

**IN THE HIGH COURT FOR ZAMBIA
2014/HP/1706
AT THE PRINCIPAL REGISTRY
AT LUSAKA**

(Civil Jurisdiction)

BETWEEN

JOSEPH MANJATA

APPLICANT

AND

ALFRED CHIKWABA

RESPONDENT

Before: Hon. Judge B.M.M. Mung'omba on this 16th day of June, 2015.

For the Applicant: Mr. J. Mudaiké of Messrs J & M Advocates

For the Respondents: No Appearance

JUDGMENT

Cases referred to:

- 1. Khalid Mohamed vs Attorney-General.***
- 2. William Masauso Zulu vs Avondale Housing Project Limited.***
- 3. Galaunia Farms Limited vs National Company Limited & Another.***

Legislation referred to:

On 27th October, 2014, the Plaintiff herein took out of the Principal Registry a writ of summons accompanied by a statement of claim against the Defendant claiming as follows:

- (1) An Order of Specific performance of the Sale Agreement made between the late Teddy Manjata and the Defendant for the sale of stand no. 35198 Lusaka;
- (2) Further to (i) above, a vesting order of the said property in the name of Teddy Manjata and authorizing the Deputy Registrar of the High Court to execute any documents necessary to complete the transaction stated in (i) above;
- (3) Any other Order that the Court may deem fit and just in the circumstances; and
- (4) Costs.

In the statement of claim, the Plaintiff states that he is and was at all material times an Administrator of the estate of the late Teddy Manjata. The Defendant is and was at all material times the owner of property known as plot 35198 Lusaka. The Plaintiff states that sometime in 2006, a sale agreement was entered into between the Defendant herein and the late Teddy Manjata for the sale of property known as stand No. 35198 Lusaka. The purchase price as consideration for the aforesaid property was K35,000.00 and was duly paid by the deceased.

Upon payment of the purchase price, transfer of title from the Defendant to the deceased was not completed. Further, before the transfer of title could be effected the Defendant also died rendering the sale agreement to be incomplete. He avers that following the death of the Defendant, his family relocated and could not be traced by the deceased. Numerous attempts have been made to locate the family of the Defendant but to no avail. He thus seeks Court's indulgence to grant the reliefs sought.

When the matter came up on 11th May, 2015, I noted that the administrator of the Defendant estate was not in attendance. There was no reason or explanation given. I further noted from the record that the Plaintiff, issued a notice by way of substituted service in the Daily Mail of 10th, 11th

and 12th of November, 2014. I was thus satisfied that the Defendant's family was fully aware of the proceedings and has failed or neglected to appear before Court and this failure is at their own peril. I therefore proceeded to hear the Plaintiff on his application.

The Plaintiff gave evidence on oath. He testified that his late brother, one Teddy Manjata had contracted to purchase plot 35198, Lusaka from Mr. Alfred Chikwaba, the Defendant. They did not complete the conveyance when his brother died. As a result no development has taken place on this property resulting in Ministry of Lands expressing intentions to repossess.

The Plaintiff as the Appointed Administrator of the Estate of his later brother, he engaged the Ministry of Lands who advised that he obtains a vesting order from the Court. He thus prays for the reliefs earlier stated in this judgment.

This was the close of the Plaintiff's case. The matter was adjourned to 16th June, 2015 for judgment.

I warn myself from the onset that the onus in a civil matter is for the Plaintiff to prove his or her case on a balance of probability. This principle has been articulated in a plethora of authorities such as ***Khalid Mohamed vs Attorney-General***, ⁽¹⁾ ***William Masauso Zulu vs Avondale Housing Project Limited*** ⁽²⁾ and ***Galaunia Farms Limited vs National Company Limited & Another***. ⁽³⁾

The learned authors **Phipson on Evidence**, 17th edition in paragraph 6 - 06 at page 151 skate the following regarding the burden of proof in civil cases:

"So far as that persuasive burden is concerned, the burden of proof lies upon the party who substantially asserts that affirmative of the issues. If, when all the evidence is adduced by all parties, the party who has

this burden has not discharged it, the decision must be against him. It is an ancient rule founded on considerations of good sense and should not be departed from without strong reasons.”

The Plaintiff in this case has to satisfy me therefore on a balance of probability that they are entitled to be granted a vesting order.

Turning to the case at hand the Plaintiff testified that he is the administrator of his later brother Teddy Manjata’s estate. An order of appointment as administrator has been exhibited (see Doc. 7 Plaintiff’s bundle of documents). According to the Plaintiff both the vendor (defendant) Alfred Chikwaba and the purchaser of plot no. 35198, Lusaka died before they could complete the sale. A one page undated agreement of sale has been exhibited (Doc.1 in bundle). This agreement only states that Alfred Chikwaba has agreed to sell to Teddy Manjata the property referred to in the accompanying particulars at the price of thirty five million kwacha (35,000,000.00). As stated earlier the agreement tendered is only a page and there are no accompanying particulars referring to the plot in issue. Pursuant to the purported contract sale, there is no assignment evidencing the transfer.

It is my considered view that this falls far short of what is required to satisfy me that the sale was completed. There is no contract of sale document from Law Association of Zambia. Section 14 of the High Court Act, Chapter 27 of the Laws of Zambia provides that:

“Where any person neglects or refuses to comply with a Judgment or order directing him to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the Court may, on such terms and conditions, if any, as may be just, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the Court may nominate for that purpose, and a conveyance, contract,

document or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it.

In light of the preceding paragraphs I find that the Plaintiff has failed to discharge the onus placed on him to prove his case on a balance of probability. Section 14 of the High Court Act makes it clear when I can grant a vesting order.

The facts presented before me do not warrant the grant of a vesting order and I accordingly dismiss the claim. The other reliefs sought consequently fall away.

Leave to appeal to the Supreme Court is hereby granted.

Dated at Lusaka this 16th day of June, 2015

Judge Betty Majula-Mung'omba
HIGH COURT