

VICTOR CHISOMBO
versus
FREDRICK CHUMA

HIGH COURT OF ZIMBABWE
CHITAKUNYE & NDEWERE JJ
HARARE, 22 September 2016 & 27 September 2017

Civil appeal

Appellant in person
Respondent in person

NDEWERE J: On 22 September, 2016, we dismissed the above appeal, with each party to bear its own costs. On 16 May, 2017, the appellant wrote a letter to the Registrar asking for the reasons for judgment. This is what prompted us to write this judgment.

The background of the case is that the respondent issued summons for the eviction of the appellant and all those occupying no. 205 Colston Hill Road, Monavale, Mabelreign in case number 48096/15 on 7 December, 2015.

The defendant filed his plea in response to the summons on 21 December, 2015. Thereafter the respondent applied for summary judgment and argued that the defendant's plea did not disclose any defence and was filed merely for purposes of delay. He attached the title deed to the property which showed that stand no. 205 Colston Hill Road, Monavale, had since been purchased and transferred from the appellant's previous employers to the Tazvida Chuma Family Trust. The respondent also attached a resolution by the Tazvida Chuma family Trust showing that the Trust had authorised Mr Frederick Tazvida Chuma to represent it.

The respondent's application for summary judgment was granted on 8 February, 2016.

On 19 February, 2016, the appellant filed an appeal against the Magistrate's decision. The appellant's grounds of appeal were five. The grounds of appeal, being by a self-actor, were not elaborately done and concise. We were, however, able to glean the issues from what the appellant wrote. The first three grounds of appeal dwelt on the background information concerning the appellant's former employers' Trusts and Companies which were not material

to the issue before the court. In summary, in his grounds of appeal, the appellant was contesting why the respondent was allowed to evict him when he had a valid life usufruct granted to him by his former employers. The facts in the record indicate that indeed, the appellant was granted a life usufruct by the previous owners of stand 205 Colston Hill Road, Monovale. But, as through a written memorandum between the appellant and the Birchley Trust Company as correctly pointed out by the learned magistrate in his judgment, the life usufruct was a personal servitude whose creation and continuation was wholly at the instance of the persons who granted that right. The continued existence of the servitude was tied to the person who granted the personal servitude. This is because an agreement for a life usufruct is binding between the parties who made the agreement only, it does not bind the whole world. So in this instance, it is the appellant's former employer who was bound by the agreement; not the new owner of Stand 205. Even if the respondent knew about the usufruct agreement; he would still not be bound by it because he was not a party to the agreement.

As observed by the learned judge in *Hamtex Investments (Pvt) Ltd v King* HH 403/12,

“It is common cause that at no time did the respondent enjoy the benefit of a registered servitude. He was in occupation of the property by agreement with MIPF. The property was then transferred to the applicant which was not a party to the agreement between the respondent and MIPF, which contract was only binding “*inter partes*”.... I therefore came to the inescapable conclusion that whatever subsisted between the respondent and MIPF was only valid “*inter partes*” and not against the applicant.... The respondent may have certain rights against MIPF but those surely do not extend to the applicant.”

Likewise, in the appellant's current case, the Memorandum of Agreement of the usufruct between the respondent and Birchley Investments (Pvt) Ltd did not bind the respondent. It is clear from the title deed that the piece of land which the respondent bought did not have any servitude registered upon it, meaning the appellant's usufruct right was not tied to the land itself. This means that while the appellant is at liberty to proceed against his former employer for breaking their contract, he has no legal basis to insist on staying on the land which now belongs to the respondent's Trust.

There was therefore no misdirection whatsoever in the learned Magistrate's decision to grant summary judgment in favour of the respondent. In fact, the learned Magistrate went to great length to explain why the appellant could not continue to stay on respondent's land, citing relevant case authorities with similar facts. If the appellant had sought legal advice before embarking on the appeal, he would have been properly advised of the legal position concerning such usufructs. Regrettably, the appellant never sought legal advice.

There being no misdirection in the learned magistrate's decision, the appeal was dismissed, with each party to pay its own costs.

CHITAKUNYE J I concur