

WILBERT MUNONYARA
versus
CBZ BANK
and
MS MANYISA
and
PAUL MANYISA
and
PUNISH MUSHEZHU
and
CRISTAINA MUSHEZHU
and
PRITABOROUGH MARKETING
and
WILSON TENDAI DONZWA
and
SALVATE TRADING
and
TAPVICE ENTERPRISES
and
SHERIFF OF HIGH COURT
and
REGISTRAR OF DEEDS

HIGH COURT OF ZIMBABWE
BEREJ
HARARE, 9 October 2013 and 30 January 2014

Opposed civil application

Applicant in person
C. Daitai, for the first respondent

BERE J: The facts which are not in dispute in this case are that on 18 August 2009 the first respondent offered a loan facility to a company styled Pritsborough Marketing on certain terms and conditions.

On 25 August 2009 two directors of Pritsborough Marketing acting in terms of the company resolution wrote to the first respondent (CBZ Bank) confirming their acceptance of the terms and conditions of the loan facility extended to the company (6th respondent). The now applicant gave himself as one of the directors of Pritsborough Marketing.

In order for the first respondent to release the loan in question it was necessary for the loan to be secured and consequently through the active participation of the applicant a first mortgage bond for US\$ 55 000-00 was registered on stand 1212 Marlborough Township, Harare in the name of the applicant.

After all the requirements of the facility had been met, the first respondent proceeded to release the amount of loan.

The applicant actively participated in the transactions that followed the disbursement of funds to Pritsborough Marketing by countersigning in every transaction as a co-signatory to the company, account. Exhibits 'A', 'B', 'C' and 'D' to the notice of opposition confirm the applicant's active participation in the running of the company account.

Upon default in servicing the loan agreement the bank sought and obtained an order authorising it to sell stand 1212 Marlborough Township of Marlborough, in execution of its judgement for the unpaid loan.

The applicant then responded by lodging one application after the other in a desperate effort to save his property. There has been several applications in this court. The list is endless.

The application before me is one of the several applications brought to this court by the applicant.

The applicant has raised several grounds which he argues should persuade the court to have the facility agreement nullified and have the first respondent interdicted from selling the mortgaged property.

The applicant argues *inter alia* that he was cheated into believing that he was a co-director of Pritsborough Marketing when in fact he was not. He went on to allege that but for this misrepresentation he would not have released his property as security for the loan extended to Pritsborough Marketing.

I have considered the points raised by the applicant in this matter and I am convinced he is not on firm ground in seeking the relief he desires.

It seems to me that the circumstances under which the applicant decided to give his house as security for the company loan has nothing to do with the first respondent.

If the applicant was misled into believing that he was a partner in Pritsborough Marketing then he must sought out that issue with the director(s) of Pritsborough Marketing.

That has nothing to do with the bank which expects nothing but the payment of the advanced loan before the applicant's property is released.

It is quite curious that after having participated in withdrawing the loan advanced by the bank, the applicant would now want to riggle out of his natural obligations before the bank has been paid what is due to it.

The position now adopted by the applicant smells of a serious conspiracy to dupe the bank if one considers the fact that the applicant is related to the directors of Pritsborough Marketing.

I am satisfied the applicant's application has no merit and that it must be dismissed with costs.

Given the easy with which the applicant has found himself in and out of this court on divers occasions on basically the same issue thereby subjecting the first respondent to unnecessary costs it is inevitable that the applicant be ordered to pay costs on a higher scale.

Consequently the applicant's application is dismissed with costs on a legal practitioner and client scale.

Messers Magwaliba and Kwirira, first respondent's legal practitioners