

KUDAKWASHE NCUBE
versus
JEMITIAS RODZE

HIGH COURT OF ZIMBABWE
MUSHORE J
HARARE, 10 July 2017 & 20 December 2017

Opposed Application

P Nhokwara, for the applicant
T P Gumbo, for the respondent

MUSHORE J: I have been asked to provide written reasons for the ruling which I made on the opposed roll on the 10th July 2017, whereat I granted Applicant the following relief:-

“IT IS HEREBY ORDERED that:-

1. The respondent and all those claiming occupation through him, be and are hereby evicted from the property described as Stand 1867 Chadcombe Township of Stand 1888 Chadcombe Township.
2. Respondent pay applicant’s costs of suit on a Legal Practitioner/Client scale.”

The facts giving rise to my having granted the Order were that respondent remained in unlawful occupation of the property which applicant had purchased at an auction conducted by the Sheriff’s office. Transfer of title in the property was effected in favour of the applicant. Applicant annexed the Deed of Transfer to his affidavit as proof of ownership of the property.

The present matter is an application to evict respondent from the abovementioned property. Respondent opposed the application despite admitting that applicant was the registered owner of the property concerned and acknowledging that applicant had paid for the property in full. Respondent is not a tenant of the applicant. He has no legal basis for opposing the present application, Respondent’s submissions are without merit. He has no legal claim to the property in question. Applicant is entitled to vacant possession, ownership and occupation of the property in question, and thus applicant has a real right to the order sought in the present matter. When the property was auctioned, applicant placed his bid on a property and won. The property was unencumbered. In a separate matter, [HC 8125/16], respondent has applied for rescission of an Order, which Order he consented to [referenced to below] and which is yet to be heard. Respondent needs to be disabused of the notion that the rescission process which he

is pursuing in that other matter before this court, is designed to allow him to ventilate his frustrations which are not based upon any sound principle of law. That is not the purpose for which the remedy of rescission is intended.

Further, respondent's contention that he had no knowledge of/ and did not participate in the granting of the Consent Order granted by Honourable TSANGA J on the 20th October 2015 is patently false. The Consent Order reads as follows:-

“ECOBANK LIMITED
And
GREEN APPLE PROCUREMENT SOLUTION (PVT) LTD
CHARMAINE LEES
KODOJOTSE SABRI
JEMITIAS RODZE
SHADRECK MASASA

“IT IS ORDERED BY CONSENT THAT:-

1. The defendants shall jointly and severally, the one paying the others to be absolved, pay the plaintiff the capital sum of US\$22 502-81 together with interest at 20% per annum and penalty interest of 1% per annum thereon calculated from the 28th February 2015 to the date of full payment.
2. The defendants shall pay the plaintiff's outstanding legal costs of \$US1 300-00
3. Payment in terms of paragraphs 1 and 2 above shall be made on or before the 20th November 2015, failing which Stand 1867 Chadcombe Township of Stand 1888 Chadcombe Township shall become specifically executable”

Thus on the 20th October 2015, respondent and his co-defendants undertook to settle their indebtedness in order to secure the property in question. Neither respondent nor his co-defendants made any efforts to settle their indebtedness. Respondent was thus keenly aware of the consequences which would undoubtedly eventuate if the debt was not serviced. As a debtor and mortgagor of the property he ought to have intimately known the extent of the defendants' indebtedness and whether or not the loan was being repaid and if so, by how much. To submit that he never participated with his co-debtors in consenting to the Consent Order of the 20th October 2015 is a blatant falsehood. That submission is preposterous.

Further in his submissions in the present proceedings, he has repeated that he never paid any sums toward that indebtedness in order to secure the property. Going by his statement, he willingly allowed the property to be let go. Respondent's objection to the relief of eviction sought by the applicant in the present matter is both *mala fide* and an abuse of this court. It will not be sanctioned or tolerated. It is on the latter basis that I had no hesitation in ordering that applicant is to pay applicant's costs on a legal practitioner and client scale.

Madzingira and Company, applicant's legal practitioners
Chinawa Law Chambers, respondent's legal practitioners