

IN THE HIGH COURT OF SWAZILAND

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Samuel Siphon Simelane

vs

Barnabas Dlamini

Case No. 163/97

Coram

S.W. Sapire ACJ

Judgment

23/7/97

The applicant has on notice of motion sought a judgment against the respondent in terms of which the respondent would be required to pay to the applicant the amount of E62 700.00 plus interest at the average bank rate calculated from the 21st March, 1987 to date of payment. Alternatively the applicant seeks an order that the respondent pay to the applicant the amount of E55 000.00 plus interest at the average bank rate calculated from the 7th March, 1986 to date of payment. The applicant also seeks an order for his costs

The facts of the matter are that the respondent purchased immovable property from the applicant. The sale was recorded in a deed of sale signed by the parties in March 1986. In terms of this agreement the respondent agreed to pay E70 000.00 for the property which amount was payable as to E5 000.00 on signature of the sale and E10.000.00 on sale. A further E10.000.00 was to have been paid on or before 31st March, 1986. It is common course that

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these two amounts were paid

The balance of the purchase price was to be payable at the rate of E8 000.00 per annum commencing on the 31st January, 1987. There was a provision that should the purchaser pay the balance of E55 000.00 within six months after the end of March 1986 the purchaser would be entitled to a 10% discount on the purchase price.

The conclusion of the transaction was interrupted by the applicant who purported to cancel the deed of sale between himself and the respondent. This led to litigation between the parties the outcome was that an order of this Court compelling the applicant to transfer the property was confirmed in the Court of Appeal. Despite this the applicant refused to transfer the property to the respondent notwithstanding that the respondent had already furnished the guarantee for the balance of the purchase price.

As a result of the applicant's failure to transfer the property in question the respondent was again compelled to come to court and on the 6th July, 1990 this Court made a further order authorising the

Sheriff to transfer the property to the respondent.

Following on this transfer documents were prepared but it was discovered by the conveyancer charged with registration of the transaction, that there were several interdicts registered against the applicant's property. Because of this the respondent could not obtain transfer unless the interdicts were lifted. It appears from annexure C(l) that the property had been attached by the Deputy Sheriff to satisfy judgments of this Court.

In order to secure transfer the respondent had, on the request of the conveyancer the guarantee which had been issued, amended to be payable to one of the respondent's creditors and thereafter the transfer was effected.

In these circumstances there can be no question of the respondent having to pay any monies to the applicant. The respondent has paid the full amount of the balance of the purchase price to the applicant's attorneys who performed the conveyancing services connected with the transfer. It is those attorneys who have the duty of accounting to the applicant for the monies received by them on the applicant's behalf. As far as the respondent is concerned he has paid the balance of the purchase price in accordance with the requirements of the transferring attorney and

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any obligations owed by him to the applicant have been discharged by furnishing the guarantee in accordance with such requirements.

Mr. Shabangu in advancing the respondent's case made reference to Resnick vs Lekhethoa 1950 (3) S.A., C Pettigrew (Pty) Ltd vs Cone Textiles (Pty) Ltd 1976 (3) SA 569 (R) 572 D - F and Odendaal vs Van Oudtshorn 1968 (3) SA 433 (7). These cases deal with the discharge by a debtor by his payment to his creditor's creditor. In this case the point therein commented on is not relevant as between the applicant and the respondent. The respondent did all that was required of him. If there has been any misapplication of funds made available by the respondent the fault lies with the conveyancing attorney in this connection.

The terms of the order of this Court dated the 6th of July, 1990 are significant. In terms of such order, subject to the existing bank guarantee being revalidated within seven days from the date of the order or the applicant delivering a further valid guarantee in like terms to the respondent or his attorney within seven days from the date of the order, the respondent was to have taken such steps as may have been necessary to give transfer of the proper sold to the applicant in terms of the agreement of sale within 21 days from today. Quite clearly it was necessary to discharge any interdicts preventing transfer. This could only have been done from the proceeds of the guarantee provided by the respondent.

In the circumstances the applicant has made up no case for the relief claimed by him and the application is dismissed with costs

S.W. SAPIRE

ACTING CHIEF JUSTICE