

MOREBLESSING CHITIYO  
and  
KUMBIRAI ISAAC SIDUNA  
versus  
JOCKSTAR INVESTMENTS LIMITED

HIGH COURT OF ZIMBABWE  
TAGU J  
HARARE, 17 May 2017 and 6 September 2017

**Application for Summary Judgment**

*L Mundieta*, for the applicant applicants  
*N Pirimukayi*, for the respondent

TAGU J: On 24 March 2015 the applicants and the respondents entered into an agreement of sale of a residential property called Stand Number 2537 of Zizalisali Lot 4, measuring 2000 square metres, held under Deed of Transfer Number 5126/2009 at a price of US\$ 32 500,00. It was part of the agreement of sale that the applicants were to pay a further US\$ 500.00 towards developmental fees. According to clause 2 of the agreement the purchase price was to be paid to one Emilda Tendai Mapanzure who owned the stand. The applicants duly paid the full purchase price as well as the developmental fees. In acknowledging the payment the respondent indicated the Stand as Stand number 3070 Bannockburn Township, Zizalisali Lot 4, Mount Pleasant Heights Phase 2, Harare, measuring 1 400 square metres instead of Stand 2537 measuring 2000 square metres as reflected on the agreement of sale. The applicants reacted to the wrong allocation of the residential stand, and on several occasions demanded stand 2537, but the respondent refused to rectify the mistake. Furthermore, the respondent refused, failed and or neglected to develop the area in breach of the contract.

The applicants issued summons against the respondent demanding delivery of stand number 2537, development of the area within 90 days from date of judgment as well as costs of suit. In the alternative the applicants claimed payment of the sum of US\$9 750.00 being

the difference between Stand Number 2537 and Stand Number 3070 as well as interest on that sum at the prescribed rate per annum from the date of summons until final payment.

Instead the respondent entered appearance to defend. This prompted the applicants to file this application for summary judgment on the basis that it has an unassailable case, respondent has no *bona fide* defence to the applicants' case and that the notice of intention to defend the action is motivated by the respondent's desire to obstruct the smooth conclusion of the applicants' case.

At the hearing of the matter the respondent took a preliminary point that this matter is *lis pendens* in that on 16 August the first applicant alongside 59 other plaintiffs in case HC 8237/2016 claimed an order that the respondent be ordered to complete development of the land in dispute within 3 months and that the second applicant issued summons in case HC 9546/2016 concerning the same stand.

The applicants opposed the point *in limine* on the ground that the pending matters deal with the issue of developmental fees whereas the current matter deal with the issue of delivery of stand 2537, that the second applicant is not a party to the pending matter and that the respondent did not file such summons but just raised the issue in its plea.

Having heard the submissions by the counsels and perusing the papers I found merit in the objections raised by the plaintiffs. The preliminary point is therefore dismissed.

#### ON THE MERITS

The court found that no explanation has been raised by the respondent as to why after receiving the purchase price for Stand 2537 it decided to give the applicants stand 3070. While the agreement says in clause 6.5 that:

“The purchaser accepts that the property or stand size, shape and number may be changed by the statutory authorities or Seller in which case he further accepts that the seller will allocate the purchaser a new stand number in an adjacent development, or refund. If there is material difference in stand size, as a result of the mentioned change then, the Seller will adjust the price proportionally to the change in the area”

Then it was the duty of the Seller to explain this. In the event of a reduction of size of the Stand the Seller is obliged to make a refund.

In the circumstances the applicants managed to prove all the requirements for a summary judgment and it is hereby granted. The following orders are made:

IT IS ORDERED THAT

- a) Application for summary judgment be and is hereby granted.
- b) Respondent is hereby ordered to deliver a residential property called Stand Number 2537 of Zisalisali Lot 4, measuring 2000 square metres, held under deed of Transfer Number 5126/2009 to the Applicants within 14 days from the date of this judgment.
- c) Respondent should develop the area within 90 days from the date of judgment.
- d) Respondent to pay costs of suit on the Legal Practitioner and client scale

OR IN THE ALTERNATIVE it is ordered that;

- a) Application for summary judgment be and is hereby granted.
- b) Respondent is hereby ordered to pay the Applicants the sum of US\$ 9750.00 being the difference monetary value between Agreement of Sale of a residential property called Stand Number 2537 of Zisalisali Lot 4, measuring 2000 square metres, held under deed of Transfer Number 5126/2009 and Stand Number 3070 Zizalisali Lot 4.
- c) Respondent should develop the area within 90 days from date of judgment
- d) Respondent be and is hereby ordered to pay interest on the said sum at the prescribed rate per annum from the date of summons until final payment
- e) Respondent to pay costs of suit on the Legal Practitioner and client scale.

*Zvinavakobvu Law Chambers*, applicants' legal practitioners  
*Machingambi Legal Practitioners*, respondent's legal practitioners.