

MARGARET RUGARE TICHAREVA
versus
INNOCENT GEORGE MUTSETSEMA
and
LEWIS CHIROZVANI
and
MINISTRY OF LOCAL GOVERNMENT, PUBLIC WORKS
AND NATIONAL HOUSING
and
REGISTRAR OF DEEDS

HIGH COURT OF ZIMBABWE
DUBE J
HARARE, 16 February 2018 & 14 March 2018

Opposed Application

Applicant in person
AK Maguchu, for the respondent
No appearance for the 1st, 3rd & 4th respondents

DUBE J: An agreement of sale entered into between two parties is concluded when the two parties append their signatures to the agreement. It is at this stage that the contract becomes *perfecta*. Any subsequent addition of a term or inclusion of a third party to the contract that is effected without the knowledge and consent of the original parties to the contract has no effect of altering the original contract. Such an addition is invalid and does not result in an enforceable contract.

The setting of this case is as follows. The applicant and the first respondent were married in terms of customary law. They became estranged in 1989 and in 1999 the first respondent moved out of the matrimonial home. The applicant claims that sometime in 1993, she and the first respondent got an offer to purchase a house from the third respondent, the Ministry of Local Government, Public Works and National Housing, (hereinafter referred to as The Ministry). At that time the first respondent was employed by the Zimbabwe National Army and the applicant was employed by a local bank. She avers that the first respondent could not qualify to benefit from the Ministry of Local Government housing project. They put together their salaries in order to qualify for the benefit. They were then allocated stand number 5560

Kuwadzana 7, Harare, (hereinafter referred to as the house), on a rent to buy scheme and they moved into the house. She contributed to the upkeep of the family whilst the first respondent paid the instalments towards the purchase of the house.

The first respondent signed an agreement of sale for the property with the Municipality of Harare on 17 May 1993. Both their names are indicated on the agreement of sale but she did not sign the agreement. She did not become aware of the development. Another agreement was signed by the first respondent with the Ministry of Local Government on 19 August 1994. She once again did not become aware of this development and did not sign the agreement then. Her name was later endorsed on the agreement on 6 October 1995.

The applicant claims that sometime in 2000 she started extending the house. After the first respondent retired, he started experiencing financial problems and she gave him a loan in exchange for his share of the matrimonial home. She has extended the house and still occupies the house. The second respondent was subsequently sold the property by the first respondent on 23 May 2007 without her knowledge. The applicant submitted that she is a co-owner of the property and the house was sold without her knowledge. She also claims that she bought the respondent's share from him making her a co-owner of the house. She contends that she should not be evicted from the house. She seeks an order declaring the agreement of sale between the first and second respondents null and void and wants it cancelled.

The second respondent defends the application. He filed a counter application seeking eviction of the applicant from the house. The applicant did not oppose the application. He entered into an agreement of sale for the purchase of the house with the first respondent on 23 May 2007. Before he bought the house he visited it to view it. When he signed the agreement of sale, he was shown an agreement of sale between the first respondent and the municipality which showed that the first respondent is the sole owner of the house and the other between the first respondent and the Ministry where the applicant's name was endorsed on a subsequent date. He urged the court to dismiss the main claim and to grant the counter claim.

The court has been asked to determine the main application. As the applicant did not oppose the second respondent's counterclaim, the main claim disposes of the issue between the parties. The issue is who between the second respondent and the applicant is the real owner of the house. It is common cause that the Ministry is the original owner of the house.

The first issue to be determined is to whom did it dispose of its interest in the house. The general rule is that a contract cannot confer rights or impose obligations arising under it on any person who is not a party to it, See *Beswick v Beswick* [1967] 2 ALL ER 1197 (HL).

Where two parties enter into a contract with one another, a third party cannot claim rights arising out of the contract. A contract cannot confer rights and obligations on a party who is not a party to it. A third party cannot be added as a party to a contract already concluded between two parties without the knowledge and consent of the original parties to the contract. No rights and obligations flow out of such a contract. The act of adding the name of a third party to a contract has no effect of making that person a party to the contract.

The evidence available reveals that the first respondent was the sitting tenant in the house at the time that it was sold. He worked for the Government of Zimbabwe and was a civil servant. That explains why the house was offered and sold to him. He initially entered into an agreement for the sale of the house with the Harare Municipality. The City of Harare was responsible for allocating the houses. The house belonged to the Ministry of Public Works. The City of Harare could not be a seller of property owned by the Ministry. The role of the City of Harare seems to have been simply that of an administrator of the property on behalf of the Ministry. Even if it is accepted that the City of Harare could actually sell the houses, the applicant did not sign that agreement of sale with it and could not be a party to that sale. Once parties have reduced a contract into writing, the requirement is that the contract should bear the signatures of all the parties. Where one of the parties to an agreement does not sign the agreement he does not become party to it. Although both the first respondent and the applicant's names appear on the agreement signed with the Municipality of Harare as the buyers, the applicant did not get to sign the agreement. For this reason, the applicant is not a party to the agreement. The first respondent is in terms of the agreement with the municipality, the exclusive purchaser of the house.

Later, the first respondent entered into another contract with the Ministry of Public Works with respect to the same house. The applicant did not get to sign that agreement and hence an agreement of sale was entered into between the parties who are signatories to the agreement. The applicant managed to get her name added onto the agreement after the signing of the agreement and in the absence of the first respondent and without his consent.

The name of the applicant was endorsed onto the agreement a year after the agreement had been executed purportedly as a co-owner. The agreement itself speaks of one purchaser. The agreement does not record that the purchaser sold or donated the property to her. The endorsement does not speak to the status that the wife used to be added onto the agreement. Whilst the applicant contends that the first respondent donated his share of the house to her, there is no proof of an agreement ceding the first respondent's rights to her. If there had been

any such cession, it would have been endorsed on the agreement with the Ministry. The applicant's founding affidavit does not allege that the purchaser sold or donated the house resulting in her approaching the Ministry to endorse her name on the agreement. The averment that the first respondent asked her for a loan in exchange for his share of the property in the house is mentioned as having transpired in the year 2000 at the time he retired from the army. This is well after her name had been endorsed on the agreement.

Clause 19 of the agreement with the Ministry provides as follows:

“The purchaser shall not part with possession of the property or any part thereof nor cede nor assign nor hypothecate this agreement or any rights hereunder to any person without the previous consent in writing of the Ministry of Public Construction and National Housing.”

The applicant does not allege that she obtained prior written consent from the Ministry before her name was endorsed on the agreement. Clause 19 prohibits ceding of the house without the consent of the Ministry in writing. In terms of clause 19 of the agreement of sale, the property could only be ceded with the consent of the Ministry and in writing. The Ministry confirmed that the first respondent bought the property from it and does not speak to any cession. The applicant has not shown that she and the first respondent obtained such consent in writing from the Ministry. The act of endorsing her name on the agreement was not done in accordance with clause 19 of the agreement. The basis for adding her name onto the contract has not been shown. The act of subsequently adding the applicant onto the contract document does not make her a party to the agreement in the absence of evidence of knowledge and consent from both the first respondent and the Ministry that she be added as an owner. The Ministry's act of seeking to regularize the agreement by adding respondent as a purchase is irregular. The Ministry made a mistake by adding the applicant's name onto the contract. The subsequent endorsement of the applicant's name and signature on the contract with the Ministry does not make her a party to the contract. The addition of her name is a nullity, leaving the original contract intact and unaffected by the addition. The agreement between the Ministry and the first respondent is still valid. No valid agreement of sale came into being between the applicant and the Ministry. The applicant is not a co-owner of the house. If an act is void, it is a nullity and is incurably bad, see *Mcfoy v McFoy Co Ltd* [1961]3 ALL ER 1169. A contract can only be valid and enforceable where it is valid.

An agreement cannot be amended to add another party in the absence of and without the consent of the original signatories to it. The act of adding the name of the applicant to the original contract is a nullity. There is no valid agreement of sale between the applicant and the

Ministry. The purported agreement between the Ministry and the applicant is an invalid agreement and is a non-event.

The applicant has no rights arising out of the contract. No valid contract of sale came into existence between her and the Ministry. The first respondent was confirmed by the Ministry as a lawful buyer of the property. The applicant was not a co-owner of the house. The applicant cannot seek to have the property transferred into her name. The applicant has not shown any entitlement to the house. The first respondent being the rightful owner of the house was entitled to dispose of the house. The second respondent bought the property from the owner of the house and the sale is valid. It is accepted that the applicant made improvements to the property. The act of developing a property does not convert one's rights to those of an owner and confer ownership of the property to her. The applicant has not filed a claim for improvements. The applicant did not oppose the second respondent's counter claim and accordingly the second respondent is entitled to the order sought. The second respondent is entitled to evict the applicant. The second respondent has not asked for any order for costs.

Accordingly, it is ordered as follows:

1. The main applicant's claim is dismissed with no order as to costs
2. The second respondent's counter claim is granted with no order as to costs
3. The applicant and all those claiming title and/or the right of occupation to house number 5560 Kuwadzana, Harare, are hereby ordered to vacate the property within thirty (30) days of service of this order on them.
4. In the event that the applicant and/or all those claiming title and/or ownership through her fail to comply with the provisions of para 1 above, the Deputy Sheriff be and is hereby authorised and/or empowered to evict the respondent and/or her representative without further notice.

Dube, Manikai & Hwacha, respondent's legal practitioners