

AGRIPPA HLABANGANA

And

BARBRA HLABANGANA

Versus

JOYCE SEVERINO

And

FRANCIS NYAMADZAWO

And

SIPIWE NYAMADZAWO

And

REGISTRAR OF DEEDS

HIGH COURT OF ZIMBABWE

NDLOVU J

BULAWAYO, 27 SEPT and 9 DEC. 2024

Pre-Trial Conference

Mr T. Chizhande, for the Plaintiffs

1st Defendant in Person

No Appearance for the 2nd – 4th Defendants.

NDLOVU J:

INTRODUCTION.

The matter appeared before me on 27 September 2024 in the morning. It had been set down for a pre-trial conference. Only the Plaintiffs and the first Defendant were in attendance. The Plaintiffs were represented by counsel, and the first Defendant was unassisted. Evidence showed that the rest of the Defendants had been served for this hearing. Evidence further showed that the 2nd and 3rd Defendants had vehemently protested these proceedings to the Senior Judge through numerous letters calling it a fraud and an attempt by the Plaintiffs to give a Lazarus experience to this case considering that it had been removed from the roll more than a dozen years ago.

On any other day, the court would strike out the Defendants' defences and refer the matter to the unopposed roll. I did not and I gave the following order:

- “1. The matter be and is hereby postponed sine die to enable the court to fully understand the historical facts of the dispute and the pleadings.***
- 2. Once that is done the Registrar will inform the parties of the way forward.***
- 3. There is no order as to costs.”***

BACKGROUND FACTS

The dispute is centred around an alleged double sale of a house in Mkoba T/Ship in Gweru by the first Defendant to the Plaintiffs and the 2nd and 3rd Defendant on the other way back in 2001/2002. It is common cause that the 2nd and 3rd defendants took the 1st defendant to Gweru Magistrates Court seeking the eviction of the Plaintiffs from the house in question ***[without citing the Plaintiffs]*** under case number 1965/02. This signalled the birth of a plethora of cases between the parties stretching over 22 years. Among those numerous cases, difficult to enumerate with certainty, is ***HC 2078/2008*** [the case *in casu*].

On 12 January 2012 Makonese J, removed this matter ***[HC 2078/2008]*** from the roll.

A perusal of the file reveals that nothing was done in this matter between 12 January 2012 ***[when Makonese J removed it from the roll]*** and 09 October 2023 when the Plaintiffs’ current Legal Practitioners filed their assumption of agency, Notice of Set Down - Trial and wrote a long letter to the Registrar ***purporting*** to have stumbled upon a Judgment ***[HB7/11]*** by ***Mathonsi J*** ***[as he then was]*** wherein the Hon Judge encouraged the parties to bring this case HC 2078/2008 to finality. I say ***purporting*** because the Legal Practitioners were being conservative with the truth. The fact of the matter is that my sister ***Kabasa J*** had 4 days earlier on 05 October 2023 delivered a judgment dismissing a related matter between the parties, ***HC 2079/08***. The same Legal Practitioners participated in that matter. ***Justice Kabasa*** in her judgment commented on the need to bring this matter ***[HC 2078/08]*** to finality and castigated the parties for having disregarded the wise counsel of ***Mathonsi J*** given to them on 27 January 2011. One wonders what could have been the wisdom behind that selective activation of memory on the part of the Plaintiff’s Legal Practitioners.

THE RULES.

In Practice Directive 3/13 an observation was made by the Chief Justice that there were a lot of inactive matters in the Registries. Registrars were directed to set those matters down and have them finalised. *HC 2078/08* was already removed from the roll on 12 January 2012. The parties did nothing about it.

In the current High Court Rules, 2021 Rule 66 incorporated *Practice Directive 3/2013*. Rule 84 provides for the lapsing of Summons. It does so without retrospective effect. These Rules came into effect in April 2021.

It appears that the *High Court Rules 2021* did not fully address the “ghost” of inactive action matters. This caused the Hon. Chief Justice to issue *Practice Direction No. 1 of 2022*. It came into effect from 24 March 2022 and made provision for management of cases like *HC2078/08* filed before the *High Court Rules, 2021* came into effect and not prosecuted to finality. Its thrust was to ensure that they were prosecuted finality within a reasonable time. Such matters were taken as having lapsed.

Where a summons has lapsed, it cannot be brought back to court without the leave of a judge. The Registrar was directed to deal with inactive summons said to have been in the High Court registry, in terms of this practice direction. The case *in casu* has been inactive since 13 January 2012 and is a summons matter and therefore subject to Practice Direction number 1 of 2022.

ISSUE

Whether or not this matter is properly on the roll.

APPLICATION

It is clear that *HC 2078/08* long lapsed by operation of the law. *Practice Direction No. 1 of 2022* is clear that a lapsed summon matter cannot be brought back to Court without the leave of a Judge. No such leave was sought by the Plaintiffs before setting this matter down for a pre-trial conference. The Plaintiffs ought to have applied for the reinstatement of the matter onto the roll first.

DISPOSITION

This matter is therefore improperly on the roll and it must be struck off the roll.

ORDER

The matter is Struck Off the Roll with costs.

NDLOVU J.

Marume & Furidzo Legal Practitioners, plaintiffs' legal practitioners