

HARARE MUNICIPAL MEDICAL AID SOCIETY
versus
MUNYARADZI KEREKE
and
BRIWARD TRADING [PVT] LTD

HIGH COURT OF ZIMBABWE
COMMERCIAL DIVISION
HARARE
MAFUSIRE J

Civil trial

Dates of sitting: 24, 25, 28 & 29 October 2024
Date of final written closing submissions: 22 November 2024
Date of judgment: 9 May 2025

T.T.G. Musarurwa, with him, *W. Chishiri*, for the plaintiff
The defendants in person, through the first defendant

MAFUSIRE J

a Introduction

- [1] The plaintiff is a medical aid society the members and beneficiaries for which are employees of the Harare Municipality, a local authority. The first defendant is a businessman, with direct or indirect beneficial interest in the second defendant, a private company duly registered in Zimbabwe. During the trial of this matter, the first defendant was serving a term of imprisonment for a crime that is not in any way connected to the present suit.
- [2] In this suit, the plaintiff claims from the defendants a refund in the sum of USD 138 000 together with interest thereon at the prescribed rate. The plaintiff also seeks an order confirming the cancellation of a certain agreement of sale between itself and the first defendant. Finally, the plaintiff seeks a declaration from this court that it paid the full purchase price for a certain immovable property in an area in Harare known as Ruwa, which property is registered in the name of the second defendant and upon which sits a medical institution called Fortress Hospital. The whole dispute centres around Fortress Hospital.

[3] The plaintiff's claims are vigorously contested by the defendants, through the first defendant. They deny any form of liability whatsoever to the plaintiff.

[4] The matter is highly convoluted. The issues are a complete bog. Among other things, the evidence and the paper trail are inconsonant. The pleadings are inelegant. It has been quite a mission to stitch together a coherent narrative from the divergent versions of the facts as presented by the parties.

b The plaintiff's case

[5] In outline, and for the moment skirting the details, the plaintiff's case is that in November 2014 it purchased Fortress Hospital from the defendants via two agreements. One was for the immovable property, Stand 9653 Ruwa Township, upon which the hospital is built [*“the immovable property”*]. The other, on the same day, granted the plaintiff the right of first refusal for the movables and other assets associated with the hospital.

[6] The defendants were represented by their agent, one Newton Madzika [*“Madzika”*]. The plaintiff was represented by its former Chief Executive Officer, one Evaristo Rukasha [*“Rukasha”*]

[7] The purchase price for the immovable property was US\$800 000. The purchase price for the equipment and fittings was US\$650 000.

[8] The plaintiff duly paid the purchase prices. The US\$800 000 was paid in two tranches, US\$700 000 through a bank then known as Kingdom/Afrasia, now defunct, and the balance through a firm of legal practitioners, Muza & Nyapadi, the conveyancers appointed to transfer title in the immovable property. The US\$650 000 for the assets was subsequently paid through Madzika.

[9] On 21 March 2022 the first defendant connived with Rukasha who, in an act of abuse of office, signed an acknowledgement of debt on behalf of the plaintiff for US\$400 000 in favour of the defendants allegedly as outstanding amounts for Fortress Hospital.

- [10] Rukasha caused some payments to be made in terms of the acknowledgement of debt. The payments were irregular because the plaintiff had fully paid for the hospital.
- [11] Following disciplinary proceedings, Rukasha was dismissed from employment.
- [12] Relying on the acknowledgement of debt aforesaid, the first defendant, through threats, fraudulent misrepresentations and intimidation, coerced or manipulated the plaintiff into signing an agreement on 31 August 2023 [*“the 31 August 2023 agreement”*] for the purchase of the second defendant as a going concern, its immovable property on which Fortress Hospital sits, the hospital’s fixtures and equipment, stock, trading licences, goodwill and the book debts.
- [13] According to the 31 August 2023 agreement, the purchase price was USD1 138 900 of which US\$866 900 was acknowledged to have been paid, leaving a balance of US\$272 000 outstanding.
- [14] The plaintiff had since paid US\$138 000 in various instalments before its newly reconstituted Board led by one Zacharia Murerwa [*“Murerwa”*] considered that the 31 August 2023 agreement was unlawful and unenforceable by reason of the fact that it had been induced by fraud or duress.
- [15] Thus, in this suit the plaintiff is seeking confirmation that it bought and paid for Fortress Hospital long back in 2014, that it is entitled to get transfer of the immovable property and all the assets associated with the hospital, and that the payment of US\$138 000 aforesaid that it had made to the defendants allegedly under an unlawful agreement, should be refunded.

c The defendants’ case

- [16] The defendants’ case, through the first defendant, is that in October 2014 the plaintiff expressed an interest to purchase Fortress Hospital.
- [17] A memorandum of understanding was signed between the parties, among other things setting out the broad parameters of the agreement that would eventually be entered into.

- [18] The price guide in the memorandum of understanding, in October 2014, was in the ranges of US\$850 000 to US\$900 000 for Fortress Hospital, US\$105 000 to US\$120 000 for the medical equipment, and US\$430 000 to US\$560 000 for the stocks, goodwill, fixtures and fittings, and ancillary assets.
- [19] The defendants appointed Madzika as agent to negotiate the sale. He had no signing powers.
- [20] Contrary to instructions and to his mandate, Madzika concluded an agreement with the plaintiff, in effect selling the hospital piece meal.
- [21] The first agreement signed by Madzika purportedly on behalf of the defendants is dated 7 November 2014 [*“the 7 November 2014 agreement”*] in terms of which the defendants, as sellers, purportedly sold to the plaintiff the immovable property for US\$800 000 of which US\$700 000 was acknowledged to have been paid already. The balance of US\$100 000 would be paid via the conveyancers’ trust account upon the signing of the agreement
- [22] On the same day, Madzika went on to conclude an addendum with the plaintiff in terms of which the plaintiff was given the right of first refusal, if the defendants decided to sell the other assets connected to the hospital, comprising staff houses, medical equipment, furniture and a generator.
- [23] The purchase price for those assets was pegged at US\$650 000.
- [24] The plaintiff immediately took vacant possession and control of Fortress Hospital.
- [25] Of the US\$700 000 acknowledged in the 7 November 2014 to have been paid, the plaintiff had in effect arranged an inter-account transfer with Kingdom/Afrasia Bank of \$700 000 in the local currency.
- [26] Kingdom/Afrasia Bank was already undergoing liquidity challenges, and no withdrawals of any deposits were being effected.
- [27] It took more than 8 ½ years for the defendants to finally have access to the deposit of \$700 000 aforesaid.

- [28] The defendants have never received the balance of US\$100 000. On the plaintiff's instructions, Muza & Nyapadi, diverted the plaintiff's payment for something else.
- [29] The amount of \$650 000 allegedly paid by the plaintiff through Madzika, or his trusts, allegedly towards the assets for Fortress Hospital, was never received by the defendants.
- [30] Madzika completely turned rogue. Not only did he not have the power or mandate to sign any agreement of sale on behalf of the defendants, but in December 2014, through his various private trusts, purported to be the owner of Fortress Hospital and its assets, and through various agreements or memoranda of understanding, he purported to sell the hospital for himself.
- [31] Upon getting knowledge of his duplicity, the first defendant terminated Madzika's mandate by written communication dated 9 December 2014. The termination letter was copied to the plaintiff.
- [32] Madzika's irregular conduct was not only in relation to the unlawful signing of the agreements of sale as aforesaid, and passing off as the owner of Fortress Hospital and its assets, but also he was involved in illicit deals with the plaintiff. He sold dubious shares worth millions of dollars to the plaintiff as investments.
- [33] To date, almost 10 years later, the plaintiff has no trace of certificate or any document of title for the purported investments.
- [34] The defendants did not defraud the plaintiff or coerce or intimidate or manipulate or bully it into signing the 31 August 2023. That agreement was the product of protracted negotiations between the plaintiff through its top officials, including one Gaylord Chidhindi, the current Chief Executive Officer [*"Chidhindi"*], Murerwa, the current Board Chairman, the late Adam Puzo, who was then the Finance Manager, and others, all of whom had been privy to the transactions and goings-on involving Fortress Hospital.

- [35] The 31 August 2023 agreement was the culmination of cooperative drafting between the plaintiff's legal counsel, *Mr Chishiri*, who originated an initial draft upon which the first defendant made minor amendments.
- [36] The process of negotiations and signing of the 31 August 2023 agreement was quite amicable as is evidenced by, among other things, communication from *Mr Chishiri* himself, among other things, praising the first defendant as a man of peace and commending him for his role in brokering the agreement.
- [37] Beyond his persistence and determination to protect his business interests, the first defendant did nothing untoward in procuring the 31 August 2023 agreement.
- [38] The 31 August 2023 agreement was a compromise between the parties. Among other things, it took into account the history of the transaction, the value of the payments that the plaintiff had purportedly made, the period that the plaintiff had had the use and enjoyment of Fortress Hospital, the true net asset values before and after, and several other factors.
- [39] The amounts of US\$400 000 in the acknowledgement signed by Rukasha on 21 March 2022 and US\$1 138 900 in the 31 August 2023 agreement were not plucked from the air. There was a proper valuation and assessment of the business that is Fortress Hospital with which the plaintiff agreed.
- [40] In July 2016 the first defendant was sent to prison for 10 years. In August 2021 he was released on bail pending appeal. However, upon the dismissal of his appeal by the Supreme Court in June 2024, the first defendant was returned to prison to serve the remainder of his sentence.
- [41] It was during the period of his freedom on bail pending appeal that the first defendant vigorously pursued and pressed for the conclusion of the outstanding transaction.
- [42] Part of the pressure on the plaintiff to resile from the agreement stems from the involvement of the Zimbabwe Anti-Corruption Commission [ZACC] which at one time caused the arrest of both Rukasha and the first defendant for their alleged roles in the payments relating to Fortress Hospital.

[43] However, the criminal case against the first defendant collapsed. In discharging the first defendant, the State was castigated by the presiding magistrate for mounting a baseless prosecution in the face of the 31 August 2023 agreement.

[44] The first defendant denies fraudulently misrepresenting to the plaintiff or coercing it into concluding the 31 August 2023 agreement. He insists the plaintiff entered into the agreement freely and voluntarily following the first defendant's concise but forceful presentation of the background facts. The agreement is backed by, among other things, resolutions of the Board of Directors of the plaintiff authorising Chidhindi to enter into such an agreement.

d The evidence

[45] The plaintiff called four witnesses: Madzika, one Vote Muza [*"Muza"*], at all material times a legal practitioner and the senior partner at Muza & Nyapadi, and the one tasked with the transfer of the immovable property. The plaintiff also called Murerwa and Chidhindi. The first defendant gave evidence for himself and the second defendant.

[46] The witnesses' evidence in chief was tailor-made to suit the divergent narratives of the parties as set out above. It is not intended to reproduce slavishly all what each of the witnesses said. Only material or outstanding aspects of such evidence will be commented upon.

i/ Newton Chirimudumbu Madzika

[47] Madzika stated that he was appointed by the defendants as agent to sell Fortress Hospital. He was the one who engaged the plaintiff. The plaintiff had shown interest in acquiring Fortress Hospital. He claimed that the full purchase price for the hospital was paid over to the defendants.

[48] Madzika relied on some document referred to as the 'certificate of full payment', allegedly signed by the first defendant on 9 December 2014, acknowledging receipt of the full purchase price for Fortress Hospital. It reads:

“CERTIFICATE OF FULL PAYMENT

I, Dr Munyaradzi Kereke, (I.D. 63-785927-D-04) confirms that Mr. Newton Madzika (I.D. 77-038105-V-77) has fully discharged all his financial obligations to Tomorrow Today Yesterday Trust. All payments due on the Sale of Fortress Hospital, (particularized as follows, hospital building, all hospital equipment, furniture & fittings) have been settled. For the avoidance doubt, I and Tomorrow Today Yesterday Trust no longer have any interest (financial or otherwise in Briward Trading (Pvt) Ltd t/a Fortress Hospital of Chipukutu, Ruwa.)”

- [49] It is common cause that Tomorrow Today Yesterday Trust was the first defendant’s family trust with a controlling interest in the second defendant.
- [50] Relying on some agency agreement between Tomorrow Today Yesterday Trust and Health Body Image [Pvt] Ltd allegedly signed respectively by the first defendant and himself on 1 August 2014, and some board resolution for the second defendant allegedly signed by two individuals, Charles Imbayago and Sibusisiwe Dube as director and secretary respectively, authorising him to sell the immovable property, Madzika insisted he had the full mandate to sign agreements of sale on behalf of the defendants for the disposal of Fortress Hospital.
- [51] Madzika denied his mandate had ever been revoked and maintained that he continued to represent the first defendant on other transactions even when he was in prison. He claimed he was seeing for the first time in court the first defendant’s alleged communication dated 9 December 2014 purporting to terminate his mandate. He said it had never been served on him.
- [52] Madzika further testified that of the US\$650 000 for the assets connected to Fortress Hospital that he received from the plaintiff, he kept it all, or part of it, as fees for the numerous services he had rendered to the defendants, and for which he had not been paid.
- [53] Madzika also said that he utilized some of the amounts he received from the plaintiff to settle some third-party writs of execution worth about US\$300 000 to secure the release from attachment the assets for the hospital.
- [54] However, in cross-examination on various aspects, Madzika conceded, among other things, that the quantum of the writs of execution in question was no more than

US\$30 000, that indeed, he received several payments from the plaintiff running into over a million dollars but claimed that the plaintiff was buying equity in the private companies or trusts owned by himself and his wife such as Health Body Image [Pvt] Ltd, Providence Trust, Worldwide Investment Trust, and so on.

[55] Furthermore, Madzika acknowledged a letter from Muza & Nyapadi to the plaintiff dated 13 January 2015 confirming that as at that date the plaintiff still owed the defendants the sum of US\$100 000 on the immovable property.

[56] Still further, Madzika confirmed that at the time when the plaintiff paid the ZW\$700 000 into the defendant's account with Kingdom/Afrasia Bank, the institution was already facing liquidity challenges. Crucially, Madzika conceded that the deposit would be considered as payment only if the defendants had successfully withdrawn it.

ii/ Vote Muza

[57] At the outset, the first defendant objected to Muza testifying on behalf of the plaintiff allegedly because he and his firm had represented the defendants in the whole transaction. However, upon satisfying myself that Muza's role had predominantly been that of a conveyancer, I overruled the objection.

[58] Muza confirmed he had been appointed to effect transfer of the immovable property but that he had never got down to doing it. He implied that subsequently, the first defendant had surreptitiously uplifted his entire file of papers from his office. However, in cross-examination on this aspect, Muza was confronted with a covering letter by himself on 19 August 2021 to the first defendant handing over the file. He claimed to have no recollection of that letter.

[59] Initially, asserting that the defendants had been fully paid for Fortress Hospital, in cross-examination Muza confirmed the aforesaid letter of 13 January 2015 and conceded that the balance of US\$100 00 had never been remitted to the defendants as the plaintiff had subsequently given instructions and authorization for him to utilize the amount as his fees for professional services rendered.

[60] Muza also confirmed the parlous financial state of Kingdom/Afrasia Bank at the time of the deposit of \$700 000 and that the bank went into liquidation soon thereafter. He admitted that the defendants did not get access of the funds for a very long time.

iii/ Zacharia Stanford Murerwa

[61] Murerwa is the current Chairman of the plaintiff's Board since 2 June 2023. Previously, he had been a consultant for the plaintiff on various projects.

[62] Upon assuming the post of Board Chairman, Murerwa said he decided to get to the bottom of the transaction relating to Fortress Hospital because he had discovered that despite the plaintiff having paid for it, it still did not have title of the immovable property. He invited the first defendant to several meetings at his office for discussions on the matter.

[63] Murerwa maintained that the plaintiff entered into the 31 August 2023 following severe threats by the first defendant. He alleged the first defendant misrepresented the true facts. Among other things, the first defendant claimed that the defendants had not been paid for the hospital. However, if the plaintiff's board and senior management had had knowledge of the certificate of full payment aforesaid and the rest of the other documents that proved that the plaintiff had paid fully for the hospital, it would not have agreed to the 31 August 2023 agreement.

[64] Murerwa testified that the first defendant threatened to repossess the hospital and re-sell it to other people. He sent evaluators during working hours to induce fear and uncertainty in the members of staff. He threatened to refund the plaintiff's payments in the local currency. This would be a monumental loss to the plaintiff.

[65] Murerwa alleged that in order to avoid losing the hospital and thereby save its investment, the plaintiff had reluctantly agreed to the 31 August 2023 agreement. But because it was induced by fraud or duress it should be set aside and all the payments made by the plaintiff in respect of it must be refunded,

iv/ Gaylord Chidhindi

[66] Chidhindi is the current Chief Executive Officer for the plaintiff since 1 August 2023. Prior to that, he had been the acting Chief Executive Officer since 26 June 2023. Prior to that, he had been the General Manager of the funeral wing of the Harare Municipality.

[67] Chidhindi insisted that the 31 August 2023 agreement was induced by fraud and duress by the first defendant. He claimed, among other things, that the first defendant had wielded a gun in one of their meetings during which he had threatened to shoot members of the Board. Chidhindi said on another occasion the first defendant nearly ran over the late Mr Puzo with his Ford motor vehicle.

[68] However, in cross-examination Chidhindi conceded that none of the first defendant's threats or acts of violence was ever reported to the police. Furthermore, despite initially claiming that the 31 August 2023 agreement was crafted by the first defendant, he eventually conceded that the agreement was drafted jointly by *Mr Chishiri* and the first defendant.

[69] After Chidhindi, the plaintiff closed its case.

v/ Munyaradzi Kereke

[70] The first defendant's evidence supported the narrative set out in the defendants' case as outlined above. In summary, he maintained that following a shareholder valuation of Fortress Hospital, the price for any sale of it as a going concern would not be less than US\$1.4 million, that Madzika was privy to this evaluation, that the plaintiff had never fully paid for the hospital despite uninterrupted use and enjoyment since November 2014, and that both the plaintiff and Newton Madzika who had a separate relationship of their own, had tried to take advantage of his incarceration to grab his family investment virtually for free.

e The issues

[71] From the divergent versions of the facts as presented by the parties, the issues for determination may be summarized as follows:

- Was the 31 August 2023 agreement induced by the fraud of, or duress, or any other kind of improper pressure brought to bear by the first defendant upon the plaintiff?
- Did the plaintiff pay the defendants the full purchase price for Fortress Hospital as had been agreed upon by the parties?
- Is the plaintiff entitled to the relief it seeks?

f The law on fraud and duress

[72] Fraud is wrongful conduct that is criminal. It is deception for personal gain. The bedrock of fraud is misrepresentation: see *Zemqos Incorporated [Pvt] Ltd v City Parking [Pvt] Ltd & Ors* 2020 (1) ZLR 434 [H], at 442.

[73] In *Mlambo v Mupfiga* 2014 (1) ZLR 103 [H] I summarized the law on duress as follows, at p 134A – E:

“Duress or coercion, in jurisprudence, is where someone performs an act as a result of violence or threats of violence or some other pressure. In the law of contract, duress, or *metus*, relates to a situation where someone enters into an agreement as a result of threats. Such a contract is voidable at the instance of the aggrieved party. Consent which is a result of coercion is not true consent: see *Broodryk v Smuts NO* 1942 TPD 47 at p 53 and *Arend v Astra Furnishers (Pty) Ltd* 1974 (1) 298 (C) at p 305 – 306.

Where a party seeks to avoid a contract on the basis of duress he or she must establish five elements. These are:

1. That the fear was a reasonable one.
2. That the fear was caused by the threat of some considerable evil to that party or his family or property.
3. That the threat was that of an imminent or inevitable evil.
4. That the threat or intimidation was unlawful or *contra bonos mores*.
5. That the moral pressure used caused damage.

See *Arend’s* case, *supra*, at p 306A – C and *Machanick Steel & Fencing (Pty) Ltd; Machanick Steel & Fencing (Pty) Ltd v Transvaal Cold Rolling (Pty) Ltd* 1979 (1) SA 265 (W). See also RH CHRISTIE: *Business Law in Zimbabwe*, 2nd ed, at p 83, and the cases referred to therein.

In my view, the five elements above are considered cumulatively.”

g Analysis of the evidence

[74] Of the plaintiff’s witnesses who testified on the fraud and duress allegedly by the first defendant, Chidhindi was the most belligerent. But with all due respect, he was the least credible. His evidence was spiced with exaggeration and hyperbole. Outstanding in this regard were his gratuitous claims that on one occasion the first defendant wielded a gun and threatened to shoot all such members of the plaintiff’s board as

were opposed to the 31 August 2023 agreement. He also claimed that on another occasion, the first defendant tried to run over the late Mr Puzo with his Ford motor vehicle.

- [75] In his exuberance, Chidhindi made veiled references to, or insinuations of the first defendant's ability to use occult powers of the netherworld to cause death to the living. Of course, he did not use such words. But this is deductive reasoning. He testified that on one occasion the first defendant advised the board chairman to protect the members of his board because they were prone to die from accidents, poison or gun shots. As a matter of fact, Mr Puzo died at the pith of the negotiations. According to Chidhindi, this death occurred a week or two after the first defendant's nether threats aforesaid.
- [76] If Chidhindi's evidence is discounted for exaggeration and hyperbole, as it ought to be, there will be nothing left of it. The first defendant, whose cross-examination of witnesses, despite his being unrepresented, was quite skilful, managed to show that Chidhindi's evidence was false. Among other things, Chidhindi had always been around with the plaintiff's senior personnel throughout the history of the transaction on Fortress Hospital, including the period that Rukasha was the Chief Executive Officer. As such, among other things, he could not legitimately claim to have been unaware of the paper trail and developments leading to the 31 August 2023 agreement.
- [77] Still on Chidhindi, the first defendant extracted the concession that despite that the alleged wielding of a gun, or the attempt to run over the late Mr Puzo were obvious acts of violence and downright criminal, none of them was reported to the police. None of the plaintiff's other witnesses corroborated Chidhindi. The first defendant denied he has ever owned a gun or that he has ever owned a Ford motor vehicle. The plaintiff did not disprove this.
- [78] It is the finding of this court that Chidhindi's evidence is unworthy of belief. It is also the finding of this court that the plaintiff's cause of action in its entirety is extremely contrived. No fraud has been proved. No elements of misrepresentation as would have

induced the signing of the 31 August 2023 have been shown. There was no duress. For duress to succeed, the fear induced must, among other things, be reasonable: see *Mlambo's* case above. The plaintiff's alleged fears herein were manifestly fanciful.

- [79] Murerwa testified that what amounted to duress was the first defendant's threats to resile from the original transaction, coupled with the threat to repossess Fortress Hospital against a refund to the plaintiff of its previous payments, but all in the local currency.
- [80] According to Murerwa, the fear that played in the minds of the plaintiff's personnel was that the loss of value of the plaintiff's investments would be colossal because, among other things, the refund in local currency would amount to no more than a paltry US\$2 000.
- [81] But it turned out that the plaintiff's own payment for Fortress Hospital through the bank transfer in 2014 had been in the local currency. Among other things, if the first defendant threatened to repossess the hospital and make refunds in the same currency, then the fear of loss cannot objectively be classified as having been reasonable. Surely what was good for the goose would be good for the gander too.
- [82] But the plaintiff's cause of action is perilous in numerous other respects. For example, the first defendant managed to prove that even if the 7 November 2014 agreement was valid, and the US\$800 000 mentioned therein as the true purchase price for the immovable property, was true, that amount was never paid at all, or in full. This is believable.
- [83] Contrary to the weight of the plaintiff's evidence through all its witness, and the so-called certificate of full payment in December 2014, the first defendant managed to show, through the letter from Muza & Nyapadi of 13 January 2015, and the several concessions in cross-examination, that at the very least, the balance of US\$100 000 was never paid to the defendants. It was converted to Muza's fees for services rendered to the plaintiff and upon the plaintiff's specific authorization.

- [84] The first defendant managed to show, among other things, through concessions from the plaintiff's witnesses, particularly Muza and his other letter of 6 November 2014, that the agreement between the parties concerning the plaintiff's inter-account transfer of the \$700 000 through the troubled Kingdom/Afrasia Bank, and in the local currency way back in 2014, would only be considered as true payment upon the defendants getting access to it.
- [85] As it happened, it was more than 8 ½ years later that the defendants eventually got access to the money. Therefore, in effect, the plaintiff had never paid for the hospital when the first defendant came out of prison and vigorously started pursuing closure of the transaction.
- [86] The so-called certificate of full payment of 9 December 2014 is not worth the paper it was written on. With due respect, the plaintiff should have been embarrassed to place any reliance on it. Intrinsicly, it is about Madzika trying to exonerate himself from his obligations towards the defendants. The document is as fake as they come.
- [87] The court finds that in spite of the first defendant's attempt to disown the 7 November 2014 agreement, Madzika did have the mandate from the defendants to conclude that agreement. However, that is just about all that the plaintiff has proved. As the finding has already been made above, the plaintiff did not perform its side of the contract. The certificate of full payment is at war with the rest of the evidence, including Muza's letter of 13 January 2015 above.
- [88] Madzika's role in this whole debacle is so suspicious as to warrant further investigation. Among other things, the paper trail in this matter shows that the plaintiff has paid him, through some special purpose vehicles, vast sums of money. Some of the amounts, such as the sum of US\$650 000, correlate neatly with the amount of the purchase price for the assets connected to the hospital as referred to in the addendum to the agreement of sale on 7 November 2014.
- [89] Madzika's evidence on these payments was vague. Among other things, he claimed entitlement to some of those funds for services allegedly rendered to the defendants

by him over a long period of time for which he had not been paid. But not a single document backs him up on this.

- [90] Madzika's attempt to explain away some huge holes in the accounts by reference to writs of execution in the region of US\$300 000 was exposed when the first defendant showed that the value of those writs was no more than \$30 000.
- [91] In contrast, there are some documents that show that Madzika received from the plaintiff huge sums of money running into over a million dollars. The plaintiff's initial evidence through Murerwa, before subsequent concessions, was that the payments were for Fortress Hospital.
- [92] However, before Murerwa, Madzika had testified that those huge amounts had been payment by the plaintiff for the purchase of equity in Madzika's special purpose vehicles.
- [93] Both Murerwa and Chidhindi had to concede that almost a decade later after those payments, the plaintiff still had nothing to show in its balance sheet for those alleged investments.
- [94] The plaintiff is a public body which is critical to the health and welfare of a significant portion of the workforce of this country. Public funds must be fully accounted for. Evidence at the trial was that the whole transaction pertaining to Fortress Hospital was under investigation by ZACC. It is hoped that the investigation will get to the bottom of the matter. But for this case, the defendants, on whom the onus of proof did not lie, managed to show that, among other things, no payment was received by the defendants for the assets connected with Fortress Hospital.
- [95] There are other aspects of the evidence that show that the plaintiff has completely failed to prove its case. Such of the credible paper trail as can be spread into a coherent compendium tends to support the defendants' version more than that of the plaintiff. For example, reference has already been made to the memorandum of understanding in October 2014 between the defendants and the plaintiff, then represented by the late Mr Puzo, showing that, among other things, the defendants, as

sellers, were looking at an amount well in excess of US\$1.4 million for the hospital and its assets, not the mere US\$800 000 the plaintiff has insisted on.

- [96] Furthermore, pre-sale evaluations by the defendants, as sellers, relate to figures in the region well in excess of the amount of \$800 000 aforesaid.
- [97] Even in terms of the dubious memorandum of understanding dated 31 October 2014, between the plaintiff and one of Madzika's special purpose vehicles, Worldwide Investments Trust, which claimed, among other things, to own 100% of the interest in Fortress Hospital, of which 57% would be disposed of to the plaintiff at US\$714 000, would mean that mathematically, as the first defendant stressed, the 100% of such interest would amount to over US\$1.2 million.
- [98] Part of the evidence of the plaintiff was some forensic audit report by a dubious firm of auditors called SBS Consultants which concluded that, among other things, the plaintiff had fully paid for the hospital but that in spite of that, the defendants were refusing to transfer the property.
- [99] The first defendant spectacularly discredited the aforesaid forensic audit report by producing correspondence from the watchdog of the accounting profession, the Public Accounts and Auditors Board, to the effect that SBS Consultants were not a registered firm of auditors in terms of the Public Accounts & Auditors Act [*Chapter 27:12*], and that therefore they were not fit and proper to provide audit services in Zimbabwe. The plaintiff had no answer.
- [100] The 31 August 2023 agreement draws its credibility from the fact that, among other things, resolutions of the plaintiff's board authorised Chidhindi to enter into such an agreement. Furthermore, in the negotiations between the parties leading to that agreement, the plaintiff was assisted by Counsel, who among other things produced the original draft to which the first defendant made minor corrections. There has been no evidence to show that the first defendant concealed anything from the plaintiffs.
- [101] In trying to discredit the defendants' case, Counsel for the plaintiff, *Mr Musarurwa*, argues that, contrary to their initial stance that they would call two witnesses, namely

Rukasha and a handwriting expert, the defendants did not do so, and that therefore their case must fall on its face.

[102] Counsel says Rukasha would have corroborated the first defendant's own evidence on some crucial aspects pertaining to what exactly the parties had agreed upon and the question of duress. The handwriting expert would have shed light on the documents in respect of which the first defendant has challenged his signature, for example the certificate of full payment.

[103] However, the court is satisfied that the defendants did not need any further evidence. The plaintiff has failed to prove any aspect of its case. The first defendant destroyed the plaintiff's case completely. The plaintiff has no case. This suit is manifestly opportunistic. The defendants are entitled to judgment.

[104] The defendants seek costs on the legal practitioner and client scale. Given the analysis above, such scale of costs is eminently justified even though the defendants were not represented at the trial.

[105] In the final analysis, the following order is hereby made:

The plaintiff's claims are hereby dismissed with costs on the attorney and client scale.

9 May 2025



Saunyama Dondo, legal practitioners for the plaintiff