

JAMES MAKONI
versus
KEIMBOYI ABRAMS
and
CITY OF HARARE

HIGH COURT OF ZIMBABWE
MAKONESE J
HARARE, 27 October 2011

Opposed Application

P. Chiutsi, for applicant
J. Ndomene, for respondent

MAKONESE J: The applicant in this matter purchased a property known as Stand 8356 Highfield, Township, Harare in terms of a written agreement of sale dated 2 February 2009. The seller of the property is recorded in the agreement of sale as Fidelis Hapagarwi Nhapi who is not cited as a party to these proceedings. The applicant alleges that at the time of the sale Fidelis Hapagarwi Nhapi advised him that there were illegal occupants on the property. He was assured that the illegal occupants would vacate the property. The applicant subsequently wrote to the first respondent on 5 August 2010 indicating that he would be moving on to the property on 1 September 2010. Needless to say the first respondent did not comply with the applicant's demand. Applicant wrote another letter dated 8 September 2010 demanding that the first respondent should vacate the property.

Infuriated by the first respondent's lack of co-operation the applicant launched court proceedings by way of a Court Application seeking an order for the eviction of the first respondent from the property. The first respondent opposed the application and argued that she was entitled to remain in occupation until the issue of ownership had been settled. She argued that she had been in occupation of the stand since the early 1980s after Fidelis Hapagarwi Nhapi had sold the stand to her late husband. The first respondent further argued that there were proceedings still pending in the magistrates court where ownership of the stand was being contested.

The first respondent contends that when the applicant purchased the property he was aware that there was a prior claim in respect of the same property.

The applicant has raised a point *in limine* in his Heads of Argument. The applicant states that first respondent has no *locus standi* to contest the application for eviction in view of the fact that she has no vested rights in the property.

The issues that have to be determined on the point *in limine* are:

1. Whether the respondent has any rights, interest or title to stand 8536 Highfield, Harare.

The first respondent alleges that her late husband purchased the property from Fidelis Hapagarwi Nhapi who was the holder of leasehold title from the second respondent. The allegation by the first respondent is however not supported by any evidence to show its veracity there being no evidence to the effect that the property forms part of the estate of the late Henry Abrams. There is no indication that the first respondent is entitled to claim on behalf of the Estate Late Henry Abrams. Additionally the first respondent is not in the Executrix of the Estate and no Letters of Administration have been produced in these proceedings.

At the hearing of the matter Counsel for the first respondent conceded that he did not have any documentary proof to indicate that the first respondent had any legal basis for claiming on behalf of the Estate.

It is not in dispute that transfer of the property has been effected to the applicant and that at the time of transfer there was no caveat on the property to restrict the transfer of rights.

2. Whether the applicant is entitled to occupation

It is trite that a *bona fide* purchaser is entitled to occupation of the premises on completion of the sale.

I associate myself with the views expressed in the case of:- *Ernest Mhizha v Lloyd Lilizha & Anor* HC 8645/2001 where Justice MAKARAU (as then she was) noted that:-

“The holder is not the owner of the land but enjoys certain defined rights over the property with the consent of the owner who invariably is the local authority under whose jurisdiction the property falls. In most cases, the rights of the lessee over the property are coupled with the right to purchase under a suspensive agreement of sale hence the coining of the term “lease to buy” that is associated with some tenure in the high density suburbs. In such cases, any sale involving the property by tenant/purchaser can only be a sale of the tenant/purchaser’s rights title and interest in the lease agreement”.

In the present case it seems logical that the rights transferred by the holder of the leasehold table include the right of occupation. I do not comprehend how the first respondent can argue that she has any rights of any shape or form in the property. In other words she has

no *locus standi* in the matter at all. She is not an Executrix of the Estate. She has not produced any documents or other evidence to indicate that she has inherited the property from the Estate Henry Abrams. The court was not furnished with any evidence to show whether Letters of Administration have been issued by the Master. This would have enabled the court to establish whether indeed the property formed part of the estate and if so whether the first respondent was a beneficiary of the property in question.

I am satisfied that the first respondent has not established *locus standi* to claim the property. In fact the first respondent's behaviour and attitude in these proceedings border an abuse of court process. She is in my view taking a short in dark hoping to frustrate and delay use and enjoyment of the property by the applicant.

I accordingly find that the applicant has successfully proved the point raised *in limine* in respect of *locus standi*. The application is granted with costs.

P. Chiutsi Legal Practitioners, applicant's legal practitioners
Maganga & Company, respondent's legal practitioners