

IN THE COURT OF APPEAL OF ZAMBIA

APPEAL NO. ~~36~~ 39/2017

HOLDEN AT LUSAKA

(Civil Jurisdiction)

BETWEEN:

TUNYA LODGE LIMITED

1ST APPELLANT

ESAU SYAMUSALE SYAMUCILIBA NEBWE

2ND APPELLANT

AND

NAMBOYO KALALUKA

1ST RESPONDENT

NGENDA SITUMBEKO

2ND RESPONDENT

ZAMBIA NATIONAL COMMERCIAL BANK PLC

3RD RESPONDENT



Coram: Chisanga JP, Chashi and Mulongoti, JJA

On the 2nd day of August 2017 and 18th day of December 2017

For the Appellants:

L. C. Zulu, Messrs Malambo & Company

For the 1st & 2nd Respondents:

B. Gondwe, Messrs Buta Gondwe & Associates

For the 3rd Respondent:

S. N. Wamulume, In house Counsel

J U D G M E N T

CHISANGA JP, delivered the judgment of the court

Cases Cited:

- 1. *Salter Rix and Co. vs Ghosh (1971) 2 ALL ER 867***
- 2. *Standard Discount Co. vs La Grange (1877) 3 CPD 67***
- 3. *Salaman vs Warner (1891) 1QB 734***
- 4. *Henderson vs Henderson (1843-60) All ER 378***
- 5. *Bank of Zambia vs Tembo and others (2002) Z.R 103***
- 6. *Zulu vs Avondale Housing Project Limited (1982) ZR 172 AT 175***
- 7. *Kasote vs The People (1977) 191 ZR P 75***

- 8. *Shula & Shamwana vs Attorney General (1981) ZR 261***
- 9. *Bank of Zambia vs Jonas Tembo and others (2002) ZR 103***
- 10. *The Attorney General Vs Achiume (1983) ZR1***
- 11. *Zambia Consolidated Copper Mines Limited vs Mulenura SCZ Judgment No 15 of 1995***
- 12. *Phiri vs The People (1973) ZR 168***
- 13. *Macfadyeon vs The People (1965) ZR1***
- 14. *Cassell vs Broome (1972) 1 All ER 801***
- 15. *Miliangos vs George Frank Ltd (1975) I ALL ER 1076***
- 16. *John Fairfax & Sons vs de Witt (1958) 1Q.B 323***
- 17. *Johnson vs Gore Wood & Company (a firm) (2001) 1 ALL ER P 481***

Other Works Referred to:

- 1. *Black's Law Dictionary, The Dictionary of Law by L. B Curzon***
- 2. *Halsbury's Laws of England 4th Edition Vol 16 paragraph 15- 26***
- 3. *Supreme Court ruling of 22nd January 2013***

The court has before it an appeal from the decision of the judge in the court below, on a preliminary issue raised by the 3rd respondent, who was 3rd defendant in that court. The circumstances in which the preliminary issue was raised are these.

The appellants commenced an action by writ of summons, wherein they claimed for an order that the receiver manager do render an account for the period of its receivership from the date of appointment and takeover of the 1st appellant, to date; an order that the sum to be found outstanding after the account be liquidated in six months; an order that during the period of rendering an account, the defendants should not offer to sell the lodge. An

