

REPORTABLE (83)  
Judgment No. SC. 91/05  
Civil Appeal No. 343/03

**KUDZAI                      MUNYIKWA                      v**  
**(1)   ANNA   MAPENZAUSWA   (2)   THE   DEPUTY   SHERIFF**

SUPREME COURT OF ZIMBABWE  
CHEDA JA, MALABA JA & NDOU AJA  
BULAWAYO, NOVEMBER 28, 2005 & MARCH 30, 2006

*E Marondedze*, for the appellant

*Ms R Hanzi*, for the first respondent

No appearance for the second respondent

CHEDA JA: The appellant in this case was married to Kundai Munyikwa ("the appellant's former wife"). They divorced at the High Court and an order was made concerning their matrimonial property. That divorce order was not filed with the papers on record.

However, it is not disputed that part of that order was that their matrimonial home was to be sold to best advantage and the proceeds to be shared between the appellant and Kundai Munyikwa.

It was alleged that problems were encountered regarding the arrangements to sell the house. As a result, the appellant's former wife, instead of enforcing the divorce order, applied to the High Court for another order, seeking almost the same relief granted in the divorce order. On 16 May 2002 the High Court issued an order, which reads as follows:

"(1) Rodor Properties (Pvt) Ltd be and is hereby authorised to and directed to carry out a valuation of stand 3087 Emakhandeni

Township of stand no. 1 Emakhandeni Township situate in the district of Bulawayo and (which) is 330 square metres.

- (2) It advertises the property and sells it for the best offered price.
- (3) It pays to the applicant (the appellant's wife) a half share of the net proceeds of sale.
- (4) It pays to the applicant her half share of the rental calculated at the rate of \$3 000.00 (three thousand dollars) per month from the 4<sup>th</sup> day of June 2001 to date of transfer.
- (5) The Deputy Sheriff be and is hereby authorised and directed to sign all necessary documents to effect transfer of the said immovable property to the purchaser.
- (6) The respondent pays the costs of this application on a client and attorney scale."

It is common cause that the property was eventually sold to the first respondent. However, the sale did not comply with the above order.

Instead, an employee of Rodor Properties (Pvt) Ltd ("the employee") inspected the house and, according to his affidavit, by merely looking at it from the house he valued it. From this outside look of the house, he valued it at \$1 500 000.00 (one million five hundred thousand dollars). He gave this price as the current market value of the property. About twelve days later the employee says he got a buyer for that price and he drew up an agreement of sale.

It is common cause that the property was not advertised, as was required by the court order. It is not stated how the first respondent came to know about the property.

It is not even suggested that there were other offers, out of which it could be said that the first respondent's offer was the highest. It is possible that it was the only offer. Without advertising and getting different offers, it cannot be said that the first respondent's offer was the best.

Accordingly, the sale, having been done contrary to the provisions of the High Court order, was certainly not proper. It was therefore not proper to order that the house be transferred to the first respondent, as the sale to her was a nullity.

Court orders are made so that they can be complied with. The order of the High Court made on 16 May 2002 had neither been set aside nor appealed against. The High Court cannot be used to enforce a sale that was carried out contrary to the provisions of a lawful order.

In view of the above, the sale of the property to the first respondent cannot be allowed to stand.

The suggestion that there was collusion between the appellant's former wife and the first respondent is not supported by evidence sufficient to persuade me to make such a finding. It is possible that the first respondent may not have known the details of the order that led to the sale. I therefore do not find it just to order costs against her.

It is ordered as follows –

- (1) The appeal succeeds to the extent that the judgment of the court *a quo* made in case no. HB 110/2003, ordering transfer of the property to the first respondent, is set aside.
- (2) Rodor Properties (Pvt) Ltd is ordered and directed to resell the property in accordance with the provisions of the court order in case no. HB 2960/01 dated 16 May 2002.

- (3) There be no order as to costs.

MALABA JA: I agree.

NDOU AJA: I agree.

*Marondedze & Partners*, appellant's legal practitioners

*Kwenda & Associates*, first respondent's legal practitioners