

KHOLISANI DHLODLO

Versus

ALEXANDRA RILEY JONES N.O.
(In her capacity as the Executor of the
Estate of the Late Basil Riley Jones)

And

THE REGISTRAR OF DEEDS N.O.

And

THE DEPUTY MASTER OF THE HIGH COURT N.O.

IN THE HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 28 MARCH 2023 & 7 DECEMBER 2023

Civil Trial

M. Dube for the plaintiff
Miss D. Nyaningwe for the 1st defendant

MOYO J: Plaintiff issued summons claiming:

1. An order confirming the agreement of sale entered into between plaintiff and the late Basil Riley Jones in respect of an undivided 1/36th share being share number 3 in stand 585 Bulawayo Township also known as flat number 3 Chanbury Court, 110 J. Tongogara St/11th Avenue, Bulawayo
2. An order compelling the 1st defendant to sign transfer papers transferring an undivided 1/36 share being number 3 in stand 585 Bulawayo Township also known as flat number 3 Chanbury Court, 110 J. Tongogara St/11th Ave, Bulawayo from the estate of the late Basil Riley Jones to the names of the plaintiff within 5 days of service of this order on the 1st defendant's legal practitioners.
3. Failing compliance with paragraph 2 above, an order authorizing and empowering the Sheriff to sign transfer papers on behalf of the 1st defendant

transferring the above mentioned property from the estate of the late Basil Riley Jones to the names of the plaintiff.

The plaintiff himself gave evidence on his own behalf. He told the court that he resides in Pretoria, South Africa, and that in 2001, he was at Wits and had a girlfriend who needed accommodation in Bulawayo. Mr Clive Basil Jones offered them an apartment to rent in 2002. The lease was renewable annually and they renewed it orally. He said that his family lived there. In 2003 he spoke to Clive Jones seeking to purchase the property. Later after the father died, he then dealt with the son. He paid in instalments but could not find him to initiate transfer. He referred the court to page 21 of the trial bundle of documents where there is emails dated 20 and 22 October 2014 wherein the parties were discussing the sale of the property. He also told the court that at pages 22 – 31 there are proofs of payment. Under cross-examination he told the court that the agreement was verbal and that he bought the property for R350 000,00. He said that the figure he paid fluctuated around 20 000 per month. He explained that he finished paying in 2017 but the declaration says 2016 as he had not yet located the receipts. He mentioned that all the deposit slips tendered were authentic and that he got them from the bank. He said he could not comment on the bank stamps not having a date. Questioned as to that so the only other person who knew about the sale of the property was the deceased, he said that his wife and son also knew. He admitted that he instituted the proceedings after deceased's death.

The defendant was represented by Jabulile Fortunate Mahlangu who was duly empowered by the executrix in the estate of the late Basil Riley Jones through a special power of attorney. She told the court that Mr Jones died on 22 August 2019. She was questioned as to why plaintiff was in occupation of the property and she said plaintiff occupied the property as a tenant.

It was put to her that plaintiff stopped paying rentals after he had purchased the property and she said she would not comment on that as she was not privy to that information. Asked as to who pays the rates for the property she said they had not looked at that with a view to first establish the status of the property. She said she does not know when the rates were last paid. Questioned as to why the payment of R350 000 by the plaintiff was being disputed. She said it was because the deposits were not reflecting on the statement they received from the bank. Asked why the bank statement from the executrix is not stamped. She said the executrix failed

to get it stamped. Questioned as to the aspect that if indeed the receipts by the plaintiff were fake, it is a criminal matter that needed to be reported to the South African police, she said they could not report in Zimbabwe as the banking was done in South Africa. She said that she is not aware if Mr Jones ever instituted eviction proceedings against the plaintiff during his lifetime. She said according to the statement she had, she is not aware of any rentals that were being paid by plaintiff into Mr Jones' account. She confirmed that there was an offer and acceptance by plaintiff and Mr Jones for the sale of the property being the subject matter of the property in question but there was no proof of payment as the bank statement they had did not reflect the funds. Under re-examination she confirmed that Mr Jones' Will was executed in 2013.

Issues for determination

1. Whether there was a valid agreement of sale between the parties.

This court has no choice but to rely on the evidence of the plaintiff, who was a party to the agreement, he told the court how he occupied the property being the subject matter of this dispute. He told the court how he paid for the property and produced bank deposit receipts into the deceased's bank account in South Africa. He occupied this place from 2001 to date. The defendant's witness, told the court that she is not aware of any payments of rates by the deceased estate, neither is she aware of any rentals being paid by the plaintiff to remain in occupation of the property. The late Clive Basil Jones died in 2019 per defendant's testimony, plaintiff is in occupation of a property owned by the deceased's estate, nothing has been done to either cause the plaintiff to leave or to force him to pay rentals. No evidence was led whatsoever to counter plaintiff's version of events. Defendant only sought to discredit the plaintiff's assertion in the declaration that he finished paying in 2016 and yet the receipts showed that he finished in 2017. The plaintiff explained this discrepancy by stating that at the time he issued summons he had not done a collection of all the receipts, a reasonable explanation in the view of this court.

2. Whether the documents should be thrown out for want of authentication

The defendant submits that the bank deposit slips must be thrown out as they fail to comply with this court's authentication rules. Whilst this is a valid submission it does not however take away plaintiff's narration on how he paid and his endeavor to try and bring such

proof albeit outside the provision of the rules. The matter would in fact still not end there, because after plaintiff has narrated the dates he deposited the amounts into the deceased's account even without tendering the receipts, plaintiff would have discharged the onus on a balance of probabilities and it would now be on the defendant to rebut that information by producing in court the deceased's bank statement refuting plaintiff's evidence.

Defendant never did that. No statement of account was tendered in court duly authenticated in terms of the rules as pleaded by defendant disproving the deposits as alleged by plaintiff. Such failure only leaves the court to find that on a balance of probabilities the plaintiff managed to prove his case as I have already shown herein.

1. The agreement of sale exists per the emails
2. The plaintiff is in occupation to this date
3. No rentals are being paid by plaintiff
4. The estate has not been paying the property rates to defendant's acknowledgment
5. The deceased left the plaintiff in occupation
6. The plaintiff has narrated that he paid the money into the deceased's account
7. Although an unstamped statement was canvassed in court, it was not tendered, neither was the deceased's bank statement duly stamped and authenticated was not tendered in court to rebut plaintiff's account on the deposits having being made.
8. No counter claim is being made for rentals or damages *in lieu* of unlawful occupation by plaintiff
9. No effort was ever made by the executrix to demand payment of rentals or vacant possession of the property.

The sum total of all these pieces of facts, raise the bar higher in the plaintiff's claim. He has managed to show on a balance of probabilities that he is entitled to the relief that he seeks.

Wherefore I order as follows:

1. The agreement of sale entered into between plaintiff and the late Basil Riley Jones in respect of an undivided 1/36th share being share number 3 in stand 585 Bulawayo Township also known as flat number 3 Chanbury Court, 110 J. Tongogara St/11th Avenue, Bulawayo be and is hereby confirmed.
2. That the 1st defendant is hereby ordered to sign transfer papers transferring an undivided 1/36 share being share number 3 in stand 585 Bulawayo Township also known as flat number 3 Chanbury Court, 110 J. Tongogara St/11th Avenue, Bulawayo from the estate of the late Basil Riley Jones to the names of the plaintiff within 5 (five) days of service of this order on 1st defendant's legal practitioners
3. That failing compliance with clause 2 above, the Sheriff of the High Court be and is hereby authorized to sign transfer papers on behalf of the 1st defendant to put this order into effect.

Dube, Mguni & Dube Legal Practitioners, plaintiff's legal practitioners
Webb, Low & Barry, 1st defendant's legal practitioners