



IN THE HIGH COURT OF SWAZILAND

Civ. Case No. 26/95

In the matter between:

ALFRED FRED HLATSHWAYO

Plaintiff

and

SAMUEL SICELO HLATSHWAYO

Defendant

CORAM:

S.W. Sapire A.J.

FOR PLAINTIFF

Mr. Shilubane

FOR DEFENDANT

Mr. Mlangeni

Judgment

(23/11/95)

The applicant in application No. 26/95 is Alfred Hlatshwayo (ALFRED). He has, on Notice of Motion dated 12/1/95 claimed transfer of Lot No. 401 in Nhlangano Extension F.3, District Shiselweni from the respondent, Samuel Sicelo Hlatshwayo (SAMUEL).

The respondent opposes the granting of the relief claimed but has not filed a replying affidavit.

In a separate application No. 500/95 Ncane Nellie Sihlongonyane (NELLIE) in terms of a notice of motion dated 16/3/95, approached this court as a matter of urgency, and without citing ALFRED or giving him any notice applied and was granted a rule nisi calling on SAMUEL to show cause, why he should not be restrained and interdicted from selling or otherwise alienating certain dwelling house upon Stand No. 401 Extension 3 Nhlangano, i.e. the property.

The two applications have been consolidated, notwithstanding that ALFRED was not a party to the application No. 500/95 and were heard together. The consolidation was effected by NELLIE being introduced into application No. 26/95 as a co-respondent.

ALFRED has proved that SAMUEL sold the property to him in terms of the Deed of Sale dated 10/6/94. He has paid conveyancers fees and made provision for payment of transfer duty and all other matters which he was obliged to do in terms of the agreement. He has paid the deposit and he has also established a guarantee for the balance of the purchase price. This guarantee has now lapsed but is ready willing and able to reinstate a guarantee. He now seeks an order which in effect would compel SAMUEL to transfer the property to him. He also asks for the costs on the application.

On the 17/3/95 this court on the application of NELLIE was persuaded to grant a rule nisi calling on SAMUEL to show cause why he should not be interdicted from alienating the property.

NELLIE in writing the application was clearly aware of the sale by SAMUEL to Alfred but for some reason best known to herself, she did not give Alfred notice of the application nor afford him an opportunity of opposing the application. The rule has been extended from time to time and I would assume that it had been extended until the hearing of the matter.

NELLIE also obtained an order, joining her in these proceedings, to oppose the relief sought by the applicant, ALFRED.

The respondent, Samuel has filed no affidavit and the applicant alleges in an affidavit dated 4/4/95 that when this application first came before the court, Samuel did not oppose the granting of the relief sought and his attorney requested the postponement to enable Samuel to sign the transfer documents. These allegations are not denied. It seems clear that NELLIE and SAMUEL are conniving in a defence to frustrate the applicant's claim to transfer.

The basis of the defence is untenable. NELLIE claims to be a co-owner of the property. This proposition is belied, and incontrovertibly

refuted by the simple fact that she is not registered as such. Any defence therefore based on an allegation that she as a co-owner had not sold the property must fail.

She says that in or about 1991 she and Samuel entered into an oral agreement in terms of which they would jointly purchase the property for amount of E145,000. In support of this allegation she has produced a letter dated 15/2/91 written to her by Samuel. I have grave suspicions as to the authenticity of this letter and if the matter were to have proceeded I would have expected cross-examination to be directed to question a number of aspects surrounding the letter. This however will not be necessary as the letter itself is not evidence of any agreement. The letter in effect is a request from Samuel to Nellie that she assist him financially in purchasing the property which they intend in some way would be for the benefit of a child of which Nellie is the mother and Samuel the father. The fact remains however that whatever the intention of Nellie and Samuel may have been, no effect was given thereto. Samuel alone acquired the property and as owner had the right to deal with it. The deed of sale in terms of which the property was acquired has not been produced but it is hardly likely that the property would have been transferred to Samuel alone had the purchasers been Nellie and Samuel jointly.

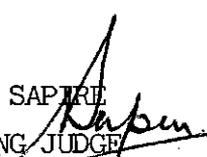
It may be true that Nellie contributed to the purchase of the property. That may entitle her to reclaim her contribution from Samuel and she may even be entitled to an interdict on the proceeds of the sale to Alfred to the extent of such contribution. She has no valid claim to the property itself.

There is no defence to the applicant's claim and no basis for Nellie preventing the transfer of the property. I therefore order:

- 1.1 The respondent SAMUEL SICELO HLATSHWAYO shall forthwith transfer Stand No. 401 Extension 3 Nhlangano Shiselweni District to the applicant.
- 1.2 Should the said respondent fail when called upon so to do, by the conveyancers attending to the transaction after the guarantee

required by them shall been re-established, to sign any document or perform any act necessary to effect such transfer, the Sheriff or his lawful deputy is hereby authorised, required and directed on behalf of the respondent to sign all such documents and to do all such things as may be required of the respondent in order to effect registration of the transfer.

- 1.3 Any notice calling on the respondent to perform his obligations in terms hereof may be delivered to him at the offices of his attorneys, by handing the same to any person practising or employed there should the conveyancers be unable to contact the respondents personally to give such notice.
3. The rule nisi issued on the application of NELLIE SIHLONGONYANE is dismissed with costs.
4. The respondents NELLIE and SAMUEL are to pay the applicant's costs jointly and severally.

S.W. SAPIRE

ACTING JUDGE