems with Clip Crunt which wanted the applicant to deposit an amount of \$10 000.00 into its account before the agreement of sale could be prepared. The Sheriff was left with no option but to confirm the sale.

In this case judgment debt was later paid after the Sheriff had confirmed the sale. There is a letter dated 8 January 2019 written to the Sheriff to advise him that the debt had been paid and that the judgment creditor was no longer interested in selling the attached property. In my view the Sheriff did not err as he confirmed the sale before the judgment debt was settled. Once the sale had been confirmed there is nothing the Sheriff can do. He did not violate the provisions of Rule 359 of this Honourable Court. The sheriff set conditions which the judgment debtor failed to comply with.

While this court has the power to set aside sale on any good cause, I am of the view that given the circumstances of this case if this application is granted it will discourage potential buyers of judicial sales in participating in judicial sales for fear that their efforts could be frustrated at any time after they have won at public sales. This will erode confidence in the judicial sales. The interests of innocent parties have to be protected as well. For these reasons I will dismiss the application.

IT IS ORDERED

1. The application is dismissed.
2. The applicant to pay costs.