

IN THE SUBORDINATE COURT OF THE FIRST

2015/CRMP/1229

CLASS FOR THE LUSAKA DISTRICT

HOLDEN AT LUSAKA

(CIVIL JURISDICTION)

BETWEEN

MILTON MUMBA

AND

SHIEDI SICHAMBA

SAMUEL TEMBO



PLAINTIFF

1<sup>ST</sup> DEFENDANT

2<sup>ND</sup> DEFENDANT

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JUDGMENT

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The plaintiff issued out of the court a writ of summons claiming against the defendant

- (I) Possession of plot No 189/70 in Kanyama compound belonging to the Plaintiff
- (II) An order of interim injunction which injunction was not granted.
- (III) Any other remedy the court may deem fit

In civil cases the standard of proof is on a balance of probabilities and he who asserts the claim must prove it.

In this case there is no dispute that plaintiff bought a plot from Ackson Banda on 23<sup>rd</sup> June 2008. There is no dispute that he built a structure on the plot though not complete. There is no dispute that this plot was sold to 2<sup>nd</sup> defendant. There is no dispute that 2<sup>nd</sup> defendant has completed the structure and put a caretaker.

The evidence is such that plaintiff bought the plot in 2011 from Mr Ackson Banda and built up to window level. He was away for 3 months working in Mpongwe and when he came back he found the house had been built though not complete. He then put a poster for the people there to stop building. He asked Ackson Banda if he sold the plot to which he refused. Plaintiff informed his brother and inquired, they were told the person who sold the plot was Sichaamba Shiedi who took them to 2<sup>nd</sup> defendant. 1<sup>st</sup> defendant said he would find another plot to build 2 complete rooms. Plaintiff told them that the plan should work fast as he wanted to move in the house, that is how he kept waiting. They only met again on 15<sup>th</sup> June 2015.

In cross examination he stated that 1<sup>st</sup> defendant admitted having sold the plot and the people at the plot said 1<sup>st</sup> defendant sold to them. But 2<sup>nd</sup> defendant stated that Ackson Banda was the owner of the plot and was an MMD member, plaintiff built on the plot.

PW2 was Irene Chitolela who confirmed that they bought the plot on 22<sup>nd</sup> June 2008 and put a 2 roomed structure. They used to check on the plot and in 2011 they found someone had completed the structure. They found the buyer and seller of the plot, the buyer was 2<sup>nd</sup> defendant and seller was 1<sup>st</sup> defendant. These defendants agreed they would buy another plot and build for us on the plot. At the council officers they found that the 2<sup>nd</sup> defendant had already been given a receipt for the plot number 189/70 Kanyama which is now in Catherine Nachangwe's name.

In cross examination she stated that 1<sup>st</sup> defendant told them he sold the plot and she was with her brother in law plaintiff had informed her of defendants plan to build them the house.

By 2<sup>nd</sup> defendant that they bought the plot from Ackson Banda on 22<sup>nd</sup> June 2008 and started constructing up to window level.

PW3 was Mawilili Daka the brother to plaintiff who testified that plaintiff bought a plot in Makeni villa in 2008 and he was taken there by the plaintiff. PW3 assisted plaintiff with a truck to ferry blocks from oriental and found a brick layer Mweemba to go and build a foundation on the plot, which he built up to window level. When plaintiff came back he found the plot was sold and the building completed that it was roofed. They investigated and found that 2<sup>nd</sup> defendant had bought the house and when asked he said 1<sup>st</sup> defendant had sold him the plot with Kafwa who sold the plot. However 2<sup>nd</sup> defendant insisted it was 1<sup>st</sup> defendant who sold him the plot.

1<sup>st</sup> defendant suggested plaintiff buys iron sheets to give 2<sup>nd</sup> defendant as there was a tenant in the house. 1<sup>st</sup> defendant had said he would buy blocks and 10 pockets of cement to build another house and it has not happened

In cross examination he stated that it was 2<sup>nd</sup> defendant who told them that 1<sup>st</sup> defendant sold the plot to him, no plot was demolished in that area and no house was sold. He was not aware 2<sup>nd</sup> defendant bought the plot from



cadres. To date 1<sup>st</sup> defendant has not built even though he was asked to build.

By 2<sup>nd</sup> defendant he stated that he did not count the courses on the house but blocks had been used.

This was the close of plaintiff case.

In Defence Sichamba Happy Shiedi the 1<sup>st</sup> defendant confirmed having bought a plot from MMD cadres in 2008, between November and December 2008 the police went in to the said farm and stopped them from building and same structures were demolished. When they later heard cadres were selling the plots they went to protect the older plots which were given to them, those that followed up their plots were sold to other people.

2<sup>nd</sup> defendant came to buy and refused to pay the money to the cadres and asked 1<sup>st</sup> defendant to be a witness of the transaction and that is how 2<sup>nd</sup> defendant built. Plaintiff came in 2011 to claim the land.

In cross examination he stated that he did not sell the plot to 2<sup>nd</sup> defendant, it was the MMD cadres that sold 2<sup>nd</sup> defendant and 1<sup>st</sup> defendant was a witness to the payment. It was 1<sup>st</sup> defendant who took plaintiff to 2<sup>nd</sup> defendants home.

DW2 was Samuel Tembo who testified that he had bought a plot in Makeni Villa on 2<sup>nd</sup> July 2011 for his wife Catherine Nalengwe but he started building and completed a 2 roomed house, on the plot there was a 2 roomed structure up to 4 courses which he completed within July 2011 and secured a care taker. Around 2012 he started receiving complaints from his care taker that people were coming to the plot claiming the house was theirs, he then told the caretaker to show these people his house that of 1<sup>st</sup> defendant who was a witness to paying for the plot RDC's at K6000=00 Kanyama Constituency.

In December 2013 1<sup>st</sup> defendant and 3 gentleman that is plaintiff, Pw3 and a Mr Lungu informed him the plot was for plaintiff. In 2015 he was given a receipt and so was plaintiff to legalise the plots and they were asked to resolve the issue but plaintiff sued.

In cross examination he stated that the structure was build up to 4 courses.

DW3 was Getrude Cheelo Mayape the caretaker to 2<sup>nd</sup> defendant who confirmed that plaintiff went there to inform her it was his plot and to leave plaintiff started going there in 2012.

In cross examination she stated that she told plaintiff the owner of the plot was 2<sup>nd</sup> defendant.

This was the close of the defendant's case.

As stated earlier the issues not in dispute are that the plot belonged the plaintiff and from the evidence it was 1<sup>st</sup> defendant who sold the plot to 2<sup>nd</sup> defendant that is why he was a witness. There was a structure on the plot and this structure belonged to plaintiff. The plot was bought in 2008 by the plaintiff. I do not believe 1<sup>st</sup> defendant when he said the plots in the farm where repossessed then again they went to get or protect the old plots.

The 1<sup>st</sup> defendant must have sold the plot to 2<sup>nd</sup> defendant as he saw there was no development being carried out without verifying the owner. When the defendant was asked about the plot, 2<sup>nd</sup> defendant confirmed in the presence of the plaintiff and his witness that 1<sup>st</sup> defendant had sold him the plot and which piece of evidence was not challenged by either defendants.

What is true is that 1<sup>st</sup> defendant sold 2<sup>nd</sup> defendant's plot up to window level when he knew it was not his plot. If the plot did not belong to plaintiff, the 2<sup>nd</sup> defendant should have brought were he signed to give the money as 1<sup>st</sup> defendant was the witness. Why did he only pick on 1<sup>st</sup> defendant to be a witness because he transacted with him as they were other people in the area.



This system by cadres to sale someone else plot just because they have taken long to develop must come to an end. 2<sup>nd</sup> defendant is actually a squatter who has no remedy at law as he never dealt with the owner plaintiff. The 1<sup>st</sup> defendant sold a plot that was not his and 2<sup>nd</sup> defendant too knew the plot was not for 1<sup>st</sup> defendant that is why he stated in his evidence that the council gave them 3 months to resolve the issue which has not been resolved.

There is no doubt the plot belongs to plaintiff and 2<sup>nd</sup> defendant has completed the structure. These two were the victim of 1<sup>st</sup> defendant crookedness. The 1<sup>st</sup> defendant had promised to find a plot and they were going to build with 2<sup>nd</sup> defendant up to the level where the structure was.

I order that the 1<sup>st</sup> defendant finds plaintiff a plot and that they build with 2<sup>nd</sup> defendant up to window level and if this fails the plaintiff is to refund the 2<sup>nd</sup> defendant the money used to complete the house from window level to completion and possesses the house as both are victims of 1<sup>st</sup> defendants crookedness though 2<sup>nd</sup> defendant should have verified before buying and complete the structure. The 2<sup>nd</sup> defendant can then pursue the 1<sup>st</sup> defendant to refund the monies paid as he is the person he was with when paying the monies.

Parties to bear on costs

IRA within 30 days

**DELIVERED IN OPEN COURT THIS      DAY OF      2016.**

  
**IREEN TILISA WISHIMANGA**

**RESIDENT MAGISTRATE**

**15/02/2016**