

RICHARD MUDHANDA
versus
BENDIGO INVESTMENTS (PVT) LTD
and
ADRIENNE STALEY PEARCE

HIGH COURT OF ZIMBABWE
WAMAMBO J
HARARE; 20 March & 2024 & 26 February 2025

Opposed Application

Applicant in person
D Tivadar, for the 1st respondent
D O Chieng, for the 2nd respondent

WAMAMBO J: This matter is a court application wherein applicant seeks the cancellation of title deeds. The relief sought by the applicant is couched in the following terms:

- “1 . The applicant for the cancellation of Deed of Transfer No and Deed of Transfer No. in terms of s 8 of the Deeds Registries Act [*Chapter 20:05*] be and is hereby granted.
2. The Deed of Transfer No 2983/23 registered of the 13th of April 2023 in favour of the first respondent of a certain piece of land situate in the district of Salisbury called stand 296 Colne Valley Township 16 of subdivision H of Colne valley of Reitfontein measuring, 4047 square meters be and is hereby cancelled.
3. The Deed of Transfer No . 2984/23 registered on the 13th of April 2023 in favour of the first respondent of a certain piece of land situated in the district of Salisbury called stand 297 Colne Valley Township 16 of subdivision H of Colne Valley of Reitfontein measuring 4293 square meters, be and is hereby cancelled.
4. Respondents jointly and severally the one paying the other to be absolved be and are hereby ordered to pay costs on an attorney- client scale”.

For starters it is clear that paragraph one of the draft order is incomplete in that it does not mention the deed of transfer numbers.

I should also mention that applicant filed an amended draft order months after the hearing of this matter without leave of the court. I will pay no regard to the amended draft order which in any case is improperly filed on the IECMS system.

This matter has a long history stretching back to the year 2002. Applicant in this matter is a self-actor. At the commencement of the proceedings in this matter he sought a postponement. I was not convinced that the applicant was candid or that the applicant deserved to be granted. The application for postponement was dismissed for reasons given in open court.

The applicant avers that he entered into an agreement of sale with second respondent for the two properties enumerated in the draft order. These properties are at the very core of this application.

After 7 or so years applicant sought to transfer the properties to Prototel Enterprises (Pvt) Ltd. On 28 October 2024 the High Court cancelled the deeds of transfers of the said properties to Prototel Enterprises under HC 6908/2011. The order under HC 6908/2011 rendered by MAFUSIRE J is composed of eight paragraphs. The 8th paragraph reads as follows:

“8 This order and the pleadings in this matter shall be transmitted by the Registrar to the Prosecutor General in order that he may decide whether or not there should be a criminal investigation”. Thereafter applicant issued summons against 2nd respondent. The High Court per CHITAPI J rendered an order under HCH 2211/21 requiring applicant to file particularized documents within a period of seven days. The order was granted on 16 June 2021.

Under HH 610- 22 (HC 3983(21) MUSITHU J. The order rendered by MUSITHU J Is couched as follows:

“1 The respondent’s claims as plaintiff in case numbers HC 10410/14 and HC 10411/14 be and are hereby dismissed for want of compliance with the order issued by CHITAPI J on 16 June 2021 in case number HC 2211/21.

2. The respondent shall pay applicants cost of suit. In 2023 the properties were transferred from 2nd respondent to first respondent.

Applicant seeks the cancellation of the deeds of transfer on the properties that are now reflecting first respondent’s name. A number of factors, militate against applicant’s application. Firstly the agreement of sale he avers was signed between himself and second respondent has its own challenges. It contains a clause that the purchaser shall pay the sale purchase price after transfer. At the same time an acknowledgement of payment of the purchase price on the same date the agreement of sale was executed is attached. The agreement of sale did not progress into transfer. There was no title deed that was obtained by applicant in respect of the two properties. Applicant attempted to transfer the properties into a company called Prototel which transfer was cancelled by an Order of Court as referred to earlier.

The agreement of sale that applicant’s application is mostly based on does not transfer real rights to him.

The second respondent remained the registered owner of the properties until he passed transfer to the first respondent. The applicant has no real rights empowering him to have the title deeds of the properties cancelled.

The cancellation of the first respondents title deeds would not benefit applicant as title would go back to second respondent as the previous title holder.

Registration of a property indeed confers real rights. These are the rights conferred to second respondent up to the time transfer was affected to first respondent. Currently first respondent is endowed with those real rights. See *Takafuma v Takafuma* 1994(2) ZLR 103.

A lot of other issues are raised in the respondent heads of argument in resistance of the application. With the narrow-summarised view I take of this matter, the application has no merit.

Costs have been proposed on the higher scale. In light of the circumstances of and history of the matter it would appear that this application was made *mala fide*. The applicant, has gone, through various applications in circumstances where he was not the victor. These various applications would reflect the fact that this particular application carried no merit. In spite of that he insisted on filing this application. The financial and other prejudice visited upon the respondents due to this application are substantial. In exercising my discretion. I find that costs on a higher scale are justified.

It is ordered as follows:

The application be and is hereby dismissed with costs on a legal practitioner and client scale.

Applicant, in person
Whatman and Stewart 1st respondent's legal practitioner
Wintertons, 2nd respondent's legal practitioner