

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CIV. T. NO. 1115/90

In the matter between:

BUYILE MPUNGOSE

vs

BUZZBY SERVICES

CORAM : A.F.M. THWALA
FOR THE PLAINTIFF : MR. SIMELANE, FINE
FOR DEFENDANT : MR. SHILUBANE

JUDGMENT

05/08/94

In this case the Plaintiff claims:

- (a) Cancellation of the contract
- (b) Repayment of the sum of E10500 being the purchase price
- (c) Interest at the rate of 9% per annum, a temporae morae to date of payment
- (d) Costs os Suit

The case arose from a contract agreement entered into during September, 1989, between Plaintiff and defendant. They entered into an oral agreement of sale in terms of which the Plaintiff purchased a mobi-house from the defendant for the sum of E10500.

The Plaintiff represented herself. The defendant was represented by its Director Mr. Abrahams. The Plaintiff paid the sum of E10500 which included transport. The defendant's director undertook to deliver the mobi-house at plot 99 Msunduzza Extension 3.

In her evidence the Plaintiff said they discussed delivery. Mr Abrahams said he was going to provide a special transport for the delivery of the mobi-house. They inspected the site. Mr Abrahams told her that the site was not suitable it needed to be graded. After the site was graded, they visited it, Mr Abrahams said the site was accessible. Mr. Abrahams arranged with City Plumbing to put the foundations of the mobi-house. The foundations were done by City Plumbing.

Petros Mpungose and Richard Nxumalo confirmed that plot 99 was graded by Mbabane Town Council and it was accessible. This was done about October, 1989. At the beginning of the trial, an inspection in Loco was done. The Court observed that work had been done on the plot and that there was a sort of a foundation. There were also blocks on the site. It must be observed that it is almost four years since the work was done. The plot is now covered with vegetation. According to the Plaintiff, the defendant did not complain that the place was not accessible.

When she noticed that the defendant did not deliver the mobi-house, she wrote the letter, exhibit A to defendant for attention of Mr. Abrahams. Mr Abrahams denied that the defendant received the letter. She also stated that she phoned Mr. Abrahams five times. She also told him that she wanted to use the house for Christmas.

Nothing happened until she received the letter exhibit 'c' from defendant. She denied that she asked City Plumbing to erect the mobi-house at Sandla. She maintains the house was to be delivered at plot 99 Msunduza extension 3 as a complete unit not, dismantled. She then handed exhibit 'C' to her Lawyers.

Mr. Abrahams confirmed that the Plaintiff and defendant entered into a contract and that the Plaintiff fulfilled her obligation.

He also confirmed that he asked the Plaintiff to make plot 99 accessible for delivery. Contrary to what the Plaintiff said, he said the house was to be dismantled and re-set on delivery. He denies receiving exhibit 'A' and he denied visiting the site after it had been graded. He also denied that the Plaintiff phoned him about five times informing him that she needed the house for christmas.

One wonders why a Lowbed Loader was needed if the house was to be dismantled. I think if it was explained to the complainant that the house was not to be delivered as a complete unit, she could not have entered into the contract. The need of a Lowbed Loader indicates that the house was to be delivered as a complete unit. The defendant Counsel also conceded that in the circumstances the time for delivery or performance was not reasonable. I agree. The Plaintiff bought a mobi-house because she was in need of accomodation. A delay for more than a year is definitely unreasonable.

The Plaintiff Counsel and defence Counsel addressed me on the question of costs and interests and referred me to Authorities cited in "The Law of Contract in South Africa" by Christie. I hold that the defendant was placed in morae on the date of the service of the summons because Plaintiff did not serve the Plaintiff with notice of demand. The interest will run from the date of service of the summons, the 30th November, 1990.

I grant judgment in favour of the Plaintiff in terms of the summons.


A.F.M. THWALA
JUDGE