

JOHN NYAMBI  
versus  
PATRICIA DARANGWA (N.O  
(duly representing estate late violet kaura dr 962/22)  
ZIBUTE SAMUEL MAKAIWA  
and  
RECLIFF MUNICIPALITY  
and  
MASTER OF THE HIGH COURT (N.O)  
and  
REGISTRAR OF DEEDS

HIGH COURT OF ZIMBABWE  
**WAMAMBO J**  
HARARE: 30 January 2024 & 9 October 2024

### **Opposed Application**

*A Chihombori*, for the application  
*L Ziro*, for the 1<sup>st</sup> respondent  
No appearance for the 2<sup>nd</sup> to 5<sup>th</sup> respondents

WAMAMBO J: This is an opposed application wherein applicant seeks to file, a supplementary affidavit in the main case, HC 7290/22. The order sought reads as follows:

“IT IS HEREBY ORDERED THAT

1. The applicant be and is hereby allowed to file a supplementary opposing affidavit under Case Number HC 7290/22.
2. First respondent be and is hereby granted leave to file a supplementary answering affidavit if he wishes so within ten (10) days of service of applicant’s supplementary opposing affidavit.
3. There shall be no order as to cost.”

In HC 7290/22 the applicant is first respondent herein. The first respondent. The first respondent is second respondent herein. The 3<sup>rd</sup>,4<sup>th</sup> and 5<sup>th</sup> respondents in HC 7290/22 are the same as in the instant case.

In HC 7290/22 applicant therein who is the first respondent in this case seeks relief couched as follows:

“IT IS ORDERED THAT:

1. The applicant for cancellation of the agreement of sale, cession and title deed be and is hereby cancelled.
2. The Agreement of sale and cession of rights regards House number 19 Masvingo Township of Redcliff Townlands situate in the district of Que Que between the second respondent, third respondent and the late Lucious Kaura is hereby cancelled.
3. The title deed 577/2009 regards House number 19 Masvingo Road Redcliff Kwekwe also known as Stand 659 Rutendo Township of Redcliff Townlands situate in the district of Que Que Registered with and issued by the 5<sup>th</sup> respondent is hereby cancelled.
4. House number 19 Masvingo Road Redcliff Kwekwe also known as Stand 659 Rutendo Township of Redcliff Townlands situate in the district of Que Que is declared to form part of Estate Late Violet Kaura 962/22 and the applicant and 4<sup>th</sup> respondent shall register and administer the immovable property as required by law.
5. The second and third respondent to pay costs of suit jointly or severally the one paying the other to be absolved.”

It is imperative to give a background to the application in HC 7290/22 for the instant application arises directly from the pleadings in HC 7290/22.

The immovable property the centre of both HC 7290/22 and this case will be referred to for convenience as 19 Masvingo Road, Redcliff. This immovable property was sold to Violet Kaura by second respondent in this case (Zibute) after Violet Kaura died her son Lucious Kaura purported to sell the immovable property to the applicant in this case. Applicant proceeded to have title deeds for the house processed in his name. The applicant in HC 7290/22 was not satisfied with the manner in which real rights were transferred to applicant in this Case.

In HC 7290/22 applicant herein filed an opposing affidavit as the respondent. That affidavit contains averments which first respondent herein took issue with in the answering affidavit. In response thereto applicant seeks to file a supplementary affidavit. The averments at the centre of this matter were made by the applicant herein as second respondent in HC 7290/22. They are contained in paragraphs and of the opposing affidavit as aforementioned.

In para 18:1 of the second respondent’s opposing affidavit in HC 7290/22 he avers as follows:

“18:1 It is correct that I went ahead with the sale fully aware of the fact that it once belonged to Estate Late Violet Kaura, however, I believed that the transfer was lawful. I acted under the impression that the estate had been properly administered and that the property had duly evolved to Lucious Kaura”

In the answering affidavit applicant in HC 7290/22 responding to the above avers as follows:

“Save to agree with the second respondent that he believed he “went ahead with the sale fully aware that the property once belonged to Estate Late Violet Kaura” the rest of the paragraph is

vehemently denied. Applicant denies that second respondent believed the transfer was lawful. The contents of this paragraph is a clear admission by the second respondent that the sale of the immovable property was unlawful and contradicts everything contained in his opposing affidavits.”

It is now applicant’s stance that applicant in HC 7290/22 made misleading remarks in the above-mentioned paragraph of his answering affidavit and he seeks a correction thereof through the submission of a supplementary affidavit.

In *Fransica Zinyemba v Rerformed Church of Zimbabwe* HH 160 – 21 MUSAKWA J (as he then was) said the following at p 2 which is directly relevant to this case:

“The law on the filing of additional affidavits is well settled. In *Silver Trucks (Pty) Ltd & Another v Director of Customs & Excise* 1999(1) ZLR 490 it was held that a Court will allow the filing of additional affidavits only in exceptional circumstances. It was further held that a party seeking to file an additional affidavit must provide a satisfactory explanation for failing to place the information before the court at the appropriate time. The explanation must negative bad faith or culpable failure to act timeously. In addition, the court must be satisfied that there is no prejudice to the respondent. See also *Transvaal Racing Club v Jockey Club of South Africa* 1958(3) SA 599.

My reading of the circumstances of this matter are such that there is no exceptional circumstance that arises when regard is had to the alleged admission. Applicant is of the firm view that he made no such admission. First respondent is adamant para 18:1 amounts to an admission. It boils down to an issue of semantics. Is it so exceptional it needs a supplementary affidavit to clarify it? I find that my reading of para 18:1 is very clear. The interpretation placed on it is but first respondent’s opinion. It is a matter that can be argued without resorting to a supplementary affidavit I find that there is no merit in submitting a supplementary affidavit on the above issue.

Equally so with the second issue raised. Applicant as second respondent appended to his opposing Affidavit an agreement of sale between himself and Lecious Kaura. He also appended to the opposing affidavit a certificate of Authority from the Master of the High Court.

The first respondent herein in the answering affidavit in HC 7290/22 raised the issue of the agreement of sale preceding the certificate of authority from the Master of the High Court.

Applicant seeks to clear the apparent misunderstanding according to him I am not taken by his submissions. I also find nothing exceptional about a party filing supporting documents in opposition and then realizing that the dates do not tally and then seeking to file a supplementary affidavit.

A litigant, or his legal practitioner should focus on the issue at hand. He or she must meet the other side's case and oppose, reply or agree with averments by the other party. A litigant cannot file apparently contradictory documents and then seek to correct them through a supplementary affidavit.

It is such a case that the issues raised can be clarified if need be in the main case. I also find that there is no merit in the application for a supplementary affidavit to be filed on the second issue as dealt with above.

I find in the circumstances that the application is without merit and should be dismissed. I am not convinced that costs on a higher scale are justifiable. I find that costs on the ordinary scale are applicable. There has not been any acceptable justification for costs on a higher scale.

**I thus order as follows:**

1. The application be and is hereby dismissed with costs.

*Sibanda & Partners*, applicants' legal practitioner  
*Takaindisa Law Chambers*, respondent's legal practitioners