



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Case No. 916/2013

In the matter between:

MTHOKOZISI MAHLANGU

PLAINTIFF

AND

SANDILE FREDDY GUMBI

DEFENDANT

*Neutral citation: Mthokozisi Mahlangu v. Sandile Freddy Gumbi
(916/2013) [2014] SZHC 190 (7th August 2014)*

Coram : M. E. SIMELANE, AJ

Heard : 2nd July 2014

Delivered : 7th August 2014

Summary

Summary judgment – plaintiff claiming cancellation of a sale agreement relating to a plot situate at Ngwane Park and refund of the purchase price – the Defendant raising a triable issue that he was unduly influenced to sign

an affidavit to sell the plot – summary judgment refused and costs to be costs in the cause – defendant granted leave to file a plea.

JUDGMENT
7th AUGUST 2014

[1] By Combined Summons issued on the 17th of June 2013 the Plaintiff sought the following prayers:

a) Cancellation of the Sale Agreement entered into between the parties in respect of sale of certain Plot 540 situated at Ngwane Park, Manzini.

b) Refund of the sum of E59 548.95 (Fifty nine thousand five hundred and forty eight emalangeni ninety five cents) by Defendant to Plaintiff.

b) Costs of suit.

[2] The Plaintiff claimed to have been sold Plot 540 situate at Ngwane Park belonging to Defendant for E170 000.00 (One hundred and seventy thousand Emalangeni) by the latter in August 2012.

[3] The Plaintiff further pleads that:

a) He paid a sum of E2 000.00 (Two thousand Emalangeni) for rates on the **30th June 2012**.

b) He again paid E57 548.95 (Fifty seven thousand five hundred and forty eight Emalangeni ninety five cents) on the **1st August 2012** whereafter the Defendant signed an affidavit in acknowledgement of this amount which is annexure “B”.

[4] The Plaintiff further pleaded that the abovementioned amounts were to enable the Defendant to prepare a proper written Deed of Sale by which Plaintiff could secure finance for the balance of the agreed purchase price.

- [5] Despite demand and even engaging the Manzini police the Defendant is refusing to hand over a signed Deed of Sale or to refund the Plaintiff the sum of E59 548.95 (Fifty seven thousand five hundred and forty eight Emalangeneni ninety five cents).
- [6] After filing of a Notice to Defend the Plaintiff applied for Summary Judgment which the Defendant opposed.
- [7] The Defendant in his Affidavit Resisting Summary Judgment denied being indebted to the Plaintiff in the aforesaid sum or any amount whatsoever.
- [8] In fact, the Defendant contended that he did not enter into any sale agreement with the Plaintiff in respect of his Plot 540 situated at Ngwane Park in Manzini, instead, the Plaintiff being a nurse at Releigh Fitkin Memorial Hospital (RFM) where the Defendant was admitted for quite some time and one of the nurses who treated Defendant while admitted there prompted and/or influenced him into signing an affidavit at the Manzini Police Station purporting to selling the aforesaid property to him (Plaintiff).

[9] The Plaintiff influenced the Defendant to sign the aforesaid affidavit by stating that they were entering into the alleged agreement because he (Plaintiff) wanted to submit it to his bank to solicit a loan. In actual fact, he says the said sum was never received by him. Plaintiff failed to annex the affidavit of the person who allegedly witnessed the said affidavit on his application for summary judgment confirming the allegations that the Defendant received the sum of E57 548.95 (Fifty seven thousand five hundred and forty eight Emalangeni ninety five cents) or any amount whatsoever. It is clear therefore that the contention of the Plaintiff that Defendant received the said sum remains disputed.

[10] Further the Defendant argues that he has a good and *bona fide* defence to the Plaintiff's claim more so, because at the time the Defendant signed the said affidavit, he was suffering from withdrawal symptoms, such as drowsiness, disorientation and impaired concentration, hence the Special plea of Undue Influence. It was submitted that by virtue of the fact that the Plaintiff was the nurse who treated Defendant both

when he was admitted and an outpatient, he (Plaintiff) was in a position to unduly influence the Defendant.

[11] The plaintiff denied that he unduly influenced the plaintiff and insisted that he paid him the said sum of money.

[12] It is my considered view that the Defendant has raised a triable issue in relation to whether he received the money in issue and whether he was duly influenced to sign the affidavit acknowledging receipt. ***(Variety Investments (Pty) Ltd v Motsa 1982 -1986 SLR 77 CA at p80 A-E).***

[13] I therefore make the following orders:

- a) Summary judgment is refused.
- b) Costs to be costs in the cause.
- c) The Defendant is granted leave to file a Plea within the next 10 days.

**MBUSO E. SIMELANE
ACTING JUDGE**

For Plaintiff : **B. Zwane**
For Defendants : **F. Sibandze**