CLOUDIO JUME
versus
WAKIE YULE
and
THE SHERIFF OF ZIMBABWE N.O.

HIGH COURT OF ZIMBABWE
CHINAMORA J
HARARE, 19 September & 18 October 2022

Application for a Declaratur

Mr *Z T Zvobgo*, for the applicant
Mr *N Tonhodzayi*, for the 1st respondent
No appearance for the 2nd respondent

CHINAMORA J:

Introduction

This application has been brought in terms of s 14 of the High Court Act [*Chapter 07:06*], and seeks certain *declaraturs* and consequential relief. From the draft order, the declaratory orders that the applicant has asked for can be summarized as follows:

1. That the first respondent did not validly serve the applicant with the application under HC 3647/17 and, as a result, the default judgment entered against the applicant on 22 November 2017, per MUREMBA J, was sought and granted in error.
2. That the aforesaid judgment in HC 3647/17, which was subsequently set aside by ZHOU J under HC 3872/19 on 29 May 2019, shall not be revived having been obtained fraudulently and was therefore erroneously granted.
3. That the first respondent's claims arising from, and in connection with, the agreement of sale entered they into around 13 February 2010 (hereinafter referred

to as "the Agreement of Sale" have been extinguished by extinctive prescription, and were already prescribed by the time HC 1495/13 was filed on 20 February 2013.

4. That, in any event, the first respondent forfeited the rights of enforcement arising from the Agreement of Sale, owing to the first respondent's cancellation of the said agreement, as confirmed in an affidavit he deposed in May 2019.

5. That the first respondent's claims against the applicant in respect of a property called Stand 9462 Budiriro Township of Stand 11265 Budiriro Township measuring 300m^2 held under Deed of Transfer No. 4508/2009 (hereinafter referred to as "Stand 9462 Budiriro 5B, Harare") arising from the Agreement of Sale are legally incapable of enforcement.

6. That the first respondent, and all those claiming occupation through him, shall vacate Stand 9462 Budiriro 5B, Harare, within ten (10) days of the date of this judgment.

7. That, should the first respondent fail to comply with para (6) above, the second respondent is hereby authorized to forcibly evict him from Stand 9462 Budiriro 5B, Harare, and give vacant possession to the applicant.

Let me go into a brief background to the dispute which has given rise to the application in *casu*.

Background Facts

Around 13 February 2010, the applicant and the first respondent entered into an agreement of sale ("the Agreement of Sale"), in terms of which the first respondent purchased Stand 9462 Budiriro 5B, Harare. The agreed purchase price was US$30 000, which was fully paid on 15 February 2010. However, the first respondent did not take transfer of the property. Some three years later on the 20 February 2013, the first respondent filed an application under HC 1495/13 seeking transfer, but did not prosecute the application. On 26 April 2017, the first respondent instituted fresh proceedings under HC 3647/17, which application was substantially similar to HC 1495/13. At the time the second application was filed, the first one had not been withdrawn. After the applicant raised the argument of *lis pendens* in subsequent legal proceedings, the first respondent withdrew HC 1495/13 on 23 July 2019. I will return to this issue.

The applicant contended that he was not served with the application under HC 3647/17. He submitted that, as a result, a default judgment was granted against him by MUREMBA J on 22 November 2017. The applicant said that he became aware of the said judgment two years after it was granted. He perused the record in HC 3647/17 and discovered a supplementary affidavit which deposed that the application was served on the applicant. The applicant confronted the first respondent about the false affidavit. In response, the first respondent deposed to an affidavit on 2 May 2019 in which he averred that he had cancelled the Agreement of Sale. This prompted the applicant to make an application, under HC 3872/19, to set aside the default judgment. Additionally, the applicant sought the cancellation of the Agreement of Sale, on the basis that the first respondent had deposed to an affidavit in which he cancelled the agreement. Despite being duly served with this application, the first respondent did not oppose it. Consequently, a default judgment was entered in favor of the applicant by ZHOU J on 29 May 2019. Armed with this order, the applicant demanded vacant possession from the respondent through a letter dated 7 June 2019, which is Annexure "CJ10" on page 49 of the record.

The applicant also filed a police report against the first respondent for perjury under Investigation Report No. IR060898. The perjury involved the supplementary affidavit used to obtain the default judgment under HC 3647/17, as well as the first respondent's affidavit in HC 5886/19. The respondent was convicted of perjury by the magistrates court on 19 March 2020.
As already stated, the first respondent filed an application under HC 5886/19 for rescission of ZHOU J's order. The application was opposed and two preliminary points were raised. The first was that the first respondent had been untruthful with the court in that he had not divulged the existence of the application under HC 1495/13, which was identical to the application under HC 3647/17. The second was that the first respondent was out of time to seek rescission as he had been aware of ZHOU J's default judgment for a period in excess of one month. The first respondent conceded to the first point *in limine* and withdrew HC 1495/13. He also conceded to the second point, namely, that the application had not been filed timeously, and filed an application for

condonation under HC 6834/19. The two applications (i.e. for rescission under HC 5886/19 and condonation under HC 6834/19) were consolidated by CHIKOWERO J on 18 November 2019 under HC 7171/19. I heard the rescission application under HC 5886/19, and in a judgment handed down on 8 December 2021, I struck the matter off the roll. The first respondent appealed against my decision to the Supreme Court under SC 485/21, which appeal is still pending.

At the hearing of this matter, the first respondent raised some preliminary points. I heard argument on these points and dismissed them *ex tempore* and invited the parties to deal with the merits of the application promising to give my reasons together with my decision on the merits. These are my reasons, beginning with the preliminary points.

Points *in limine*

A total of seven points *in limine*, were raised, and they are as follows:

i. That the founding affidavit is fatally defective by reason of repetitive and argumentative allegations made therein;
ii. That the application is defective by reason of the fact that it seeks both *declaraturs* and consequential relief simultaneously;
iii. That there has been a misjoinder of the second respondent;
iv. That there has been material non-disclosure on the part of the applicant which renders the application invalid;
v. That the declaraturs sought in respect of para 2 (a) and (b) of the draft order, relating to the judgment of MUREMBA J under HC 3647/17 are *res judicata;*
vi. That the declaraturs sought under para 3 (a) – (c) of the draft order are *lis pendens*, as they relate to the same issues that are before the High Court under HC 5886/19 and HC 6834/19, as well as the Supreme Court under SC 485/21; and
vii. That the consequential relief sought under para 3 (d) and (e) of the draft order has prescribed and therefore cannot be entertained.

I shall address each of the points *in limine* in turn.

Points *in limine*

The first preliminary point argued by Mr *Tonhodzayi* for the first respondent, is that the founding affidavit should be struck off in its entirety on the basis that it is repetitive and argumentative. To support this proposition, Counsel relied on South African case law. I asked whether, to his knowledge, the courts in this jurisdiction had ever adopted such an approach, to which he answered in the negative. In response, Mr *Zvobgo* for the applicant, made three submissions. Firstly, he submitted that given the long history of the matter, which spans a period in excess of a decade, it was necessary for the founding affidavit to be repetitive in some instances, in order to properly explain the matter. Secondly, he contended that since the relief sought necessarily involves issues of prescription, cancellation of contracts and *rei vindicatio*, it was inevitable that some aspects of the affidavit would be argumentative. Finally, he argued that in any event, if the court took the view that parts of the applicant's affidavit were repetitive and argumentative, the offending paragraphs could merely strike out the paragraphs, instead of striking out the entire affidavit. I found this argument to be persuasive and eminently reasonable. The requirement for brevity and limiting oneself to only factual allegations in an affidavit seems to me not an absolute one. In cases, such as this one, where the history of the matter is long and winding, and where there is need to properly explain some salient legal issues, an affidavit cannot be struck out for the mere reason that it is repetitive and argumentative. It would unreasonable, in my view, to pedantically constrict an affidavit, in circumstances where it is clear that a deponent could not make out his case without being repetitive or argumentative. Of course, this must be within reason, and will be a matter of value judgment for the judge seized with a matter. On the facts of this case, I do not consider that the point is merited. It certainly does not warrant the dismissal of the application or striking out of an affidavit which founds a party's case in its entirety. There is judicial precedence for not taking the approach of the South African courts. In this respect, I am

fortified by the remarks of MAKONI J (as she then was) in *Turner & Sons (Pvt) Ltd* v *Master of the High Court & Ors* HH 498-15 where she appositely stated:

> "Such other issues as the voluminous nature of the affidavits and that they do not comply with the rule, standing on their own, would not, in my view, result in the affidavits being expunged from the record. Rather, it should give rise to an adverse order of costs".

I did not find any merit in this preliminary point, and for that reason I dismissed it.

The second point *in limine* was that the application is defective to the extent that the applicant seeks both declaraturs and consequential relief at the same time. According to the first respondent, the wording of s 14 of the High Court Act prohibits a litigant from seeking both a declaratur and consequential relief in the same application. In support of this contention, the first respondent cited the case of *Allan Norman Markham* v *Minister of Energy & Power Development & Ors* HH 275-21. The applicant's response was that the first respondent had simply misinterpreted the s 14 of the High Court Act and misunderstood the judgment in the *Markham's case* (supra). I entirely agree. All that s 14 of the High Court Act means is that a litigant is free to apply for a *declaratur* whether or not he also intends to seek consequential relief. Indeed, there is nothing which precludes an applicant from seeking both a *declaratur* and consequential relief in the same application. Invariably, an applicant asks for a declaratory order as the main relief, and then seeks consequential relief as a consequence of (or pursuant to) the declaratur. In fact, I had occasion to deal with such a case in *Reserve Bank of Zimbabwe* v *Holbud Limited* HH 583-21. As the principal relief, the applicant sought (and I granted) an order that declared that the assets of the Reserve Bank of Zimbabwe are subject to the provisions of the State Liabilities Act [*Chapter 8:14*] and therefore cannot be attached in execution. Then, as a consequence of the said declaration, the applicant asked for (and I granted) an order nullifying and setting aside the writ of execution issued attaching the assets of the Reserve Bank of Zimbabwe. For this reason, this preliminary point lacked merit and I dismissed it.

The third preliminary point was that there was a misjoinder of the second respondent. This point is inconsequential and need not detain this court. Rule 32 (11) of the High Court Rules, 2021 (*"the* Rules") provides that no matter shall be defeated by reason of non-joinder or mis-joinder of a party. (See *Sobuza Gula-Ndebele* v *Chinembiri Bhunu* N.O. SC 29-11). The point *in limine* therefore cannot be used to defeat the application. I move on to address the fourth preliminary point, namely, that there had been material non-disclosure by the applicant. The argument was that he did not state that he had filed an application for summary judgment in the eviction summons that he instituted in the magistrates court (Case No. 10909/19), and that same was dismissed. I notice that, in his founding affidavit, the applicant mentioned the eviction summons matter that he instituted in the magistrates court. He advised the court that the matter could not proceed further in the magistrates court because of the existence of the first respondent's application to this court under HC 5886/19. I do not find the material non-disclosure alleged by the first respondent. What matters is that he did not withhold information on that case from this court. The point *in limine* is similarly dismissed for lack of merit.

Next, the first respondent raised the preliminary point on *res judicata*. It was contended that the relief sought by the applicant under para 2 (a) and (b) of the draft order had already been dealt with by ZHOU J when he granted the order under HC 3872/19 on 29 May 2019 setting aside the default judgment of MUREMBA J under HC 3647/17. From my reading of the order of ZHOU J, it is apparent that it was an order granted in default. A key element of the defence of *res judicata* is that the previous order or judgment must have been final in nature. A default judgment can hardly be said to be final in nature as the merits of the matter were never dealt with. In this context, it is instructive to observer that in *Maparura* v *Maparura* 1988 (1) ZLR 234 (HC) at 236C-D, CHIDYAUSIKU J (as he then was) aptly said:

> "The essence of the defence of *res judicata* is that the issues being raised have been previously raised and determined by a court of competent jurisdiction."

The plea of *res judicata* was explained with more clarity by MAKARAU JP (as she then was) in *Chimponda & Anor* v *Muvami* 2007 ZLR (2) 326 at 329G-330 C in these words:

> "For the plea to be upheld, the matter must have been finally and definitively dealt with in the prior proceedings. In other words, the judgment raised in the plea as having determined the matter must have put to rest the dispute between the parties, by making a finding in law and / or in fact against one of the parties on the substantive issues before the court or on the competence of the parties to bring or to defend the proceedings. The cause of action as between the parties must have been extinguished by the judgment".

Therefore, the reliance on *res judicata* is misplaced on the facts of this case. Accordingly, the point *in limine* failed for that reason.

The next point taken was that of *lis pendens*. In that regard, the first respondent argued that the *declaraturs* sought in para 3 (a) – (c) of the applicant's draft order were all related to the issues under consideration in HC 5886/19, HC 6834/19 and SC 485/19. I disagree. The only thing in common about this case and the ones pointed out is that they all concern the same immovable property, i.e. Stand 9462 Budiriro 5B, Harare. That is where the similarities begin and end. That common denominator does not suffice to meet the requirements of *lis pendens*. The law on *lis pendens* is settled in this jurisdiction. In *Diocesan Trustees for Diocese of Harare* v *Church of the Province of Central Africa* 2009 (2) ZLR 57 (H), it was held that for a plea of *lis pendens* to succeed it must be demonstrated that the matters are between the same parties or their successors in title concerning the same subjects matter and founded upon the same cause of action. In *casu*, I am seized with an application in terms of s 14 of the High Court Act, while the application under HC 5886/19 is for rescission of judgment. By contrast as well, HC 6834/19 involves an application for condonation of late filing of a rescission application. The Supreme Court appeal under SC 485/21 pertains to a challenge against my decision striking off the roll the rescission application in HC 5886/19. Apart from the Budiriro property being an aspect of the three cases, they do not deal with the declaraturs sought *in casu*, and *lis pendens* does not apply, even tangentially.

At any rate, the plea of *lis pendens* is not absolute. As a result, in *Mhungu* v *Mtindi* 1986 (2) ZLR 171 (SC) MC NALLY JA had this to say:

> 'The defence raised by this allegation is the defence of lis pendens, sometimes known as lis alibi pendens. Herbstein and Van Winsen in the *Civil Practice of Superior Courts in South Africa* 3rd ed at pp 269 et seq say, at page 269 – 270;
>
> "if an action is already pending between parties and the plaintiff there brings another action against the same defendant on the same cause of action and in respect of the same subject matter, whether in the same or a different court, it is open to such defendant to take the objection of lis pendens, that is, another action respecting the identical subject matter has already been instituted, whereupon the court, in its discretion, may stay the second action pending the decision in the first action." **[My own emphasis]**

On the facts of this case, it was my view that the plea of *lis pendens* did not apply. For that reason the preliminary point failed.

The last preliminary point was that the consequential relief sought under para 3 (d) and 3 (e) of the draft order has prescribed. The applicant responded to this preliminary point by drawing the court's attention to the affidavit that was signed by the first respondent on 2 May 2019, in terms of which he cancelled the Agreement of Sale. The applicant contended that the right to repossess his property from the first respondent could only arise after the cancellation of the contract. Hence, as the present proceedings commenced on 9 March 2022, it was less than three years from the date of cancellation. Evidently, there can be no basis for concluding that the consequential relief sought by the applicant has prescribed. This point *in limine*, too, has no merit, and I dismissed it. Having dispensed with the preliminary points, I now turn to address the merits of the application.

On the merits

As already stated, this application was brought in terms of s 14 of the High Court Act, which allows the court, in its discretion, to grant a *declaratur* and consequential relief. The provision states as follows:

> "The High Court may, in its discretion, at the instance of any interested person, inquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon such determination."

The approach in our jurisdiction (and in South Africa) can be gleaned from a plethora of cases. For example, in *Munn Publishing (Pvt) Ltd* v *Zimbabwe Broadcasting Corporation* 1994 (1) ZLR 337 (S) at 343-344, GUBBAY CJ held as follows:

> "The condition precedent to the grant of a declaratory order is that the applicant must be an interested person, in the sense of having a direct and substantial interest in the subject matter of the suit which could be prejudicially affected by the judgment of the court. See *United Watch & Diamond Co (Pty) Ltd &Ors* v *Disa Hotels Ltd & Anor* 1972 (4) SA 409 (C) at 415 *in fine*; *Milani & Anor* v *South African Medical & Dental Council & Anor* 1990 (1) SA 899 (T) at 902G–H. The interest must relate to an existing, future or contingent right. The court will not decide abstract, academic or hypothetical questions unrelated to such interest. *See Anglo-Transvaal Collieries Ltd* v *S A Mutual Life Assurance Soc* 1977 (3) SA 631 (T) at 635G–H. But the existence of an actual dispute between persons interested is not a statutory requirement to an exercise by the court of jurisdiction. See *Ex p Nell* 1963 (1) SA 754 (A) at 759H–760A. Nor does the availability of another remedy render the grant of a declaratory order incompetent."

The starting point is to ask the question: has the applicant shown any real and substantial interest which warrants the court to make a declaration of rights in his/her/its favour? This requirement ensures that an applicant does not seek a declaration of non-existent rights or consideration of rights in the abstract. (See *Newton Elliot Dongo* v *Joytindra NatveriaL Naik* HH 73-18). In this regard, the applicant must show that they have a right which may be affected adversely should the court not make a decision in their favor.

In *casu,* the applicant has provided a title deed through Annexure "CJ1" (on pages 25-27 of the record). The said title deed states that he is the registered owner of Stand 9462 Budiriro 5B, Harare. It is trite that in terms of s 2 of the Deeds Registries Act [*Chapter 20:05*], a title deed is *prima facie* proof of the right of ownership. This statute provides that the registration of rights in immovable property passes real rights to the title holder, and this legal position was underscored

by the Supreme Court in *Takafuma* v *Takafuma* 1994 (2) ZLR 103 (S) at 105H-106A, where MCNALLY JA had this to say:

> "The registration of rights in immovable property in terms of the Deeds and Registries Act [Chapter 139] (now [Chapter 20:05]) is not a mere form. Nor is it simply a device to confound creditors or the tax authorities. It is a matter of substance. It conveys real rights upon those in whose name the property is registered."

See also *Chapeyama* v *Chapeyama* 2000 (2) ZLR 103 (S).

Based on the authorities cited above, I am satisfied that the applicant managed to demonstrate that he is the legal owner of Stand 9462 Budiriro 5B, Harare. On account of that ownership, the applicant has a real and substantial interest in this matter which, of course, concerns vindication of the property from an unlawful occupier. I note that the first respondent was shown to have obtained a default judgment in HC 3647/17 fraudulently. Because the judgement was fraudulently obtained against him, I have no doubt that the applicant, indeed, has a real and substantial interest in the matter before me. Having resolved the issue of *locus standi*, the next inevitable question is: does the applicant have an existing future or contingent right that entitles him to seek the relief in the application before me? As I have already acknowledged, the applicant has a real and substantial interest in the *lis in casu*. Flowing from that right, is the concomitant right to possess founded on the *actio rei vindication*, particularly, where the first respondent has not challenged the applicant's ownership right of ownership. Noteworthy in this connection is that in *Chetty* v *Naidoo* 1974 (3) SA 13 (A), at 20, the court remarked:

> "The owner may claim his property wherever found, from whomsoever is holding it. It is inherent in the nature of ownership that possession of the *rei* should normally be with the owner and it follows that no other person may withhold it from the owner unless he is vested with some right enforceable against the owner (e.g. a right of retention or a contractual right). The owner, in instituting a *rei vindicatio,* need, therefore, do no more than allege and prove that he is the owner and that the defendant is holding the *res,* the onus being on the defendant to allege and establish any right to continue to hold against the owner" **[My own emphasis]**

If find the above observations self-commending, and I respectfully endorse them. See also S*tanbic Finance Zimbabwe* v *Chivhunga* 1999 (1) ZLR 262 (HC). *Hwange Colliery Company* v *Tendai Savanhu*, HH 395-13, where *Chetty* v *Naidoo* (*supra*) was cited with approval. Indeed, according Gibson JTR *Wille's Principles of South African Law* (7th ed. Juta 7 Co Ltd, Cape Town, 1977) at p 203, categorically states that it makes no difference whether the possessor is *bona fide* or *mala fide*, since the owner of a movable may recover it from any possessor without having to compensate him, even from a possessor in good faith who gave value for it. The learned author further asserts as follows:

> "In the case of land, the absolute owner of the land may claim the ejection of any person in possession of it, and also an interdict restraining persons from continuing to trespass on it, as well as damages for loss or destruction caused by trespassers."

Bearing in mind the requirements for the grant of declaratory relief in terms of s 14 of the High Court Act, and the common law remedy of *actio rei vindicatio*, I now have to decide whether this is a proper case for grant of the relief sought. In this regard, *Munn Publishing (Pvt) Ltd* v *Zimbabwe Broadcasting Corporation* is the *locus classicus* that must necessarily guide my exercise of discretion. In *casu*, besides the other considerations, finality to litigation is critical to my determination. Obviously, because the first respondent has relentlessly continued to clog the court system over an Agreement of Sale. Once he opted to cancel that agreement, the parties were returned to the *status quo ante* as if the Agreement of Sale never existed. Before I make my conclusion, let me briefly comment on the issue of prescription. By the time that the proceedings under HC 1495/13 were instituted, the three year period of prescription had already elapsed. The consequences of prescription were stated by MAFUSIRE J in *Gumbochuma* v *ZETDC* HMA 52-19 in apposite language as follows:

> "…the lapsing of a debt by prescription is absolute, unless one can show that prescription does not apply or that the running of it was delayed or interrupted."

Given the foregoing, I am prepared to accept that the applicant has made out a case for the declaratur sought in para 3 (a) of the draft order *vis-à-vis* the first respondent's rights in the agreement. As regards cancellation the agreement, which is the focus of para 3 (b) of the draft order, the applicant has placed before me an affidavit sworn by the first respondent on 2 May 2019 confirming the cancellation. The first respondent does not deny that he signed the sworn affidavit. I must say that the explanation that he signed the affidavit because he was afraid that the applicant would report him to the police is ludicrous, if not incredible. Surely, he could not have been so afraid as to give up his proprietary rights in a property that he bought. On the legal effect of a sworn statement, see *Tian Ze Tobacco Company (private) Ltd* v *Muntuyedwa* HH 626-15. I therefore take the view that the declaratur sought in para 3 (c) of the draft order, to the effect that the first respondent no longer has any enforceable rights arising from the agreement in respect of the property is a logical extension of the declaraturs in para 3 (a) and 3 (b) of the draft order. For these reasons, I am inclined to grant the declaratory orders sought.

It now remains to consider the consequential relief of eviction of the first respondent and persons deriving occupation through him, sought in terms of para 3 (d) and 3 (e) of the draft order. Earlier in this judgment, I noted that the first respondent has no lawful right to remain in occupation of the property. Consequently, no basis exits for the relief of *rei vendicatio* not to be afforded.

Costs of suit

Ordinarily, costs follow the result. What I must consider, though, is the applicant's request for punitive costs. The first respondent has been clogging the court system with needless litigation and has been forthcoming with the court. For instance, he filed the court application under HC 1495/13 and merely sat on it for four years without taking any action on it. He then instituted an identical application under HC 3647/17, but made absolutely no effort to inform the court that he had previously instituted a similar application which he had not withdrawn. Lastly, having cancelled the Agreement of Sale, he had absolutely no reason based in law to refuse to vacate the

applicant's property. As a result, I believe that an order for costs on the scale of attorney and client will appropriately reflect the court's displeasure with the first respondent's conduct.

Disposition

Accordingly, I make the following order:

1. The points *in limine* raised by the first respondent are hereby dismissed.

2a. It be and is hereby declared that the first respondent did not validly serve the applicant with the court application that was instituted under Harare High Court case number HC 3647/17, and that therefore, the default judgment that was entered against the applicant in that matter on 22 November 2017, per MUREMBA J, was sought and granted in error.

2b. Consequently, it be and is hereby ordered that the judgment granted by MUREMBA J under HC 3647/17, referred to in the preceding paragraph, which was subsequently set aside by the judgment of ZHOU J that was granted under Harare High Court case number HC 3872/19 on 29 May 2019, shall not, and cannot, be revived given that it was induced by fraudulent and criminal conduct and was therefore erroneously granted.

3a. It be and is hereby declared that the first respondent's claims against the applicant, arising from, out of and in connection with the written agreement of sale that was entered into by and between the applicant and the first respondent on or about 13 February 2010, have been extinguished by reason of extinctive prescription, and had already become prescribed by the time that the first respondent instituted the court application under HC 1495/13 on 20 February 2013.

3b. It be and is hereby declared that, in any event, the first respondent forfeited all of the rights of enforcement arising from, out of and in connection with the written

agreement of sale that was entered into by and between the applicant and the first respondent on or about 13 February 2010, owing to the first respondent's cancellation of the said written sale agreement, as stated by him in a written affidavit, sworn under oath, which was deposed and attested to in May 2019.

3c. It be and is hereby further declared that the first respondent's claims against the applicant, in respect of certain piece of land situate in the District of Salisbury called Stand 9462 Budiriro 5B, Harare, arising from the written agreement of sale entered into by and between the applicant and the first respondent on or about 13 February 2010, are no longer capable of legal enforcement.

3d. Consequently, it be and is hereby ordered that the first respondent, and all those claiming occupation through him, shall vacate certain piece of land situate in the District of Salisbury called Stand 9462 Budiriro 5B, Harare, within ten days of the date of this order.

3e. In the event that the first respondent fails to comply with the eviction order in para (d) above, then the second respondent be and is hereby ordered, directed and authorized to forcibly remove the first respondent from the premises of the aforementioned immovable property described above, and to deliver vacant possession of the same to the applicant.

4. Leave be and is hereby granted to the applicant to serve this order on the first respondent through the applicant's legal practitioners or a person in the employ of the applicant's legal practitioners.

5. The first respondent shall pay the applicant's costs of suit on the legal practitioner and client scale.

Zvobgo Attorneys, applicant's legal practitioners
Musendekwa Mtisi, first respondent's legal practitioners