

MARY NYAMUTATA
versus
JOHN CHIKOMO
and
ARIMANDO BREAD
and
EPWORTH LOCAL BOARD

HIGH COURT OF ZIMBABWE
BHUNU J.
HARARE, 5 July 2010 and 27 October 2010

Mr *Mavhundo*, for the plaintiff.
Mr *Katsande*, for the 2nd defendant.
No appearance for the 3rd defendant

BHUNU J: The dispute in this case is essentially between the plaintiff and the first defendant who both claim to have purchased stand number 2110 Solani Epworth from the second defendant. The plaintiff claims to have bought the property on 12 March 2000 but did not take session of the purchased property. The second defendant however, later purchased the same property from the first defendant and took session on 21 of March 2003. The session was duly registered by the third defendant in its capacity as the Local Board and owner of the property in dispute.

On 27 June 2006 plaintiff issued summons against the defendants claiming nullification of the sale agreement between first and second defendants. The plaintiff was met with the special plea that its claim against both defendants has since prescribed.

The preliminary issue which arises is therefore whether or not plaintiff's claim has since prescribed. The plaintiff claims that she bought the property on 12 March 2000. Thus the plaintiff became entitled to acquire session of the disputed property from that date. On the other hand the seller that is to say first defendant became obliged to facilitate session of the property to the plaintiff. To that extent the first defendant was indebted to effect transfer to the plaintiff as from that date. In other words the debt became due on 12 March 2000.

In terms of s 15 of the Prescription Act [*Cap. 8:11*] such a debt prescribes after 3 years without interruption. In terms of s 16 of the Act prescription begins to run as soon as the debt becomes due.

In terms of s 7 of the Act the running of prescription can be interrupted by the issuing of process. In this case it is common cause that the plaintiff issued summons on 27 June 2006, more than 5 years after the due date. By then her claim had already prescribed against both defendants. The issuing of summons did not therefore interrupt the running of prescription as the debt had already prescribed.

In the result the plaintiff's claim cannot succeed. It is accordingly ordered that the plaintiff's claim be and is hereby dismissed with costs.

Sawyer & Mkushi, plaintiff's legal practitioners

F.M Katsande & Partners, 2nd defendant's legal practitioners