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Judgment No. SC 63/06
Civil Appeal No. 226/02

NOEL NGANDI

v

(1) GIFT PANGANAYI (2) CHITUNGWIZA MUNICIPALITY (3) DEPUTY SHERIFF

SUPREME COURT OF ZIMBABWE
SANDURA JA, ZIYAMBI JA & MALABA JA
HARARE, SEPTEMBER 12, 2006

M Baera, for the appellant

K Ncube, for the first respondent

No appearance for second and third respondents

MALABA JA: At the conclusion of hearing arguments for the appellant and the respondents in this case we dismissed the appeal with costs and indicated that the reasons for the decision would follow in due course. These are they –

The appeal was against a judgment of the High Court dated 2 July 2002 by which an order was made against the appellant who was the first respondent in the court *a quo* in the following terms:

"1. The first respondent shall sign the cession forms ceding his rights, title and interest in the immovable property known as stand number 15402 Seke township within seven (7) days of the service of this order on him failing which the Deputy Sheriff is hereby authorised to sign the same.

2. The applicant shall pay the sum of $100 000 to the first respondent upon the signing of the cession forms by the first and or the Deputy Sheriff.

3. The second respondent is hereby directed to approve such cession.

4. The costs of this application shall be borne by the first respondent."

The applicant in the court *a quo* is the first respondent on appeal. He alleged in the application that he entered into an agreement of sale with the appellant in terms of which the latter sold and he purchased rights in stand 15402 Seke township at a price of $200 000 and that the appellant was in breach of the agreement refusing to sign cession forms at second respondent's offices ceding his rights in the said stand notwithstanding the fact that he had received $100 000 towards the payment of the purchase price in terms of the agreement of sale.

The appellant denied that he entered into an agreement of sale with the first respondent. He said that the first respondent entered into an agreement of loan with his mother in terms of which the latter borrowed a sum of $100 000 from the first respondent. The learned judge rejected the appellant's story and made the order appealed against.

There is no doubt at all that the appeal is devoid of merit. The learned judge had before her ample documentary evidence showing that the appellant and the first respondent entered into an agreement of sale of which the rights in stand 15402 Seke township was the merx. Annexure "B" is a document titled "Agreement of

Sale". It has the appellant as the "seller" of stand 15402 Unit O, Seke, Chitungwiza. The first respondent is cited in the document as the purchaser of the said property. The purchase price is recorded as $200 000 of which $2 000 was to be paid on the date of the signing of the agreement by the parties. The balance of $198 000 was to be paid on the date of the signing of the cession forms at Chitungwiza municipality.

The agreement of sale was signed by the appellant and the first respondent on 26 March 2001. The appellant is shown to have affixed his signature on the document as the "seller" of the stand. He also initialed each of the six pages of the agreement. There is a schedule of payments of various sums of money by the first respondent to the appellant amounting to $98 000. The sums of money were paid on 28 March, 30 April, 3 May and 8 May 2001. The document shows that on each occasion the money was paid to the appellant who acknowledged receipt of the money by signing against the word "seller" whilst the first respondent as payer signed against the word "buyer." The schedule is itself headed - "Agreement of Sale : Payment Update."

In the light of this evidence it was folly for the appellant to hope that the learned judge would be persuaded by his bald allegation that the first respondent entered into an agreement of loan with his mother. There was just no evidence of the parties entering into an agreement of loan. The appellant deposed to an affidavit in support of an application for condonation of the late payment into court of security of costs. In that affidavit he averred that the first respondent had failed to pay him "in full and therefore breached" their contract which he cancelled.

The appeal was accordingly dismissed with costs.

SANDURA JA: I agree.

ZIYAMBI JA: I agree.

Baera & Company, appellant's legal practitioners

Gill, Godlonton & Gerrans, first respondent's legal practitioners