

DRAWING SERVICES (PVT) LTD  
versus  
BETTY KANYUCHI

Plaintiff  
Dependant

HIGH COURT OF ZIMBABWE  
BERE J  
HARARE, 3-4 September, 12-13, 19, 20 and 21 October 2009 and 3 March 2010

### **Civil Trial**

*W.P. Zhangazha*, for the plaintiff  
*Adv.Zhou* instructed by Messrs Takundwa and Company, for the defendant

BERE J: The plaintiff as represented by its Managing Director Ms Elizabeth Chidavaenzi issued summons out of this court on 9 June 2008 seeking the ejectment of the defendant from stand number 3182 of subdivision A of stand 159 Prospect in Harare ('the property').

On 2 October 2008 the defendant filed her plea and sought the dismissal of the plaintiff's claim on the basis that she was a legitimate possessor and occupier of the property in question, the right, title and interest in the property having been lawfully transferred to her by virtue of "the declaratory order issued by this court under case number HC 7594A/06".

It was further the defendant's contention that she was in occupation of the property pursuant to a sale agreement entered between herself and a company called Champion Constructors (Pvt) Ltd.

Alternatively it was contended by the defendant that the plaintiff was estopped from denying that the seller Champion Constructors (Pvt) Ltd was the holder of rights, title and interest in, and was entitled to dispose of the property in the manner it allegedly did.

### The Evidence

In support of its contention the plaintiff relied on the evidence of its Managing Director and representative Ms Elizabeth Chidavaenzi. Several documentary exhibits were tendered in support of the plaintiff's position which was mainly an unequivocal denial of Champion Constructors (Pvt) Ltd having been authorized to dispose of the property in the manner it did or at all.

The defendant relied on her own evidence together with the testimony of two former workers of Fingold Real Estate Agents which was said to have been mandated by Champion

Constructors (Pvt) Ltd to dispose of the property to the defendant. In addition reliance was also sought on several documentary exhibits whose significance will be highlighted later in this judgment.

### The Issues

At the pre-trial conference which was held on 9 July 2007 the parties were unanimously agreed that the matter be referred to trial on basically two issues, viz,

- (1) whether the defendant has right of occupation over stand number 3182 of subdivision A of 159 Prospect, and
- (2) whether the plaintiff has the right to evict the defendant from the property in question.

### The Plaintiff's Evidence

The thrust of the plaintiff's representative's evidence was to demonstrate to the court that the plaintiff was the registered owner of the property in issue and that no mandate was given to anyone to sell the property.

The evidence as presented by Ms Elizabeth Chidavaenzi, its Managing Director who happens to be a major and controlling shareholder in both the plaintiff and Champions Constructors (Pvt) Ltd was that the property in issue was owned by the plaintiff as one of the 39 subdivisions of stand 159 Prospect. Ms Chidavaenzi produced a title deed to confirm the ownership of this property by the plaintiff. See pp 5-7 of the plaintiff's bundle of documents marked Annexure 'A' (Exh. 1). As regards the relationship between the plaintiff and Champion Constructors (Pvt) Ltd, it was Ms Chidavaenzi's testimony that the latter was contracted by the plaintiff to service the land and develop residential houses on the subdivisions and would be paid in kind for its services or in the form of completed houses which it would in turn sell to prospective home owners in order to recoup its expenses.

It was Ms Chidavaenzi's testimony that whilst in the past the plaintiff through Champions Constructors (Pvt) Ltd had mandated an Estate Agents called Fingold Real Estate to dispose two of its properties, it did not sanction the sale of the property in issue. According to this witness's testimony, this explains why the agreement pertaining to the defendant was not signed by the seller. To put it bluntly, she said it was a fraudulent sale which was masterminded by John Chagaresango (an employee of Fingold Real Estate) who is a close relative of the defendant.

Ms Chidavaenzi believed that John Chagaresango acted in collusion with his erstwhile fellow sales agent Ms Mutodi. It was the witness's further testimony that her attention to the

'agreement' signed by the defendant on 26 September, 2006 was drawn to her for the first time ever when the defendant's legal practitioners sent her a letter of demand in November, 2006 in which the lawyers were demanding that she signs the 'agreement' and that her immediate reaction was simply not to ratify such a fraudulent agreement.

It was significant that according to this witness's testimony, Fingold Real Estate, the supposed agent of Champion Constructors did not present the 'agreement' to her for her signature. The witness strongly believed that Fingold sales agents who had had the privilege of doing work for her company in the disposal of two houses earlier on took advantage of their inside knowledge of the project to fraudulently 'sell' the property in question to the defendant.

The witness was quite adamant that for the two properties which Fingold Real Estate Agents had been mandated to sell she had herself given Fingold written sale instructions on behalf of Champion Constructors (Pvt) Ltd as is the norm in the industry.

Through her testimony the witness challenged Fingold sales agents to produce her written instructions to them authorising them to sell the property in question. No such written instructions were produced.

It was Mr *Chidavaenzi*'s further testimony that even if one were to lean backwards and accept for a moment that there had been a proper agreement between the defendant and Champion Constructors (Pvt) Ltd, the defendant had not even made the slightest attempt to comply with various provisions of that agreement to the extent that the defendant would not have been able to enforce it. It is significant that this breach was accepted by the defendant and both Mutodi and Chagaresango, both of whom sought to justify it on the strength of some other oral promises allegedly made by Ms *Chidavaenzi*.

Ms *Chidavaenzi* commented on the final order granted in favour of the defendant ( p 4 of exh I and on p 25 of annexure B (exh II). She said this order was confirmed in default and that an attempt was made to oppose the confirmation of this order but failed on some technicality. The witness further said that the poor handling of this particular case was one of the reasons she severed ties with her erstwhile legal practitioners, namely Messrs Mandizha and Company. MS *Chidavaenzi* further explained that at the time herself and Champion Constructors were barred leading to the granting of the final order in question the parties were engaged in negotiations to try and amicably resolve this matter.

MS *Chidavaenzi*'s understanding was that the final order in question did not give the defendant the right of occupation but the right to enforce the agreement. She stated that from

the time the defendant obtained the order in question she has made no attempt to enforce that order and that even if she had attempted to do so she would not have succeeded.

It was further the evidence of Ms *Chidavaenzi* that having discovered this fraudulent agreement which involved the defendant, purely out of compassion and consideration for the defendant she initiated negotiations to try and resolve the impasse and that the only original but heavily amended (in pen) document from Fingold Real Estate (which bears the name of Betty Kanyuchi as a replacement of Miss Sibongile Kaziboni) must be looked at within this context.

Indeed correspondence on pp 61, 62 and 68 confirm there were in fact some discussions which were carried out on a “without prejudice’ basis.

### **The Defendant’s Evidence**

In summary the witness’s evidence dealt with how she came to be involved in the “purchase” of the property in issue having been assisted to do so by a close family member John Chagaresango, a son to her elder sister. She said John Chagaresango was working for Fingold Real Estate Agents.

It was her accepted evidence that she had told John Chagaresango that she wanted to buy a house and that having seen a completed sample house and the house now in issue under construction, she was invited by her nephew John Chagaresango to sign an agreement of sale on 26 September, 2006 which was witnessed by John Chagaresango, Mr Phiri, her advisor and one Faith Muzungu a younger and literate relative of hers.

It was her testimony that after signing the agreement (on pp 12 – 17) of the defendant’s bundle of documents she commenced to pay in three different instalments on 28 September 2006, 9 October 2006 and 3 November 2006 a total Z\$32 500 000-00. She had difficulties in explaining why she paid an extra Z\$500 000-00 if the price of the property was pegged at Z\$32 000 000-00.

She said that sometime in November 2006 after she had made three payments, she went to view progress of construction on site where she met Ms *Chidavaenzi* for the first time. It was her evidence that on confronting her on delay in the construction, Ms *Chidavaenzi* commented that the witness was troublesome and that the house would be finished soon. The record of proceedings will show that despite this being a very critical part of the defendant’s case, Ms *Chidavaenzi* was never cross-examined on her alleged encounter with the defendant.

It was the defendant's evidence that the terms of the agreement which she signed were never explained to her and that she was assured by John Chagaresango that Ms Chidavaenzi would sign the agreement upon full payment of the purchase price of the property.

The defendant further explained that she moved onto the disputed property and started making improvements towards finishing the house. Under cross-examination she told the court that Ms Chidavaenzi did not authorise her to make any improvements. It was very clear that the defendant blindly signed the agreement of sale. I will comment on this aspect later in this judgment when I will make an attempt to do an assessment of the evidence in this case.

#### The Evidence of Evis Monica Mutodi

She was the second witness called by the defendant to bolster her case.

The witness has a fairly balanced academic background and her chain of qualifications were given as follows:- a Bachelor's degree in Chemistry and a certificate in education (both from University of Zimbabwe), a qualified examiner with Zimsec and a diploma in Real Estate with Estate Agents Council of Zimbabwe. She is a member of the Estate Agents Council of Zimbabwe. The witness said she had a 4 years experience in Real Estate.

It was the witness's evidence that at the relevant time she was employed by Fingold Real Estate as a Sales Negotiator and had previously sold two properties on behalf of Champion Constructors (Pvt) Ltd in the same scheme as the house in issue. The witness said she did not know and never dealt with the plaintiff in this case but dealt with Champion Constructors.

Ms Mutodi said she got to know of the defendant through her then workmate John Chagaresango who introduced her as someone who was looking for a house to buy. She said she then telephoned Ms Chideavaenzi who positively responded by referring her to the house in issue as being available for sale. She then drove to the site with the defendant, John Chagaresango and another member who she could not remember. On site they were cleared to view a completed sample house first before they proceeded to stand 3182 (the stand in issue). The defendant, having shown interest expressed the desire to purchase the property after which the witness said she telephoned Ms Chidavaenzi to advise of the defendant's interest. It was her evidence that she advised Ms Chidavaenzi that John Chagaresango would be reporting to her office in pursuit of this transaction. She understood thereafter an agreement was drawn up but she did not take part in drawing up that agreement.

The witness was emphatic in her evidence in chief that she did not deal with the defendant other than driving her to the construction site. She also remembered that when they visited the stand in question no work had commenced on that stand.

Under cross-examination the witness confirmed that when they visited the property in question no work had commenced on it. However, with further probing she appeared uncertain of what the exact position of the property was.

The difficulty with this witness's evidence was that her alleged telephone conversation with Ms Chidavaenzi, important as it was given the nature of the plaintiff's declaration particularly in paragraphs 3 – 6 thereof, was never put to Ms Chidavaenzi in cross-examination.

Secondly, Mutodi's evidence was characterized by unmistakable prevarication.

In her evidence in chief she said the initial instruction to sell the property in question was given to her by Ms Chidavaenzi. When questioned by the plaintiff's counsel in what form the instruction came, she said it was Ms Chidavaenzi's practice to put instructions on an agreement of sale for Fingold.

Probed further, she said such instructions had been given to her over the telephone. When that averment was further tested under cross-examination she changed and said the instructions were in fact given to Mrs Alec over the telephone in her presence but conveniently claimed not to have heard everything that was said. In one breath she said she was given the instructions in agreement form and that she had herself taken that initial instruction to the defendant's lawyers. When further probed she changed her story and said that those initial instructions to sell the property were in fact given to Fingold typists.

The record of proceedings particularly where this witness was cross-examined will reveal a sorry state because at the end of her evidence she had presented a hopelessly confusing piece of evidence.

It must be remembered that this witness was very critical to the defendant's case in that she was supposed to provide the nexus between the original instructions to Fingold by Ms Chidavaenzi leading to the alleged contractual agreement with the defendant.

That nexus was heavily compromised by the prevarication which characterized Mutodi's evidence.

Against that prevarication is the clear and concise evidence of Ms Chidavaenzi which was to the effect that she did not authorize or mandate Fingold or anyone for that matter to dispose of the property in issue.

It is also significant that the much talked about written initial sale instructions to Fingold were never tendered in court. Ms Chidavaenzi was quite categorical that there were no such instructions, and in my view probabilities are firmly in her favour.

There were other aspects of Mutodi's evidence which were far from convincing. It is common cause that both Mutodi and John Chagaresango were employed by Fingold Real Estate Agents as sales agents or negotiators. They had worked together for a fairly reasonable length of time.

However, when pushed under cross-examination Mutodi said she did not know whether or not John Chagaresango was a registered estate agent. She also said she did not know John Chagaresango's qualifications.

Further, her evidence under cross-examination was not consistent with that of the defendant even on the purchase price. The Defendant said the purchase price was pegged at Z\$32 000 000 but Mutodi said she told the defendant that the price was Z\$32 500 000. Not only that, but Mutodi told the court in her evidence under cross-examination that she disclosed to the defendant about some clauses in the sale agreement. Compare this with the defendant's evidence who said she was never told anything including any escalation in the event of delayed payment and any other clause in the agreement. In fact, the defendant's explanation was that when it came to the agreement itself she dealt with her cousin John Chagaresango and not Mutodi.

The witness was categorical that the purchase price of the property was Z\$ 32 500 000 when everyone else involved in this transaction including the defendant and John, including the written copy of the supposed agreement reflect Z\$32 000 000 as the purchase price.

As the cross-examination took its toll on her Mutodi reneged from her earlier evidence that she had personally negotiated the agreement itself with the defendant but rather had dealt with John Chagaresango.

There was more confusion when the defendant's counsel sought to put things right in re-examination. The witness again changed her story and stated that the instructions to sell were given to her and she passed them on to John Chagaresango.

I think in all fairness it would be extremely dangerous for this court to seek to be guided by the evidence of this witness. She sufficiently discredited herself and the record of proceedings will confirm this observation.

If Mutodi's evidence was so porous and unconvincing then perhaps it is time to move and look at the evidence of John Chagaresango.

#### The Evidence of John Chagaresango

This witness was the last one for the defendant and is closely related to the defendant in that he is a son to the defendant's older sister.

The witness told the court that he went as far as standard six and did undergo some in house training as a sales agent at Fingold Real Estate. At the time he had worked for Fingold as a sales agent for about 3<sup>1/2</sup> years.

From his own testimony it was clear the witness was quite conversant with his work. He said he was involved in advertising houses for sale, taking potential purchasers to view houses for purchase, verifying ownership of houses by checking title deeds through the Surveyer General's office and handling agreements of sale.

The witness confirmed that the defendant was indeed closely related to him and that she had mandated him to look for a house to purchase.

The witness told the court that he knew Ms Chidavaenci as they worshiped at the same church and then later interacted with her at Fingold Real Estate as Ms Chidavaenzi was not only a friend of Ms Violet Alec the owner of Fingold, but had given Fingold the mandate to sell certain of her properties.

It was the witness's evidence that he was familiar with the sale of the property in question. Throughout his testimony, he referred to the property in question as stand 1382. However the truth is that the correct reference of the property is stand 3182.

It was quite revealing that John Chagaresango vividly remembered Ms Chidavaenzi instructing Fingold to dispose three of her properties but conveniently he said he was only involved in the sale of this particular property which incidentally is linked to his aunt and is the subject of this dispute.

In contrast with the evidence of Mutodi, John told the court that prior to the defendant visiting the site for construction Mrs Violet, Mutodi, Ms Chidavaenzi and himself had been to the site.



John further told the court that it was to him that Ms Chidavaenzi disclosed the purchase price of the property in issue. Compare this with the testimony of Mutodi who had earlier on told the court that it was to her that this same disclosure was made.

John vividly remembered that the agreement of sale was prepared at Fingold with him and Mutodi present and having some input in it. This was inconsistent with the evidence of Mutodi who said among other things that she handed the original instructions to John and that once she did that she had nothing further to do with that agreement.

There was further confusion created by John's evidence when he suggested that once the agreements were done, he together with Mutodi took those copies together with the original instruction copy to Ms Chidavaenzi at her office at Robinson House to have the copies signed. It was his evidence that Ms Chidavaenzi then asked them to leave those copies for her to scrutinize after which she would telephone them. John went on to say that when he later followed up on those documents, Ms Chidavaenzi told him not to worry as she would sign the documents.

This piece of John's evidence presented quite some challenge to the court for basically three reasons. Firstly, it was in sharp contrast with the evidence of Mutodi who clearly stated that once she gave the original instructions to John she never had anything to do with this agreement. She did not herself testify on the visit to Robinson House.

The second reason why the court had difficulties with this evidence was that important as it appeared in as far as the plaintiff's declaration was concerned, Ms Chidavaenzi who was subjected to quite some long and searching cross-examination was never specifically asked about this visit to her offices by both Mutodi and Chagaresango as well as Chagaresango's follow ups.

Thirdly and more importantly is the fact that after the trial had started the defendant filed a supplementary summary of evidence in which she undertook to produce 'the original draft agreement with handwritten alterations by Miss E Chidavaenzi which alterations she made at the time of sale before the final draft was produced. This is evidence of her mandate from Ms Chidavaenzi.'

The assumption was that this document was available and would be produced in court. Alas! it was never produced and the explanation by John as regards the fate of this document runs contrary to what the defendant's summary made on the 11<sup>th</sup> hour with the indulgence of the court sought to portray.

John further told the court under cross-examination that he did not explain all the terms of the agreement to his aunt, the defendant. Asked to explain his reasons for not doing so he retorted as follows:

“I did not because the sale of this property was done on trust between Ms Chidavaenzi and myself”.

In cross-examination the witness was directed to specific clauses of the agreement which were apparently not complied with by the defendant and all the witness could do was to repeat that this agreement was not based on what the defendant and himself and others (as witnesses) had signed for but on other verbal assurances by Ms Chidavaenzi.

Assuming the agreement was indeed entered into, it was quite curious to the court that given the experience of John in Real Estate business, he would have failed to appreciate the significance of a written contract, particularly a contract with a variation clause which is as specific as clause 8 of the agreement which is sought to bind the parties in this case.

Surely if the agreement was to be based on some other verbal assurances by Ms Chidavaenzi, would it have been prudent for a man in the mould of John to encourage his aunt to sign an agreement which was in sharp contrast with such verbal assurances. An inevitable question would then arise, why sign the agreement if one desires not to be bound by the terms above one's signature?

#### General Assessment of the Evidence

The evidence of the plaintiff's representative and Managing Director of both the plaintiff and the alleged seller Champion Constructors (Pvt) Ltd was precise and to the point. The witness was consistent throughout her testimony - firstly in her plea followed by her summary of evidence, her evidence in chief and in her evidence under cross-examination that she did not give Fingold or anyone for that matter the mandate to dispose of the property in issue and that what happened was tainted with fraud. She was quite clear that she only got to know about the alleged sale which had supposedly taken place on 26 September 2006 in November of the same year when a letter of demand had been dispatched to her by the defendant's legal practitioners, and that she decided not to ratify such a fraudulent agreement.

The court was unable to detect anything sinister in Ms Chidavaenzi being a major shareholder in both the above entities, that is Champion Constructors and the Plaintiff.

The witness was subjected to a focused and thorough cross-examination and in my view she acquitted herself extremely well and emerged unscathed. One of the several pointed

questions which was thrown at the witness in cross-examination which demonstrated her focus and open-mindedness which in the court's view gave some indication as to the possible motives behind the conduct of Mutodi and Chagarasango in coming up with this idea of this 'sale' is captured in the record of proceedings as follows:-

“Q. Is there any probable reason why Ms Mutodi would go on to sell a specific stand in respect of which she has no mandate?

A. A human being is not predictable and in this case the most probable reason could have been money because on each sale they made they would earn a commission and Fingold confirms it that Monica Mutodi and John both shared the commission they earned from the unlawful sale” p 34 of my long hand notes.

As a witness I found Ms Chidavaenzi a focused, emphatic, confident and convincing throughout the proceedings. Her evidence proclaimed loudly and boldly that there was no contract to talk about between Champions Constructors and the defendant.

The same cannot be said of the evidence of Mutodi and Chagaresango. I have already tried to highlight some of the obvious short comings in their testimonies.

Their evidence, individually and combined was quite suspect as it failed to tally where it mattered most.

The evidence of the two witnesses was critical to the defendant's case because it was through them or one of them that the Defendant's case was supposed to be anchored.

After listening to, and carefully weighing that evidence it became clear to the Court that Fingold could not possibly have been mandated to sell this property to the defendant by Champion Constructors (Pvt) Ltd or anyone for that matter. If my reading of the evidence is correct (which I am certain it is) then Fingold could not possibly have acted as an agent of Champion Constructors (Pvt) Ltd.

We have a scenario where at most, John Chagaresango acted as an agent of his aunt the defendant in looking for a house to purchase. If John abused his position at Fingold then the defendant, by initiating this litigation, has targeted the wrong party. She is simply 'barking up the wrong tree'. The defendant's recourse should be against either Fingold Real Estate Agents or its identified former employees John Chagaresando and Monica Mutodi if it is true they shared the commission derived from the money paid by the defendant (which allegation incidentally stands unchallenged in the record of proceedings).

The effect of the order of this Honourable Court (Page 25 of Defendant's Bundle of Documents – Page 4 of Plaintiff's Bundle)

That order was an order by default and it was affecting the parties cited therein, viz, the defendant in the instant case, Champion Constructors (Pvt) Ltd and E. Chidavaenzi.

Paragraph (a) of that order clearly stated that it was “legally binding and enforceable against Champion Constructors (Pvt) Ltd”.

It is common cause that the holder of title of the property in question is the plaintiff in this case, which was not cited in the proceedings of 19<sup>th</sup> September 2007. It appears quite clear to me that this order could not possibly have been fully enforced without the citation of the holder of title, the plaintiff.

This might possibly explain why almost three years after obtaining that order the defendant has not attempted to enforce it. The defendant might have fully appreciated the futility of pursuing that route.

In any event, it is doubtful that if the court sitting on 19 September 2007, had been fully armed with the evidence presented in this fully fledged trial, would have granted that order. In my view, the court would have been constrained to grant that order given that the title holder was not party to those proceedings. No court desires to be associated with a *brutum fulmen* decision.

Is the defendant a bona fide possessor

It is abundantly clear from the evidence that the defendant obtained an order from this court on 19 September 2007 which called upon her to enforce it. The defendant has from that time adopted a lackadaisical approach in dealing with that order. She has made no effort to enforce that order and does not seem to be in a hurry to do so.

Instead, as the plaintiff's counsel has correctly observed, the defendant has simply moved onto the property without attempting to properly enforce the order.

The defendant is fully aware that the plaintiff was vehemently opposed to her occupation. Not only that, but when she occupied the property she embarked on unauthorized improvements on the disputed property. I believe that under such circumstances the defendant cannot qualify to be an innocent possessor of the property in question.

In any event, in the light of the findings of the court, the defendant is in a fraudulent agreement masterminded by her own agent John Chagaresango and is therefore disabled from

deriving any benefit awarded to a bona fide possessor. The defendant must have recourse against either her agent or Fingold.

The position the defendant finds herself in was aptly put by Christie in the following:

‘But if the agent fraudulently misrepresent his authority he is liable in delict for all consequential damages that are not too remote<sup>1</sup>’

Does the plaintiff has a right of lien?

The point has been made by the defendant’s counsel that the defendant is a bona fide possessor and as such has a lien or ius retentionis to enforce her right to compensation for the improvement she made on the property in issue.

The plaintiff’s counsel is of the firm view that the Defendant has recourse against her cousin and agent who fraudulently masterminded her entering into an agreement with a non-existent principal.

Silberberg and Schoeman admirably deal with this issue of lien when they state.

‘By definition a lien holder’s right lies against the owner of the property which he has maintained, repaired or improved.....The headnote of the report states that Brooklyn House case is also authority for the proposition that a person who has improved property of another in pursuance of a contract with a third party, has the same rights as a person who has merely protected if against loss or damage.....<sup>2</sup>’ See also the case of Brooklyn House<sup>3</sup> for further guidance on the issue.

It does seem to me that the issue of a lien, not having been pleaded in the alternative or the defendant not having counter-claimed for compensation for the improvements made, that issue falls squarely outside the purview of the enquiry that must seize me. For this reason, this issue which is not part of the pleadings but was only given prominence in court addresses is irrelevant in the enquiry before me. The issue does not call for consideration in this matter for a case is rooted in the pleadings and not in court addresses.

What the plaintiff has successfully established in this case is that it is the holder of title of the property in question and that it did not mandate anyone to dispose of that property.

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<sup>1</sup> Business Law in Zimbabwe, Juta and Co. Ltd 1985, by R H Christ at p

<sup>2</sup> The Law of property, Silberberg and Schoeman second edition, published by Butterworth, 1983 at pp 486-487

<sup>3</sup> Brooklyn House Furnishers (Pvt) Ltd v Knoetze and Sons 1970 3 SA 264(A)

Consequently the defendant cannot use her improvements as a weapon or defence against her eviction. She can only file a claim if she so desires, but after vacating the premises in question. In this regard, I lean on the reasoning or the ratio in the case of Syfrets Participation Bond Managers Ltd<sup>4</sup>. Although the case involved improvements made by a tenant, I am satisfied that the same principle would apply in the instant case.

Overally I am satisfied that the plaintiff's case is with merit and judgment is accordingly entered in its favour.

IT IS ORDERED

1. That the defendant be and is hereby evicted from the property being stand 3182 of subdivision 'A' of Stand 159 Prospect within seven days from the date of this order.
2. That the defendant pays costs of suit.

*Chinamasa, Mudimu, Chinogwenya & Dondo*, plaintiff's legal practitioners  
*Takundwa and Company*, defendant's legal practitioners.

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<sup>4</sup> Syfrets Participation Bond Managers Ltd v Estate Co-op Wine Distributors (Pvt) Ltd 1989(1) SA 106 (T)