DIANA TSITSI MAREWANGEPO
versus
TAWANDA TACHIONA
and
SANYATI RURAL DISTRICT COUNCIL
and
LECKIAS GUMBO

HIGH COURT OF ZIMBABWE
CHINAMORA J
HARARE, 6 October 2022 and 12 May 2023

Civil Trial – Specific Performance

T Nyamucherera, for the plaintiff
G Majirija, for the first defendant
F Nyakatsapa, for the third defendant
No appearance for the second defendant

CHINAMORA J:

Factual Background

This is a trial in which the plaintiff seeks specific performance of a contract of sale of a piece of immovable property. Essentially, she asks this court for an order compelling the first defendant to accept the balance of the purchase price, and to cede to her his title and rights in respect of Plot No. 44 Sabonabona Subdivision C, Kadoma (hereinafter called "Plot 44"). The genesis of this dispute is set out in the pleadings filed of record. Let me summarize the essential details. The plaintiff avers that, on 12 October 2018, she entered into an agreement of sale with the first defendant, in respect of Plot 44. Her version is that the contract was a verbal one, which also captured some of its terms in an affidavit signed by the first defendant. Crucially, the plaintiff states that the affidavit confirms that the defendant received $5 500 as a deposit, and set out some payment terms for the balance. It appears from the summons and declaration that the purchase price was $24 500, payable partly in cash and by way of transfers within a period of five months.

The first defendant denies the plaintiff's version. Instead, he contends that no agreement of sale was concluded as the parties were still negotiating the contract. In his submissions, the first defendant states that the plaintiff kept changing the purchase price, moving between $24 000 and $24 079. From the papers and evidence led in court, there appears to be much confusion on the specific price of Plot 44, apparently because the parties were mixing payment methods (i.e. cash in United States and ecocash transfers into the first defendant's mobile phone wallet). The plaintiff's evidence was that the parties agreed that part of the payment was to be made in kind through the plaintiff giving the first defendant a Honda Fit Aria motor vehicle.

The second defendant, who was cited in its official capacity, did not contest the plaintiff's claim, meaning that it would abide by the court's decision. On the other hand, the third defendant claims that he entered into an agreement of sale with the first defendant over Plot 44 and signed an agreement of sale around 6.00 a.m. on the 12 October 2018. Incidentally, this is the same day that the plaintiff asserts that Plot 44 was sold to her by the first defendant. He avers that he was to pay a deposit of $10 500 to the first defendant's account on the date of agreement, namely, 12 October 2018. His evidence was that, when he did the transaction, it only reflected in the first defendant's account on 13 October 2018.

The papers tendered in evidence and oral testimony in court show that, on a date after 12 October 2018, the first defendant informed the plaintiff that Plot 44 had been sold to the third defendant. The first defendant sought to negotiate with (and persuade) the plaintiff for her to take another stand belonging to him, namely, Ordoff Plot, but she refused. It is also evident from documents placed before this court that, at some point, the third defendant took occupation of Plot 44. This led the plaintiff to file an urgent chamber application in this court, under HC 08/20, for an interdict pending finalization of this dispute, which was granted on 7 January 2020. Despite this interdict, the first defendant signed a cession of his rights in Stand 44 to the third defendant. I will now examine the respective cases of the parties presented before me.

The Plaintiff's Case

It is plaintiff's testimony that she became aware that the first defendant was selling a stand through one Mr Vambayi Shenjere ("Shenjere"), who was then an Engineer with Sanyati Rural District Council ("the Council") and known to the first defendant, who was the former chairman of the Council. Shenjere was aware that the first defendant was looking for a buyer for the stand. The

plaintiff told the court that Shenjere facilitated a meeting of the parties on 12 October 2018. Shenjere testified that, the first defendant was the first defendant, as a former chairman of the Council, who had worked for it for many years and was entitled to get a stand from the Council. The witness stated that the first defendant had, however, not yet been allocated the said stand as some payment conditions had to be met. The three of them went to Sanyati Rural District Council where they were shown a layout plan from which the plaintiff chose Plot 44. This evidence was corroborated by Mr Shenjere in his testimony in support of plaintiff's case. According to Mr Shenjere, the plaintiff and the first defendant agreed on the purchase price, and the deposit in the sum of $5 500 was paid by the plaintiff directly to the Council, following which an offer letter was made in the first defendant's name. (See Exhibit 1 on page 12 of Plaintiff's bundle).

The plaintiff maintained that on 12 October 2018, she entered into a verbal agreement of sale with the first defendant in respect of Plot 44 Sabonabona Subdivision C, Kadoma. Her case is that the parties agreed that, she would pay an amount of $9 000 to the first defendant towards the purchase price for the plot. In addition, the plaintiff would pay the amount owing to the Council, which is the amount of $5 500 that resulted in the offer letter being given to the first defendant. According to the plaintiff, the payment of $5 500 constituted the deposit. She told the court that after she paid the deposit and the offer letter was issued, the first defendant signed an affidavit, which was not disputed by the first defendant. The affidavit which is Exhibit 2, appears on p 27 of Plaintiff's Bundle of Documents, *inter alia* reads:

> "I, Tawanda Tachiona, do hereby solemnly and sincerely swear/declare the following: I am to receive $1,000-00 from Mrs Marewangepo Dianna on 13 October 2018, and Mrs Marewangepo paid $5,500-00 in my name as deposit for a stand, Sabonabona Plot (Plot No. 44) on 12 October 2018, and to receive $5000-00 in kind on 22 October 2018. Balance to be paid in 5 (five) months as follows: $600-00 per month i.e. 200 US and 400 as Bond notes (transfer).

The affidavit is self-explanatory. The plaintiff, additionally, explained that she still had to give the first defendant her Honda Fit Aria motor vehicle valued at $5 000, which was the payment in kind referred to in the affidavit. In a message sent on 1 November 2018 (found in Exhibit 7, which is a transcript of messages exchanged between the plaintiff and the first defendant), the first defendant advised the plaintiff that he wanted a cash payment of $2 500 and when it was ready. The text message reads as follows:

> "I paid some of the money to Council amounting to $4,500-00, so it is now $10,000-00. In addition, we discussed as a family on the issue of the United States dollars which a difficult to come by, so

> make it $2,500-00 then call me so that I come and sign at once. The other amount you bring in Bond notes then we on this side will try to pay everything that is due to Council for the stand before month end then we close the deal, and what will be left are the monthly payments".

This evidence was not challenged under cross examination. The plaintiff further testified that she travelled to Kadoma from Bulawayo on 3 November 2018 with the amount of $2 500 requested by the first defendant, but the first defendant did not show up. Consequently, she left a message that she had left the money with her mother for him to collect as she had returned home. This is confirmed in Exhibit 7, which, on 11 November 2018, has the following message:

> "Good morning. You did not manage to come per our agreement yesterday. We have left the United States dollars in Kadoma. You will be given by [my] mother in Kadoma and put it down in writing. You phone on numbers 0773501754 0r 0718501754".

The first defendant did not collect the money and the plaintiff engaged the first defendant on various occasions with the intention of making further payments. Her further evidence was that the defendant advised her that he was at a funeral and was unable to communicate. Having given this excuse, the plaintiff said that, the defendant thereafter refused to accept the money being paid to him via ecocash and sent it back to her. She further said that this made it impossible for her to perform her obligation to complete payments due in terms of the agreement.

Additionally, the plaintiff gave evidence that the first defendant brought the third defendant into the picture claiming that he had sold the same plot to him on 12 October 2018 around 6.00 a.m. and was, therefore, cancelling the agreement with the plaintiff. In light of this, the plaintiff said that she instituted these proceedings to compel the first defendant to transfer his title and rights Plot No. 44 to her since there was now a competing claim to ownership by the third defendant. As the third defendant had begun digging a foundation for a house on the stand, she successfully sought and obtained an order stopping the third defendant from effecting further developments. She told the court that, the first and third defendants nonetheless signed a deed of cession of the former's rights to the latter. The plaintiff told court that the deed of cession is a nullity since it was signed when there was an extant order of this court in respect of Plot No. 44. She was steadfast that the court order did not allow the first defendant to cede the property to the third defendant.

The plaintiff's further testimony was that she met the first and third defendants over the disputed stand, and the first defendant admitted to breaching the agreement with her, and offered her an alternative stand (Ordoff Plot) which she refused insisting that they had agreement relating

to Plot 44. Before me, the plaintiff denied that the third defendant entered into an agreement of sale with the first defendant. She said that the first and third defendants are relatives and that the alleged agreement is an arrangement between them intended to deprive her of her right to Plot 44 in terms of the contract she entered into on 12 October 2018 with the first defendant. The plaintiff asserted that the first defendant is obliged to pass transfer in her favour. Further, she adamantly stated that the first defendant should be compelled to accept the balance of the purchase price in the sum of $6 085, which she had tendered to him, hence, the relief which she was seeking before this court.

The first Defendant's Case

On the other hand, first defendant testified that he is a former Chairman of the Council and, during his tenure, he was allocated two stands including the plot in issue. He told the court that, in 2018, he elected to sell the plot and met the third defendant on a number of occasions and finally entered into an agreement with him on the 12 October 2018. This agreement, which is Exhibit 21 appears on page 1 of first defendant's Bundle of Documents and is marked as Annexure "A". His evidence continued that the third defendant undertook to do a ZIPIT transfer of a deposit of $10 500 immediately. However, the payment did not reflect immediately in the first defendant's account. The first defendant told the court that, suspecting that the payment from the third defendant was no longer coming, he then entered into negotiations with the plaintiff, which negotiations were not conclusive and would be finalized on 22 October 2018. He was adamant that no agreement of sale was consummated from his discussions with the plaintiff.

The first defendant accepted that he signed an affidavit acknowledging receipt of an amount of $5 500 from the plaintiff, which is attached on p 8 of his Bundle of Documents. He told the court that the plaintiff had prepared an agreement of sale, but he refused to sign it since the parties were not yet in full agreement. The witness further stated that he was persuaded by the plaintiff to accept an amount of $5 500 which was 30% of the total price of the plot as quoted on the proforma invoice from the Council, which appears at p 12 of plaintiff's Bundle of Documents. His testimony was that he took the money and used it to pay deposit for the plot which was required by the Council. The first defendant confirmed that, in terms of the affidavit he signed, the plaintiff would $1 000 by 13 October 2018, but she failed to do so. He proceeded to explain that, as the parties had not yet agreed he could not take action against the plaintiff consequent to the default in payment. In his testimony, the first defendant also said that, when he received the deposit from the third

defendant on 13 October 2018, he opted to sell to the third defendant. He produced Annexure "B2" which is on pp 15-16 of his Bundle of Documents, which shows two payments of $10 000 and $500 received on 13 October 2018 and 15 October 2018, respectively. These payments were made by the third defendant. The first defendant's case is that he never entered into a valid agreement of sale with the plaintiff, but that they were still negotiating the terms of the agreement which would be finalized on 22 October 2018.

The first defendant's evidence continued that the plaintiff was in breach because she did not come up with the payment in kind on 22 October 2018 as had been agreed by the parties. He went to say that when the plaintiff showed up on 23 October 2018, he advised her that they could not proceed engaging over Plot 44, but he could offer her the Ordoff Stand. It was his further testimony that, on that day (23 October 2018), the plaintiff forced him to accept 415 bond coins which should have been paid on 13 October 2018. He disagreed with the plaintiff's evidence and Shenjere that there was no Plot 44 to talk of before the offer letter was issued on the 12 October 2018. The first defendant told the court that he was already aware of the plot as it had been given to him sometime in 2017. Further, the first defendant stated that plaintiff neither paid the balance owing to the Council nor did she offer to pay him that amount. Therefore, he concluded his testimony by asserting that the plaintiff had failed to perform her duties under the contract as agreed.

The third Defendant's Case

In his evidence-in-chief, the third defendant disclosed that the first defendant is his brother-in-law. He applied for joinder to these proceedings because he had an interests in Plot 44, which he claims to have from the first defendant on 12 October 2018 bought in terms of a written agreement of sale. This is the same agreement relied on by the first defendant. In his Bundle of Documents, it is on page 8 and is marked Annexure "A". The third defendant stated that, sometime in July 2018, his wife (Ruramisai Gumbo) was advised by the first defendant that he was disposing of two immovable properties, namely, Ordoff Plot and Plot 44, and he asked her to go and view the plots. He added that they went to see this stand several times between August and September 2018, but tall grass hampered a clear view. Additionally, the third defendant told the court that they eventually went with the first defendant and saw the plot.

Further, the third defendant said that negotiations with the first defendant started around September 2018, and a purchase price was agreed. His testimony continued that the parties

prepared a draft agreement which they signed on 12 October 2018 at about 6.00 a.m. This agreement is Exhibit 21. In addition, he said that he was required to pay a deposit of $10 500, and clear the balance of $14 580 by 30 November 2018. Under cross examination by the plaintiff's Counsel, his attention was drawn to the signatures page of the agreement, which showed that it was witnessed by Alfred Tachiona and Gumbo Sifelani. Asked whether these witnesses were present when the parties signed the agreement, he said that they were not there. Asked why an absent witness had signed the agreement *ex post facto*, his answer was that he had overlooked it. He was referred to page 8 of the Bundle of Documents, which has an acknowledgment of receipt of cash in the sum of $10 500 that he signed on 12 October 2018, despite his admission that the money was only received on 13 October 2018 and 15 October 2018.

In his testimony, the third defendant explained that he sent some money to his wife, so that she could make a ZIPIT transfer of $10 000 to the first defendant on 12 October 2018. He produced a bank statement showing that the deposit of $10 000 was made on 13 October 2018. Despite this, the third defendant told the court that the payment was done on 12 October 2018, but that the bank had reversed the payment. When asked such a reversal was not on the bank statement, his response was that it was an error by the bank. The third defendant was also asked by his lawyer why he had signed a deed of cession in the face of an extant court order. He relied that the order did not prohibit cession of rights in the property. Finally, the third defendant adduced evidence of payments of rates, lighting and plan approval fees for the plot, and maintained that he was the lawful purchaser of Plot 44. Before examining the law relevant to resolution of the dispute *in casu*, I will examine the issues for determination.

The issues in this matter

In the Joint Pre-Trial Conference Minute signed by the parties on 22 June 2022, they agreed on the following four issues:

(1) Whether or not the first defendant validly sold an immovable property known as No. 44 Sabonabona C, measuring 14635 square metres, in Sanyati to the plaintiff.

(2) Whether or not the plaintiff is entitled to specific performance in respect of Stand No. 44 Sabonabona C, measuring 14635 square metres, in Sanyati.

(3) Whether or not there is a valid agreement of sale between the first defendant and the third defendant.

(4) Whether or not the plaintiff should be evicted from Stand No. 44 Sabonabona C, measuring 14635 square metres, in Sanyati.

I now proceed to examine the relevant law and how it applies to this dispute.

The Law and Analysis of the Case

In an application for specific performance, the court has to be satisfied that there was a valid agreement of sale between the parties. In this respect, the question to be answered is whether the verbal agreement between the parties and the affidavit deposed to by the first defendant on 12 October 2018 created a valid agreement of sale. The law on the subject of sales is settled in this jurisdiction and, in this context, in *Simbarashe Pasipamire* v *Global Property Advisory & Technical Services* HH 06-18, MANGOTA J stated that:

> "Four elements constitute the contract of purchase and sale. These are:
>
> a) the seller who wants to sell;
> b) the buyer who wants to buy;
> c) the thing or the subject – matter of the contract - and
> d) the price. (See *Norman's Purchase and Sale* in South Africa 4th ed, p 2: *Mackenrtain's Sale of Goods* in South Africa, 4 ed, p 28 ff)."

From the enunciation of the law above, it is evident that a valid agreement of sale exists between the plaintiff and the first defendant. I say this because, the first defendant's own evidence confirmed that he had a piece of land (Plot No. 44) which he intended to sell; there was a buyer, who was willing to buy it; and the purchase price was agreed between the parties. In any event, the affidavit singed by the first defendant sets out the terns of the agreement. Crucially, the affidavit shows that the purchase price can be determined. Consistent with an agreement of sale, the plaintiff made a deposit payment of $5 500. The payment terms in respect of the balance are explicitly set out in the affidavit. The plaintiff gave her evidence well and was not shaken in any material respects under cross examination. The court does not doubt her credibility. In fact, the plaintiff's account accords with what is confirmed in the first defendant's affidavit, which was signed on the date Plot No. 44 was officially allocated to him, and the sum of $5 500 was paid to the Council by the plaintiff on his behalf. It is significant that the affidavit was a unilateral act of the first defendant signed under oath before a commissioner of oaths.

I find the versions of the first and third defendants unbelievable. They say that they entered into an agreement of sale at 6:00 am on 12 October 2018, which happens to be the same day that

the first defendant signed the affidavit (Exhibit 2). It is also the day when the first defendant in his own words and handwriting and under oaths states:

> "Mrs Marevangepo paid $5,500-00 in my name as deposit for a stand, Sabonabona Plot (Plot No. 44) on 12 October 2018"

In light of this, the court does not accept that, before the plaintiff paid the deposit of $5 500 there was any prior agreement between the first and third defendants. The court finds it incredible that the third defendant made a payment which did not show in his account, hence his quick decision to begin discussing a sale of the same property to the plaintiff. I make two observations in this regard. The first is that the reversal of payment, which is ascribed to a bank error, is not endorsed on the bank statement. Secondly, given the family relationship between the first and third defendant, I am not persuaded that he would act with such haste to cancel an agreement signed at 6.00 a.m. of the same day, without first informing the third defendant that the payment had not been received. This testimony is undermined by the agreement which the first and third defendants claim to have signed on 12 October 2018 (Exhibit 21). Clause 8 of that agreement provides as follows:

> "… if the purchaser fails to observe or perform any of his obligations under this agreement of sale and fails to rectify such breach within 14 days of the dispatch by the seller or his agent by registered post or hand delivery of written notice requiring him to remedy such breach, the seller shall be entitled, at his option, and without prejudice to any other rights available to him at law, either … cancel this agreement of sale, regain possession of the property and to claim damages for the breach of contract …"

The first defendant accepted under cross examination that he considered that the third defendant had breached the contract, yet he started offering the property to someone else before communicating the decision to cancel and give the contractual notice to rectify the breach. The testimony that he merely negotiated with the plaintiff but did not conclude a sale is preposterous, given that the affidavit contains all the elements of what constitutes a contract of sale. I find the admission that people were asked to sign as witnesses after the event very damning. Clearly, those two individuals were not present at the time the parties signed the document, yet a false impression was deliberately created that the document had been signed and duly witnessed. The deception extended to the receipts acknowledging payment which were made to reflect 12 October 2018 as the date of payment. This insertion of false dates was admitted by both the first and third documents. The inescapable conclusion is that the first and third defendants presented to court documents which

told a lie about themselves. It was a blatant attempt to mislead the court. This cast doubt on their credibility. I am satisfied that a valid sale of Plot No. 44 was concluded between the plaintiff and the first defendant, and that there was no sale of the same property to the third defendant.

I move to examine if there was breach by the plaintiff which justifies the cancellation of the agreement of sale. The first defendant's argument the plaintiff breached the contract by failing to pay the sum of, $1 000 by 13 October 2018. Before deciding if there was a breach warranting cancellation of the contract, one critical aspect must be considered. The first is whether the agreement of *in casu* qualifies as an instalment sale in terms of the Contractual Penalties Act [*Chapter 8:04*]. The answer is found in s 2 of the Act, which provides:

> **"**instalment sale of land" - means a contract for the sale of land whereby payment is required to be made –
>
> (a) in three or more instalments; or
> (b) by way of a deposit and two or more instalments;
> and ownership of the land is not transferred until payment is completed"

I note further that in *Nenyasha Housing Co-operative* v *Violine Sibanda* HH 456-19, DUBE J (as she then was) eruditely stated:

> "An instalment sale is defined as a sale agreement which requires that payment of the purchase price be made in three or more instalments at by way of deposit and two or more instalments with transfer of the property, which is subject of the sale, being transferred after full payment of the purchase price … The procedure to be followed by the seller entails him giving notice to rectify, discontinue or remedy the breach, followed by the institution of proceedings. The mischief behind this provision is to offer protection to purchasers in instalment sales. Where a purchaser in an instalment sale is in breach of the terms of the agreement, he is afforded an opportunity to rectify, discontinue or remedy the breach before proceedings for cancellation of the instalment sale are commenced. Where he is in breach and is able to remedy the breach within the time specified in the notice, the need to cancel the sale falls away. Failure to give a purchaser notice to rectify, discontinue or remedy the breach renders the proceedings for cancellation of the contract a nullity …" **[My own emphasis]**

The agreement between the parties was obviously an instalment sale agreement. It provided for payment of a deposit of $5 500 and subsequently monthly instalments stretching over three months. The evidence revealed that the first defendant, when the plaintiff had not made payment timeously, did not notify her of the breach and ask her to rectify it. Instead, he remained quiet, only to later give notice of cancellation which did not comply with the Act. This was accepted under cross examination. At any rate, the first defendant's conduct of continuing to accept payments towards the purchase price was not consistent with cancellation of the sale. His evidence in court

that the payments were now going towards sale of the Ordoff Plot is cavalier, if not dishonest. Firstly, the plaintiff and the first defendant had an agreement of sale in respect of Plot No. 44 which had not been cancelled. Secondly, the plaintiff had rejected the offer to purchase the Ordoff Plot insisting that the parties' agreement on Plot No. 44 was extant. Short of being something in the fictional world, there was no basis upon which the agreement vis-à-vis Plot No. 44 could mutate to one over the Ordoff Plot. Therefore, there was no lawful cancellation of the agreement of sale.

Having come to the conclusion that the contract between plaintiff and first defendant remained (and is still) extant, I must comment on the cession signed between the first and third defendant. Let us recall that this court, in HC 8/20, granted an interim interdict which prevented the third defendant from making any further developments on the disputed property, or doing anything incidental thereto. In addition, the court observes that the current proceedings were commenced on 13 November 2019 before the cession was signed on 5 January 2020 by the Kadoma City Council Director of Engineering Services. Even if the cession was executed on 5 February 2020 (which is on the City of Kadoma's official stamp), the position remains unchanged that it was done after court action began. I make the inevitable conclusion that the cession was signed against an extant court order, or in respect of a property which was *res litigiosa*. In this regard, in *Zimano* v *Zimre Property Investments Ltd* HH 357-20, I held that a party cannot do something that breaches a court order. With respect to *les litiosa*, *Zimbabwe Banking Corporation & Anor* v *Shiku Distributors (Pvt) Ltd & Ors* 2000 (2) ZLR 11 (H), it was held that *res litigiosa* may not be sold after institution of proceedings. See also SC 7-13 and *Opera House (Grand Parade) Restaurant (Pvt) Ltd* v *Cape Town City Council* 1986 (2) SA 656 (C).

On the authority of the above cases, the cession is invalid and does not affect the plaintiff's rights in terms of the agreement of sale. Primarily, the plaintiff seeks an order for specific performance, while tendering the outstanding purchase price. Such a tender is competent, and I need only refer to *Chiarelli* v *Bouna Investments (Pvt) Ltd t/a Bouna Safaris, Travel and Tours* HH 678-15, where MATANDA-MOYO J stated the law as follows:

> [3]
> "… the party seeking specific performance must have substantially fulfilled his obligations in terms of the contract. A party may also be granted the relief if he has offered to do or is ready and willing to do all acts that were required of him to execute the contract according to its terms. It is settled law that every party to a binding contract who is ready to carry out its own obligations under it has a right to demand from the other party, so far as it is possible, performance of that other party's obligations in terms of the contract. See *Farmers Co-Operative Society* v *Berry* 1912 AD 343 at

> 380. In matters involving payment of money the full amount must have been paid or at least there must be a tender for payment of the full amount owing …" **[My own emphasis]**

From my assessment of the evidence, it is apparent that the plaintiff substantially fulfilled her part of the contract and was prevented from completing payments by the first defendant who attempted to resile from it by not collecting the amount left for him with the plaintiff's mother and by returning the payment made by ecocash. She has tendered the amount outstanding, hence the prayer that she be allowed to pay the sum of US$9 579 to the first defendant. Having performed her side of the contract, I see nothing that precludes the plaintiff from asking the first defendant to similarly fulfil his part. In this respect, in *River Ranch Ltd* v *Delta Corporation Ltd* HH 1-10, PATEL J (as he then was) appositely said:

> "Where the sale of immovable property is involved, the purchaser's obligation to pay the purchase price is ordinarily reciprocated by the seller's obligations to give occupation and effect transfer. See *Pasha v Southern Metropolitan Local Council of the Greater Johannesburg Metropolitan Council* 2000 (2) SA 455 (WLD) at 466. The parties' obligations are reciprocal because they arise from what is essentially a bilateral or synallagmatic contract. See Christie: *The Law of Contract in South Africa* (3rd ed.) at 467-468". **[My own emphasis]**

Considering the relevant law and the evidence availed to the court, I am satisfied that the plaintiff has proved on a balance of probabilities that she is entitled to the relief that she seeks. I am now left to consider the question of costs. Generally, costs follow the result, and I have no reason to depart from this approach. The plaintiff has asked costs on a legal practitioner and client scale. An award of costs is in the discretion of the court depending on the circumstances of each case. Nothing was placed before the court to justify costs on a punitive scale. I am inclined to grant the relief sought with costs on the ordinary scale.

Disposition

The order that I make is as follows:

1. The agreement of sale entered into between plaintiff and first defendant in respect of No. 44 Sabonabona Subdivision C, Sanyati be and is hereby upheld.
2. The first defendant shall receive an amount of US$6 085 being the remaining balance of the purchase price in respect of No. 44 Sabonabona Subdivision (C) in Sanyati to the plaintiff.

3. The plaintiff shall pay the outstanding balance of USD$9 579 to second defendant for No. 44 Sabonabona Subdivision (C) in Sanyati.
4. The first and second defendants shall facilitate the cession of title and rights in respect of No. 44 Sabonabona Subdivision C to the Plaintiff.
5. If the first defendant does not cede the title and rights in respect of the No. 44 Sabonabona Subdivision C, Sanyati to the plaintiff within ten days of the granting of the order the Sheriff of the High Court of Zimbabwe be is hereby authorized to do all what is required and to sign all the necessary documents for the cession.
6. The first and third defendant shall jointly and severally pay of costs of suit, the one paying the other to be absolved.

Lawman Law Chambers, plaintiff's legal practitioners
B Matanga Attorneys at Law, first defendant's legal practitioners
T Pfigu Attorneys, third defendant's legal practitioners