

REGINA MUFALO v HELLAS INONGE NGANGA (1988 - 1989) Z.R. 88 (S.C.)

SUPREME COURT
NGULUBE, D.C.J., GARDNER, J.S., AND CHAILA, AG. J.S.
18TH AUGUST 1988
(S.C.Z. JUDGMENT NO. 24 OF 1988)

Flynote

Land law-Presidential consent-Validity of contract subject to Presidential consent.

Headnote

The plaintiff issued a writ claiming specific performance of an agreement for the sale of land, and other remedies. She then took out a summons for summary judgment. The Deputy Registrar dismissed the application on the grounds, *inter alia*, that state consent had not been obtained. On appeal the High Court upheld the decision. The appellant appealed.

Held:

There is nothing preventing parties entering into contracts for the sale of land conditionally upon the obtaining of Presidential consent under the Lands (Conversion of Titles) Act, s .13(1).

Legislation referred to:

Land (Conversion of Titles) Act, 1975, s .13(1)

For the appellant : S. Patel, Messrs Solly Patel, Hamir and Lawrence.

For the respondent : F. S. Kongwa, Messrs Kongwa and Company.

Judgment:

GARDNER, J.S.: delivered the judgment of the Court.

This is an appeal against a judgment of a High Court Judge upholding a decision of a Deputy Registrar to dismiss the action as being frivolous and vexatious.

In this case we will refer to the appellant as the plaintiff and the respondent as the defendant as they were in the Court below.

The plaintiff issued a writ claiming specific performance of an agreement for the sale of land, alternatively damages for breach of contract, together with a declaration that the plaintiff be entitled to a lien on the property for the deposit paid to the defendant. After the issue of the writ the plaintiff took out a summons for summary judgment for specific

p89

performance. After hearing the summons for summary judgment the Deputy Registrar dismissed the application on the grounds that the state consent had not been obtained for the sale of the land and he further found that the plaintiff had no beneficial interest in the property, therefore he dismissed

the action as being frivolous and vexatious. The plaintiff appealed to a High Court Judge who upheld the decision of the Deputy Registrar on the same grounds. The plaintiff now appealed to this Court on the grounds that the Deputy Registrar and High Court were wrong in law in holding that it was impossible for the parties to enter into a contract for the sale of land until state consent had been obtained.

Mr *Kongwa* on behalf of the defendant has conceded that the Deputy Registrar and the High Court were wrong in holding that a contract for the sale of land could not be entered into until state consent had been obtained. Mr *Kongwa* has very properly conceded that he had not asked for the whole of the action to be dismissed by the Deputy Registrar and it should not have been so dismissed. He was at pains, however, to point out that this was not a proper case for summary judgment for specific performance. In view of the attitude taken by Mr *Kongwa* we will not say too much about the merits of the action. We will say, however, that we agree with the arguments put forward in the heads of argument for the plaintiff, that there is nothing to prevent parties entering into contracts for the sale of land and conditionally upon the obtaining of Presidential consent under section 13(1) of the Land (Conversion of Titles) Act. We also agree that there were other matters to be disposed of as claimed in the writ of summons and the action should most certainly not have been dismissed as being frivolous and vexatious.

For the reasons given, this appeal will be allowed. The order by the Deputy Registrar dismissing the action is set aside and the action is sent back for the proceedings to continue in the High Court.

The costs of this appeal will be the appellant's in any event. The rest of the costs will be in the cause.

Appeal allowed.

Case sent back for further hearing.
