

VAS SALES AGENCIES LIMITED AND FINSBURY INVESTMENT LIMITED, NORMAN BLOE
MBAZIMA (Sued as Caveator) AND REGISTRAR OF LANDS

SUPREME COURT
MUZYAMBA, LEWANIKA AND CHIBESAKUNDA, JJ.S.
11TH FEBRUARY, 1999.
(S.C.Z. JUDGMENT NO. 2 OF 1999)

Flynote

Civil law - Injunction - refusal to grant Civil procedure - Injunction - refusal to be followed by inter parte summons and leaving of both parties

Headnote

The appellant appealed against the refusal by the High Court to grant on *ex parte* order of injunction to restrain the 1st respondent from selling Stand No. 5969 to the 2nd respondent or his nominee.

Held:

There was a procedural error on the part of the learned Judge who heard the application. If the court refused the application, the proper procedure was to hear both sides. The appeal was to be allowed. The order made below was to be set aside, and the matter remitted back to the High Court for an interparte hearing before another Judge.

For the Appellant: C.D. Mabutwe, Mabutwe and Associates.

For the Respondents: N/A

Judgment

MUZYAMBA, J.S.: delivered the judgment of the court.

This is an appeal against a refusal by the High Court to grant an *ex parte* order of injunction to restrain the 1st respondent from selling Stand No. 5969 to the 2nd respondent or his nominee.

The brief facts of this case are that the first and second respondents entered into a contract for the sale of Stand No. 5969 by the first respondent to the appellant. The agreed purchase price, payable on signing the contract was K240,000,000.00. The price was not paid as agreed and on 9th November, 1998, the first respondent gave the appellant notice to complete the sale in seven (7) days failure which the contract would be cancelled. It would appear from the certificate of search at the Lands and Deed Registry that before the 7 days notice expired the first respondent signed another contract of sale with the second respondent and on 12th November, 1998, the second respondent filed a caveat on the property. The Appellant then brought an action against the respondents for, *inter alia*, specific performance of the contract and later applied *ex parte* for an order of injunction which was refused and hence this appeal.

We wish to observe here that the application before the learned Judge was not heard on the merits and ordinarily no appeal lies against a decision not on the merits. In this case there was a procedural mistake on the part of the learned Judge who heard the application and it is for this reason that we entertained the appeal. We have said before and we wish to reiterate here that in any *ex parte* application, if the court is inclined to refuse the application then the proper procedure to adopt is to order that the application do stand as *inter parte* summons and here both sides instead of hearing the applicant only and then embark on a lengthy ruling which is not on the merits to justify the refusal. For this reason we allow the appeal, set aside the order made below and remit the matter back to the High Court for an inter parte hearing before another Judge.

The appellant to bear its own costs.
