HB 60-19
HC 1024/15

JOEL SIMON SILONDA
versus
VUSUMUZI NKOMO

HIGH COURT OF ZIMBABWE
BERE J
BULAWAYO: 16, 17 & 24 JANUARY 2018 AND 2 MAY 2019

Civil Trial

T Masiye-Moyo, for the plaintiff
L Nkomo, for the defendant

BERE J: On 22 April 2015, the plaintiff issued summons out of this court seeking the following order against the defendant:

"1) An order confirming null and void the purported agreement of sale signed by the plaintiff and defendant on the 12th January 2010 in respect of Umguza 100 acre Lot 5A for want of a subdivisions permit at the material time and in any event and in the alternative for defendant's breach of the terms and conditions of the agreement of sale.
2) An order for the eviction of the defendant and all those claiming rights after him from Umguza 100 Acre Lot 5A currently occupied by the defendant on the basis of a null and void agreement of sale.
3) Payment of the sum of US$18000-00 being reasonable rental and unjust enrichment arising from defendant's occupation of Umguza 100 Acre Lot 5A from March 2010 to April 2015.
4) An order for holdover damages at the rate of US$10-00 per day being reasonable rental for the portion of Umguza 100 Acre Lot 5A currently occupied by the defendant calculated from the 1st May 2015 to date of vacation, both days included.
5) Costs of suit on a higher scale."

Upon being served with the summons and after indicating his intention to defend the action the defendant in his plea flatly denied any form of liability and sought the dismissal of the plaintiff's claim with costs at a punitive scale.

In addition, the defendant counter claimed on the basis of unjust enrichment and sought an order against the defendant in the following terms:

"1. Payment in the sum of US$19000-00 together with such payment as will be sufficient to enable the defendant to purchase a property of comparable value including all the improvements he had effected.
2. A refund of all the money used by the defendant in drawing electricity to the plaintiff's homestead and applying for a subdivision permit.
3. Interest on all sums at the prescribed rate of 5% per annum with effect from the date of issue of summons to date of payment in full.
4. Costs of suit at an attorney and client's scale."

The facts of the case

The following facts are not in dispute in this case.

By a deed of sale signed by both parties on 26 January 2010, the plaintiff sold to the defendant 10 acres of land being part of 100 acre of Lot 5A, Umguza, District on certain terms and conditions outlined in the deed.

At the time the parties signed the agreement of sale, there was no subdivision of the land in question as required by section 40 of the Regional, Town and Country Planning Act, [Chapter 29:12], thus rendering the agreement null and void from its inception.

As fate would have it, the parties ran into problems with their agreement, with allegations and counter allegations mounted against each other. Under cases referenced HC 491/11 and HC 2828/12 both parties initiated civil action against each other over the invalid agreement. Confusion rained. Both parties ended up withdrawing the civil suits against each other leaving the instant case to resolve their differences and provide some direction.

THE EVIDENCE

The evidence in this trial centred on the testimonies of the two protagonists aided by some documentary exhibits to strengthen each other's position. I proceed to deal with that.

THE PLAINTIFF'S EVIDENCE

The plaintiff who was aged 94 years at the time he gave evidence in court was in full control of his faculties and did not seem to show any sign of struggling due to his advanced age.

The witness gave a detailed narrative of his relationship with the defendant whom he regarded as his "child". He chronicled how he entered into an agreement of sale (exhibit 1 of Annexure 1) on 26 January 2010.

The witness told the court that pursuant to the signing of the agreement and the payment of the initial US$10000-00 (ten thousand) dollars, he allowed the defendant to commence construction on the purchased property. He said it was part of the agreement that the defendant would pay expenses related to the processing of the subdivision permit.

The witness said he wanted the defendant to pay him $350 per month as rentals for staying and conducting his farming activities at the plot which was the subject of the sale agreement. He said when they ran into problems with their agreement owing to the defendant's failure to comply with their agreement he wanted him to be evicted from the plot and the defendant's response was to report him to the police.

When the witness's attention was drawn to the fact that the defendant was alleging to have made improvements for which he had been enriched and therefore wanted to be compensated, he said that the improvements had not benefited him and that the defendant was free to destroy such improvements. The witness confirmed the improvements consisted inter alia of two dwelling houses, the second one of which the defendant had constructed against his will.

The witness further told the court that in installing electricity the defendant had used substandard poles which got rotten and he concluded his evidence in chief by suggesting that the defendant had cheated him.

Under cross-examination from the defendant's counsel, the plaintiff confirmed that he and the defendant had signed the sale agreement in 2010 and that as a result of that, the defendant had carried out visible improvements on the purchased property.

The witness also confirmed that other than the sale agreement he had not signed any lease agreement with the defendant.

When questioned about the borehole on the property the witness was emphatic that it was him who had sunk it and that all the defendant did was merely to have it flashed.

On further cross-examination the witness could not dispute that the houses built by the defendant had electricity installed by the defendant. When the valuations of the improvements

done by the defendant were brought to his attention, the plaintiff was unable to challenge same. The best the plaintiff could say on the valuations was;

> "He did that on his own volition. I did not tell him to make such developments. There is a letter which says there should be no development until the case is over."

The plaintiff's cross-examination was concluded by an admission that when he concluded the agreement of sale with the defendant, he was fully aware that he did not have a subdivision permit. When his attention was drawn to his arbortive attempt to obtain a subdivision permit in 2000, almost 10 year before signing the agreement with the defendant, the plaintiff denied having applied for such permit, and sought to argue that the only permit he had applied for was for the southern side of his plot.

THE DEFENDANT'S EVIDENCE

The defendant commenced his evidence by highlighting the cordial relationship which he had enjoyed with plaintiff prior to entering into this agreement of sale with him. He indicated that in order to raise the money to buy this particular plot, he had to dispose of his smaller 6 acre piece of land.

The defendant told the court that after paying the initial agreed sum of US$10000-00 (ten thousand United States Dollars), he embarked on the construction of his cottage which was subsequently followed by the main house and electrification of same.

The defendant testified on the difficulties that he had with the plaintiff which were centred on the latter's refusal to receive part of the payment owing to delay. The defendant said owing to the frustrations which he faced as a result of the refusal by the plaintiff to accept payment he ended up initiating legal proceedings against the plaintiff for breach of contract. The plaintiff also confirmed the civil suit commenced against him by the plaintiff and its ultimate withdrawal.

The defendant testified that all in all he paid the plaintiff a total of US$19550-00 (nineteen thousand five hundred and fifty United Stated Dollars) toward the agreement.

The defendant's further evidence was that he only became aware of the absence of the subdivision permit much later and when he was well into the agreement as a result of which he gave the plaintiff US$80-00 for the facilitation of the permit. The defendant further stated that

when he eventually got the subdivision permit through the plaintiff's legal practitioners, it turned out to be a fake or not authentic document. He insisted that other than paying for its processing, he had no input into its production and flatly denied ever being involved in the fraudulent acquisition of the subdivision permit.

In his further evidence in chief gave a detailed account of the various improvements he made at the "purchased" property and the numerous demands for his eviction made against him by the plaintiff. The witness said he was prepared to move out of the property as long as he was fully compensated for the improvements made. In his own words the defendant stated the following as regards his counter claim;

> "May the court order that the plaintiff compensates the reason being that I constructed my house after he had given me permission to do so. I constructed two houses and he was watching me do so. If he says I should vacate the piece of land I will do so by removing what I put there to enable me to construct again at a different place. If he does not end up a destitute or a person of no fixed abode."

When questioned during his evidence in chief to indicate the improvements he made, the following is what he stated:

> "First and foremost, I built a three-bedroomed house (cottage), and secondly, a three bedroomed main house. I pulled electricity to the house. On that stand was a dry borehole. I got a company which flushed the borehole. I then bought the pump and the jojo tank which I fixed for the storage of water. That is the water that we are using. The rest of the things have their valuation."

The witness went further to give the three valuations of the improvement he carried onto the property which he averaged to come up with a figure of US$97833-33. The witness emphasized that he had invested all his resources on the property and maintained that if he did not get compensated for such improvements he would end up having no fixed abode.

The defendant was taken through cross-examination part of whose thrust was to challenge him why his (defendant's) lawyer had not suggested to the plaintiff that he was lying if, at all he was misleading the court during his testimony.

Part of the exchanges which caught the court's attention and require emphasis went along the following:

"Q: You accept now that this land has always belonged to plaintiff until today.

A: Yes

Q: You appreciate that the plaintiff's claim is based on you being unjustly enriched and him being unjustly impoverished.

A: I realize he was unjustly enriched. I paid some money towards the property to the plaintiff following our sale agreement.

Q: What do you want from the plaintiff?

A: I want him to reimburse me for the expenses I incurred on that piece of land so that I am able to get another place to stay with my children since he pretended as if he was selling me that piece of land, he knew I would never get any title deed in respect of that land ---.

Q: Your claim is based on unjust enrichment.

A: Yes

Q: You heard him say he has no use of such improvements

A: Yes, I heard him say so but he is going to use them. The structures are on his piece of land which he pretended to be selling. There is electricity which he will use. If he did not want the houses, he could not have allowed me to construct them.

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Q: Your bundle, you have put in several receipts from pages 90-102 to support your expenditure. All these are from September 2010. These were incurred at a time plaintiff told you to stay away from his land and to keep your money.

A: We had entered into an agreement of sale."

When it was suggested to the witness that he was supposed to be paying rentals to the plaintiff, the defendant denied ever entering into a lease agreement with the plaintiff, but rather a sale agreement.

In conclusion, the defendant said that the valuation reports that he submitted had collectively dealt with the improvements he made and for which he was claiming to be paid.

ASSESSMENT OF EVIDENCE

At a joint pre-trial conference (record pp 56-58), held by the parties, the parties narrowed their contentions issues to the following:

(1) Whether or not plaintiff is entitled to a reasonable rental arising from the defendant's unauthorized/authorized occupation of the property in dispute.

(2) Whether or not defendant has been unjustly impoverished and plaintiff unjustly enriched as a result of the alleged developments made by the defendant upon, the disputed part of the land and if so, the quantum thereof.

It is with these issues in mind that I proceed to consider the evidence tabled in this court.

Is the plaintiff entitled to reasonable rentals?

The evidence which is not in dispute is that the defendant took occupation of the property in issue pursuant to a sale agreement which sale turned out to be null and void or invalid owing to its non-compliance with mandatory provisions of the Regional, Town and Country Planning Act[1] [Chapter 29:12].

The sale agreement entered into by the parties is self-explanatory and it is too ambitious if not too generous to read into the agreement that it could at any stage be turned into a lease agreement to provide for a basis for the plaintiff to claim rentals.

It cannot possibly be the correct position as stated by the plaintiff in his declaration that:

"In or about March 2010, Defendant forcibly occupied a portion of Umguza 100 Acre Lot 5A----."[2]

This averment is clearly not borne out by the overwhelming evidence in this court which speaks to the defendant's occupation as informed by the agreement of sale. The fact that under case HC 2828/12 the plaintiff initiated a civil suit against the defendant to force compliance with the sale agreement cements the existence of the agreement of sale between the parties. The argument is simply that if in 2010 the defendant had forced himself onto the plaintiff's property, there would have been no need for the plaintiff to try and enforce compliance with some agreement in 2012, two years down the line.

[1]. Sections 39 (1) (b) (i) and 40 of the Act.
[2] . Par 14, record page 5

The plaintiff, in his own testimony confirmed that the defendant only took occupation of the plot pursuant to an agreement. What cannot be disputed is that subsequent to the defendant's occupation, the agreement ran into challenges. Despite this, these challenges did not in any way change the defendant from being a purchaser to a tenant.

The parties were fully conscious of what they wanted when they entered into this agreement. It is not for this court to re-write the contract for the parties. As was observed by the Supreme Court in the case *Magodora and Others* v *Care International Zimbabwe* [3]:

> "It is not open to the courts to write a contract entered into between the parties or to excuse any of them from consequences of the contract that they freely and voluntarily accepted, even if they are shown to be onerous or oppressive. This is so a matter of public policy. Nor is it generally permissible to read into the contract some implied or tacit term that is in direct conflict with its express terms."

For these reasons, the court is not prepared, for whatever reasons to convert or to read into a simple sale agreement a lease agreement. One gets the obvious impression that reference to the defendant's alleged forced occupation of the property was slotted in as a desperate attempt to justify a claim for rentals by the plaintiff. The averment clearly lacks merit and it is not sustainable.

Has the defendant been unjustly enriched at the expense of the plaintiff?

This enquiry is intricably linked to the existence or non-existence of a lease agreement. I have already made my position clear that the plaintiff is not entitled to any rentals flowing from a lease agreement because no such agreement ever existed or can be inferred from the evidence led in this court.

If anything, the evidence shows beyond doubt that it is in fact the plaintiff who has been unjustly enriched and the defendant impoverished in the process.

It is not in dispute that pursuant to the sale agreement defendant paid a total of $19550-00 towards the fulfillment of that agreement. The $19 000 was for the purchase of the land and $550-00 was paid towards the facilitation of the subdivision of the sold piece of land when defendant realized that he had been sold the land in violation of the mandatory provisions of the

[3]. 2014 (1) ZLR 397 (S) at p. 398F

Regionals, Town and Country Planning Act. The defendant's evidence in support of this payment was not challenged by the plaintiff. In fact, in his declaration filed in this court on 22 April 2015, the plaintiff made an unsolicited offer to refund the defendant US$19 000-00 on monthly instalments of US$395.00.

The defendant's claim is built in his counterclaim filed in this court on 24 June 2015. In that counter claim the defendant states that he made a number of improvements which would prejudice him if they were to accrue to the plaintiff without him being compensated.

In his closing submissions, plaintiff's counsel *Mr Masiye-Moyo* criticized the defendant's pleadings and commended as follows:

> "Of significance is that in paragraph 5 above defendant did not specifically allege that the alleged improvements have resulted in plaintiff being enriched."

I accept the position taken by plaintiff's counsel that the defendant's pleadings especially in the counter claim were poorly drafted. They lacked elegance. They could have been drafted in a much better way.

However, I do not accept that when the defendant's case is looked at holistically the alleged defects in the pleadings can be raised to the level of fracturing his case. This is because the defects were cured by the overwhelming evidence in support of the defendant's case. The defendant's uncontroverted evidence was that pursuant to the agreement of sale (which turned out to be invalid), he had poured substantial resources on the plaintiff's property. In the process, the plaintiff ended up being enriched and the defendant impoverished and that the defendant wanted to be compensated for this. This was the basis of the defendant's claim and even the plaintiff's counsel fully understood this as demonstrated by the tone and nature of his cross-examination of the defendant. It is therefore not sustainable for counsel to argue that the defects in the pleadings must lead to the collapse of the defendant's case.

I now proceed to consider the defendant's case. The plaintiff's case was largely built around the alleged breach of the agreement of sale. However as the evidence led in this court has shown, there was no agreement to talk about for lack of compliance with the statutory requirements of the Regional, Town and Country Planning Act which prohibits any agreement of sale in respect of land which is not yet subdivided in accordance with a permit granted under

section 40 of the said Act. In the case of *X-Trend – A Home (Pvt) Ltd v Hoselaw (Pt) Ltd*[4], the Supreme Court had occasion to deal with the law as regards the kind of sale which the plaintiff and defendant purported to enter into in this case. The court had this to say:

> "Section 39 forbids an agreement for the change of ownership of any portion of a property except in accordance with a permit granted under section 40 allowing for a subdivision. The agreement under consideration was clearly an agreement for the change of ownership of the unsubdivided portion of a stand. It was irrelevant whether the change of ownership was to take place on signing or on an agreed date, fulfilled. The agreement itself was prohibited."

This Supreme Court decision was subsequently followed by the High Court in the case of *Tsamwa* v *Hondo and Others*[5] where the court remarked as follows."

> "The plaintiff's claim must be dismissed as at the time the parties entered into the agreement, there was no subdivision permit in existence. An agreement made in such circumstances is forbidden by section 39 (1) (b) (i) of the Act. Any purported agreement for the change of ownership of a portion of a property is a nullity and no effect can be given thereto."

In the preceding portions of this judgment I have already dealt with the fallacy of the plaintiff's claim for rentals and it is not my intention to revisit same save to emphasise that when the plaintiff gave evidence in this court, he repeatedly stated that he allowed the defendant to take occupation of the portion of the land pursuant to the signing of the deed of sale. Indeed clause 3.1 of the agreement fully supports this averment. It therefore follows that the plaintiff has dismally failed to plead a valid cause of action for rentals.

The defendant was taken to task by the plaintiff's counsel on why his lawyer did not specifically tell the plaintiff that he was lying on certain aspects of his evidence which the defendant disputed in his evidence in chief or in his own cross-examination. Over my years on the bench I have always been marveled by this way of reasoning. In the first place, a litigant can be a lay person (as in this case), and when he gives instructions to his counsel he/she does no more than tell a simple story in his own simple understanding. In court, such a litigant has no capacity to frame appropriate questions for his legal practitioner. The legal practitioner who is

[4] . 2000 (2) ZLR 348 (SC) at p.
[5] . 2008 (1) ZLR 401 (H) at p. 402B

properly trained in the field of law is assumed to know better how to frame his questions for cross-examination. A simple, untrained litigant has absolutely no control over that process.

More importantly, a court does not require the cross-examination of a party in pointed terms labeling him a liar to make a finding that such a party is indeed a liar. The ultimate decision of finding someone to be a liar is not for the cross-examiner but it is a prerogative of the trier of fact after taking into account all the evidence in that trial. In fact, in my view a cross-examiner must be slow to label a witness a liar because the trier of fact might see things differently and arrive at a completely different conclusion which by implication might then project the cross-examiner as a liar himself.

As I will demonstrate later in this judgment, contrary to the effort made in this trial to potray the defendant as not worth believing, I found his credibility to be beyond reproach. The plaintiff was clearly far from convincing. Let me deal first with the legal position in as far as it impacts on the agreement entered into by the parties in *casu*.

It has already been spelt out that the contract entered into by the parties was null and void, and therefore unenforceable. As observed by R. H. Christie, in *Business Law in Zimbabwe*[6], ---

> "The law cannot be expected to lend its aid to the enforcement of a contract which the law itself prohibits: *City of Gweru* v *Kombayi* 1991 (1) ZLR 333 (S). Unenforceability means that, as in *York Estates Ltd* v *Wareham* 1949 5R 197, 1950 (1) SA 125, specific performance will not be granted."

Taken to its logical conclusion, the plaintiff cannot sue for breach of contract in this case. But our law recognizes that quite often, in the process of engaging in an illegal or unenforceable contract there may be other "collateral or connected transactions that do not amount to indirect attempts to enforce the illegal contract"[7]. In general terms, our law will not enforce an illegal or an invalid contract unless public policy demands that such approach be relaxed. See *Jajbay and Cassim*[8] which created the guiding rules.

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[6]. Published by Juta and Company, Ltd 1998 at p. 97 par 3.
[7] . Business Law in Zimbabwe (*supra*) p. 98 par 3
[8] . 1939 AD 537

Where someone has been unjustly enriched in circumstances where the victim's innocence is beyond question, the court will come to the aid of such a party. The defendant's case is a clear example of the need to relax the rule.

In what is probably the leading case in this country on unjust enrichment, in *Industrial Equity Ltd* v *Walker*[9] the court affirmed the position that a general enrichment action is recognized in our law and that the prerequisites of such an action are:

> "(a) the defendant must be enriched;
> (b) the enrichment must be at the expense of another, in that the plaintiff must be impoverished and there must be a causal connection between the defendant's enrichment and the plaintiff's impoverishment ;
> (c) the enrichment must be unjustified
> (d) the enrichment must not come within the scope of one of the classical enrichment actions;
> (e) there should be no positive rule of law which refuses an action for the impoverished person."

See also the recent case of *Charles Nyathi* v *Estate Late Philemon Ncube Mabuza and Tandie Mabuza N. O and the Master of High Court N.O*[10]

It is noted that, the defendant, in his counter-claim has established all the requirements for unjust enrichment which call for his compensation. In an attempt to resist the defendant's claim the plaintiff raised basically three arguments; *viz*, that the counter-claim was not properly framed, that he did not authorize the improvements and that the improvements are not useful to him, and therefore does not need them.

I have earlier own dealt with the alleged defects in the pleadings and made a specific finding that any such defects were cured by the overwhelming evidence in support of the defendant's claim.

As correctly argued by *Mr Nkomo,* for the defendant, the contention that the plaintiff did not authorize the improvements effected on the plaintiff's land is untenable because of clause 3.1. of the deed of sale which authorized construction to commence upon payment of a deposit of $10 000-00. The plaintiff's own evidence confirmed that this initial payment was made and the defendant confirmed same.

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[9]. 1996 (1) ZLR 269 (H) at p. 270C-D
[10]. HB S 4/19

In his evidence in chief plaintiff made a stout effort to convince the court that at the time the deed of sale was signed he did not know that there was no subdivision. Compare this with the defendant's position that the plaintiff had been made to believe the whole transaction was above board. Unfortunately the letter dated 17 August 2000 from the Land Surveyor's office[11] which was copied to the plaintiff exposed the plaintiff and threw his credibility into the dustbin. The letter showed the extent to which the plaintiff was prepared to go in misleading the court.

Even the averment that the plaintiff made in his declaration that the defendant had forced himself on his piece of land projected the plaintiff in bad light because when he gave evidence in court, he conceded that defendant's occupation of the land in issue was as a result of the agreement of sale. The plaintiff's position got worse when he admitted that he had at one time sued the defendant to force him to comply with the sale agreement. Such witnesses cannot claim to be credible witnesses.

The defendant gave a lucid testimony on the various improvements he made on the land in issue and the plaintiff was unable to controvert that evidence. Under cross-examination the plaintiff conceded that he did not bother to monitor the improvements the defendant was making because the latter had bought the portion of the land in issue.

To show that his credibility was beyond reproach, the defendant was able to back up his evidence with documentary exhibits. The deed of sale signed by both parties fully supported the circumstances surrounding the defendant's occupation of the piece of land and the improvements he made. The improvements made by the defendant were supported by sworn valuation reports from three different real estate agents- see exhibits 9, 10 and 11.[12]

The third contention by the plaintiff in *casu* that the improvements effected by the defendant are not useful to him was clearly a misconceived view of the law given that the inescapable conclusion was that such improvements had added value to his property. In throwing out the plaintiff's contention this court is guided by view taken by McNALLY JA in the case of *Reza* v *Nyangani*[13] where the court remarked as follows:

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[11]. Annexure II, page 62
[12]. Annexure II pp 120, 126 and 136
[13]. 2001 (1) ZLR 202 (S) at p. 205G

> "--- usefulness of improvements must be measured in terms of added value, and not on the basis of whether the plaintiff would require the structure for his own use."

It cannot be seriously contended that in *casu*, the improvements made have not added some value to the plaintiff's land and that in the process of doing so and as correctly stated by the defendant, the defendant has been impoverished.

The valuation reports given by the defendant which were not challenged by the plaintiff give an estimation of the cost of obtaining a piece of land of the same size as purchased by the defendant as the sum of $35 000-00. In coming up with a figure which he deemed to be fair and reasonable compensation, the defendant simply averaged the three valuation reports and added the price of similar land to get $132833-33. The proposed approach seems to be alien to well known principles of computation of such compensation. I propose to accept the lowest valuation of $90 000-00 plus $35 000-00 being the estimated costs of purchasing a similar piece of land which would give the amount of $125 000-00 as fair compensation for the improvements.

The defendant's uncontroverted evidence in court was that he had virtually invested all this resources on the "purchased" piece of land thinking that it would be his permanent home, and that he has no financial resources to secure alternative accommodation for himself and his family. He was very emphatic that if evicted without compensation his family would be rendered homeless and become destitute. There is no doubt that the defendant and his family is in a serious predicament and that unless protected by this court, may end up as destitutes.

As argued by his counsel, the defendant is a bona fide possessor of the portion of land in issue and that he effected useful improvements thereon in good faith believing that he had purchased the piece of land. The defendant therefore has a lien entitling him not to be evicted without being compensated. As further noted by his counsel, in *Rubin* v *Botha*,[14] INNES J (as he then was) had this to say:

> "The equitable relief given by Roman Dutch Law to a person who had made improvements upon the land of another was the outcome of the modification of the maxim that whatever is affixed to the soil belongs to it, by maxim that no man should be allowed to enrich himself at the expense of another----."

[14]. 1191 AD 568 at p 578-9

I might add and say the courts must endeavour to do justice between man and a man and further that the decisions made must not encourage parasitic tendencies.

This court firmly believes that this is a proper case to exercise its discretion in the interest of equity and fairness by ordering that the defendant be evicted only upon payment of the full compensation ordered by the court per the defendant's counter claim. This is mainly because the defendant has a real lien over the portion of the land in issue.

Consequently, it is ordered as follows:

1. That the purported Deed of Sale concluded by the parties on the 26th of January 2010 in respect of a portion of Umguza 100 Acre, Lot 5A, be and is hereby confirmed to be null and void for want of compliance with the mandatory provisions of the Regional, Town and Country Planning Act, [Chapter 29:12].
2. That the plaintiff's claim for payment by the defendant of reasonable rentals and holding over damages be and is hereby dismissed with costs.
3. That the plaintiff be and is ordered to pay to the defendant the sum of $125 000-00 being compensation for improvements effected by the defendant on the plaintiff's property.
4. That the prescribed interest be levied on the amount (under 3) (*supra*) with effect from the 24th of June 2015 to date of full payment.
5. That the plaintiff pays costs of suit.

Messrs, Masiye-Moyo and Associates, plaintiff's legal practitioners
Messrs Calderwood, Bryce Hendrie and Partners, defendant's legal practitioners