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Understanding Fraud in Acquiring Real Rights in Immovable Property.

The acquisition of real rights in immovable property is a critical process that requires careful attention and due diligence. Recent cases in Zimbabwe, such as ***Elison Kudakwashe Mariko and Ruvimbo Cynthia Maisva v. Stohill Investments HH 279-23 and TBIC Investments (Private) Limited v. Kennedy Manganje SC 13/18*** highlight the potential pitfalls and fraudulent activities that can occur during property transactions. These cases serve as a stark reminder of the importance of vigilance and professional guidance in safeguarding property investments.

1. What is the process involved in acquiring real rights in immovable property?

Acquiring real rights in immovable property is a structured process governed by the Deeds Registries Act (Chapter 20:05) as follows:

- 1.1 Ensure all necessary legal documents, or deeds, are prepared by a Conveyancer/notary public. This professional ensures the deeds meet legal standards, which is crucial for the registration process and securing your ownership rights. According to Section 13 of the Deeds Registries Act, this step is essential for a smooth acquisition of real rights.
- 1.2 Deeds must be executed or signed in the presence of a registrar. This step, outlined in Section 19 for deeds of transfer and Section 44 for mortgage bonds, ensures the documents are legally binding.
- 1.3 Register the real rights in property. It involves the registrar officially recording the details of one's deed, as outlined in Sections 10 and 14 of the Deeds Registries Act. This step is vital

for legally recognizing one's ownership or other real rights in the property. By registering, one protects their rights and ensures that ownership is publicly acknowledged, adding transparency and security to property dealings. Completing this step is essential to safeguard one's investment.

- 1.4 It might be necessary to make endorsements or corrections to the deeds to ensure all information is accurate. Sections 42 and 43 provides for this process, which may involve rectifying errors or updating records to reflect changes in ownership or rights. This stage ensures that the official records are up-to-date and accurate, maintaining the integrity of the property registry.
- 1.5 The final stage involves issuing a title deed or deed of transfer, which confirms the holder's rights to the property. According to Section 38, this certificate serves as the official document proving the registered owner's real rights in the immovable property. It acts as a guarantee of ownership and can be used as evidence in legal matters, providing the ultimate assurance of property rights.

2. Causes of Fraud in Property Transactions

Fraud in property transactions can manifest in various ways, often exploiting weaknesses in the system. The Mariko & Maisva case revealed several factors contributing to fraudulent activities, including:

- 2.1 Weaknesses in conveyancing laws and registration procedures that allow fraudsters to manipulate the system.
- 2.2 Exploitation of legal loopholes by individuals with malicious intent.
- 2.3 Lack of professional guidance from legal and real estate professionals, leaving buyers vulnerable.
- 2.4 Inadequate due diligence by parties involved, leading to oversight of critical details.
- 2.5 Fraudulent alteration or disappearance of title deeds, complicating ownership verification.
- 2.6 Failure to verify the identity and authenticity of sellers, increasing the risk of dealing with imposters.

- 2.7 Over-reliance on verbal agreements without proper documentation, which can be easily disputed.
- 2.8 Negligence by conveyancers in confirming transaction details and ensuring legal compliance.
- 2.9 Gullibility and lack of awareness among property buyers, making them easy targets for scams.

3. Proper Process of Acquiring Property

To mitigate the risk of fraud, it is essential for buyers to engage reputable estate agents and legal professionals. These experts possess the knowledge and experience necessary to navigate the complexities of property transactions and ensure compliance with legal requirements. Key steps in the acquisition process include:

- 3.1 Conducting thorough due diligence on the property and the seller to verify authenticity and ownership.
- 3.2 Requesting certified copies of title deeds and other relevant documents from the Deeds Registry.
- 3.3 Insisting on a written agreement of sale that outlines all terms and conditions, including payment details.
- 3.4 Using a trust account managed by a legal professional to securely hold funds until all conditions are met.
- 3.5 Staying informed about common fraud schemes and consulting with professionals to identify potential red flags.
- 3.6 Regularly communicating with legal and real estate professionals to stay updated on the transaction's progress.

4. Legal Remedies for Victims of Fraud

Victims of property fraud have legal avenues to seek redress and claim damages. The Mariko & Maisva case demonstrated that estate agents can be held liable for negligence if they fail to perform due diligence. The court emphasized the duty of care owed by professionals to their clients, highlighting the importance of exercising superior skill and knowledge to prevent harm.

5. Court's Establishment on Solutions

Both the Mariko & Maisva and TBIC Investments cases underscore the importance of verifying the authenticity of sellers and the status of properties. The courts stressed the need for compliance with legal standards and procedures to prevent fraudulent transactions. These cases serve as a reminder that breaches of duty by estate agents can lead to significant financial losses for buyers.

6. Conclusion

In today's property market, the threat of fraud is ever-present. These landmark cases serve as cautionary tales, urging buyers to exercise due diligence, seek professional guidance, and adhere to legal procedures. By learning from these cases, individuals can better protect their investments and ensure the integrity of their property transactions. Awareness and proactive measures are key to safeguarding against fraud and securing one's real estate assets.

Please note that this article is intended for informational purposes only. It is not a substitute for professional legal advice. For further clarity and legal assistance, please contact the writer directly.

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