

**IN THE COURT OF APPEAL OF ZAMBIA  
HOLDEN AT LUSAKA**

Appeal No. 156/2019

*(Civil Jurisdiction)*

**B E T W E E N:**

**CHARLES VALENTINE CHISHIMBA**

**APPELLANT**

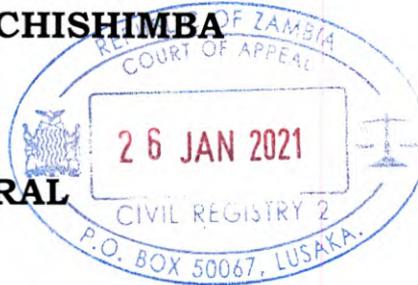
**AND**

**THE ATTORNEY-GENERAL**

**1<sup>ST</sup> RESPONDENT**

**PETER MUMBA**

**INTERVENOR**



***Mchenga DJP, Ngulube and Siavwapa, JJA***

***On 23<sup>rd</sup> September, 21<sup>st</sup> October 2020, and 26<sup>th</sup> January, 2021***

*For the Appellant* : *Mr. I. K. Mulenga of Kumasonde Chambers*  
*For the 1<sup>st</sup> Respondent* : *Mr. C. Mulonda of Attorney General Chambers*  
*For the Intervenor* : *Ms. M. Siansumo of Malambo & Company*

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**JUDGMENT**

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SIAVWAPA JA delivered the Judgment of the Court.

**Cases referred to:**

1. *Beatrice Muimui vs Sylvia Chanda SCZ Appeal No.50 of 2000.*
2. *Trade Kings Limited vs Unilever Plc and Cheesbrough Ponds Zambia Limited and Lever Brothers (2000) ZR.16.*
3. *The Attorney-General vs Marcus Achiume, (1983) ZR 1.*
4. *Lwando & other Teachers vs ZCCM Investment Holdings PLC and Others SCZ Appeal No 83 of 2009.*

5. *Zambia Consolidated Copper Mines Limited and Another vs Dr. Francis Khama, SCZ Appeal No.7 of 2001 (unreported)*
6. *Brenda Mwale vs Bwalya Daka, SCZ Appeal No.48 of 2006.*

## **1.0 Introduction**

- 1.1 This is an appeal against the decision of the High Court (P.H. Yangailo, J) declining to grant the appellant an order that he was a sitting tenant who was entitled to buy house No.2 Saise Road, Rhodes Park, Lusaka.

## **2.0 Background**

- 2.1 The brief background is that the appellant is a police officer who at the time of trial was holding the rank of Inspector and had been in service for approximately 30 years. As an incidence of his employment, he was allocated house No. 2 Saise Road to occupy as a resident on 10<sup>th</sup> July, 2000. As fate would have it, he was unfortunately evicted on 19<sup>th</sup> October, 2002 and relocated to another house in Chelstone Police Camp. He initially resisted the eviction but was faced with a hoard of paramilitary officers armed with an eviction order. He eventually moved to Chelstone. His woes did not end there, after a short stay in Chelstone he was again moved out of that property.
- 2.2 In the meantime, the appellant had been exchanging correspondence with the Ministry of Works and Supply and Government officials over the subject house. He had a bone to chew over the manner he was treated. As far as he was

concerned, having been a sitting tenant, he was eligible and entitled to be offered the house to purchase. On the other hand, the Government officials held a different view and found that he did not qualify to be offered. This reaction is what compelled the appellant to institute proceedings against the respondent. The reliefs sought in the court below were for a declaratory order that he was a sitting tenant who was entitled to purchase the house in issue.

### **3.0 Decision of the High Court**

3.1 At the conclusion of the trial and after taking into consideration all the evidence and arguments the Judge came up with the following significant findings:

1. The mere fact that the appellant had occupied the property was not in itself sufficient to clothe him with the dominant right to purchase it.
2. The allocation slip and letter to Lusaka Water and Sewerage Company relied on by the appellant did not constitute proof of an offer to purchase it.
3. There was no formal evidence on record demonstrating that any form of consideration had passed between the appellant and defendant which created a binding agreement between the parties.
4. That no proof of the fact that other colleagues save for one had been allowed to purchase VIP houses.

5. House in dispute was a VIP house and therefore exempted from sale.
- 3.2 In the final analysis the Judge found that the appellant was **not** entitled to purchase the house as a matter of right and accordingly dismissed his claims.

#### **4.0 Grounds of Appeal and the Appellant's arguments**

- 4.1 The appellant is very disappointed with this decision and has advanced six grounds. In the first ground of appeal, it is contended that the court below misdirected itself both in law and in fact when it held that the mere fact that the plaintiff had occupied the property was itself not sufficient to clothe him with the dominant right to purchase it.
- 4.2 It has been submitted that the appellant satisfied the criteria set by Government for one to be eligible to buy a Government house. That the appellant, not only occupied the property in issue, but was a civil servant still in the service. What has irked the appellant is the court's reliance on the first part of the holding in case of **Beatrice Muimui and Sylvia Chanda**<sup>1</sup> which is that 'being a sitting tenant is not the sole criteria in purchasing a Government house'. Counsel's contention was that there were two elements set out in the **Beatrice Muimui** case which made one eligible to purchase a Government house, namely: being a sitting tenant and also being an employee of Government.

Mr Mulenga argued that the appellant had demonstrated in his evidence in the court below that he was a sitting tenant and a civil servant who was in active service.

- 4.3 In the second ground the appellant is unhappy with the holding that the allocation slip and letter to Lusaka Water and Sewerage did not constitute proof of an offer to purchase it.
- 4.4 Counsel has gone to great lengths to recite the evidence adduced in court as well as the contents of the intervenor, Peter Mumba in an application for leave to apply for judicial review as well as the application letter from Mr. Mike Mulongoti, to purchase the same house.
- 4.5 In concluding submissions on this ground, it has been contended that Peter Mumba did everything he could to frustrate the appellant from purchasing the subject house.
- 4.6 The third ground is attacking the finding that the appellant seemed to suggest that the committee on the allocation of Government houses intended to sell him the subject property thereby creating a binding legal relationship. The appellant's Counsel, after outlining the sequence of events, has strongly argued that the committee by their actions had intended to empower the appellant under the Home Ownership Scheme.
- 4.7 The fourth ground is attacking the finding that no proof of sale of VIP houses to other civil servants had been produced save for one. The printouts from the Land Register in respect of

Crispin Mushota, Celestina Kabalu and Francis Kabonde have been called in aid as proof of the sale of the three houses despite them being VIP houses.

- 4.8 In relation to ground five, it is argued that although the court below found that the subject house was a VIP and therefore, exempted from sale she turned a blind eye to the fact that Crispin Mushota, Celestina Kabalu, and Francis Kabonde bought houses classified as VIP houses.
- 4.9 The last ground of appeal is taking a swipe at the refusal by the court below to make a declaration order in favour of the appellant. It has been contended that the approach taken by the trial Judge fell short of the guidelines which have been prescribed by the Supreme Court in numerous decisions. To support this contention, the case of ***Trade Kings Limited vs Unilever Plc and Cheeseborough Ponds Zambia Limited and Lever Brothers***<sup>2</sup> has been adverted to. The long and short of the argument in this ground of appeal is that the court had an unbalanced evaluation of the evidence and that being the case we are entitled to interfere with the decision in line with ***The Attorney-General vs Marcus Achiume***<sup>3</sup> which entitled us to interfere on that basis.

## **5.0 Respondent's arguments**

- 5.1 The respondent's counsel summarized the grounds of appeal as being based on the issue of eligibility of the appellant to purchase house No. 2 Saise Road as a sitting tenant.
- 5.2 The thrust of his submissions on grounds one to five was that the criteria for purchasing institutional houses in Zambia involve the existence of an offer and acceptance. Our attention was drawn to the case of ***Lwando and Other Teachers vs ZCCM Investment Holdings PLC and Others S<sup>4</sup>*** where the Supreme Court held that the appellant's, in that case, had no legal right to purchase the houses they were claiming as they had never been given an offer to purchase the houses.
- 5.3 The respondent's counsel further argued that the property was exempted from sale as it was classified as a VIP house in accordance with clause 1.1 of the Handbook on Civil Service Home Ownership Scheme. Reference was made to clause 2.0 on the definition of a VIP and persons who were eligible to purchase the houses in issue.
- 5.4 We were accordingly urged to dismiss the appeal with costs.

## **6.0 Consideration and decision of the Court**

- 6.1 We have thoroughly examined the evidence before us, the arguments by the parties and authorities cited. The grounds of appeal raise issues pertaining to eligibility to purchase

house No. 2 Saise Road, alleged frustrations by one Peter Mumba, conduct of the committee on the allocation of government houses, sale of VIP houses to other civil servants, paying a blind eye to the sale of VIP houses, and unbalanced evaluation of evidence by the trial Judge. This is the road map we will endeavor to use in analyzing the evidence before us.

## **7.0 Eligibility**

- 7.1 The issue that arises for determination in the first ground of appeal is whether or not the appellant was entitled to purchase the house in issue.
- 7.2 In answer to this question, we have scrutinized the Handbook on the Civil Service Home Ownership Scheme, in particular, Clause 2.0 which reads as follows:

### *2.1. Eligibility*

*In the process of identifying civil servants who are bona fide sitting tenants, the following criteria should be used:*

- a) A confirmed civil servant who is in service and is a legal tenant;*
- b) A civil servant who retired or was retrenched, but was not paid terminal benefits and is a legal tenant;*
- c) A civil servant who retired, but was re-appointed on contract/gratuity terms and conditions of service.*
- d) A spouse or children of a civil servant who died, but was not paid terminal benefits and was a legal tenant;*

*And*

*e) A civil servant who qualifies to own land under the provision of section 3(2) and (3) of the Land Act No.29 of 1995.*

7.3 It is also imperative in our view to address our minds to clause 1.1 of the Handbook on VIP houses which states as follows:

*“A VIP house is defined as one with four or more bedrooms, two bathrooms, two water closets (master bedroom self-contained). These are house intended for Political Leaders, Judges, Chief of Staff at State House, Special Assistants to the President, Secretary to the Cabinet, Deputy Secretary to the Cabinet, Permanent Secretaries and their equivalents. Consequently, these houses are excluded from the sale. (emphasis ours).”*

7.4 It is clear from the foregoing that a criteria has been set out for one to be eligible to purchase a government house. One of the criteria which is relevant in this case is that one is a confirmed civil servant who is in service and is a legal tenant. So, in so far as the criteria is concerned the appellant has satisfied one of them.

7.5 Turning to the question of which houses can be sold, the handbook on VIP houses gives guidance. It is abundantly clear from the aforecited clause 1.1. that there are certain houses that have been classified as VIP houses which are for a

particular category of people and are therefore excluded from the sale.

- 7.6 In the present case, it is not in dispute that house No. 2 Saise Road was one such house that fell into the category of VIP houses. With that said, it means that it ought not to have been available for sale as it was by virtue of the guidelines in the Handbook on VIP houses not intended or earmarked for sale.
- 7.7 We shall return to this aspect later in the Judgment. Pertaining to other criteria that have been set for the sale of government houses, there are a plethora of authorities that have stated that being a sitting tenant is not the sole criterion. The other consideration, in addition to being a sitting tenant, is proof of an offer and acceptance to purchase.
- 7.8 In the celebrated case of **Beatrice Muimui**<sup>1</sup> – the apex court categorically opined that:

*“... being a sitting tenant was not the sole criteria to purchasing Government houses and that there were other important criteria to be taken into account such as being an employee of the Government or quasi-government organization. There is no doubt that ZCCM is a quasi-government organization in the sense that the government has controlling majority shares and as such its wishes of the manner of liquidating its debt has to be taken into court.”*

7.9 In **Zambia Consolidated Copper Mines Limited and Another vs Dr. Francis Khama**,<sup>5</sup> the Supreme Court observed that:

*“In the present case the 2<sup>nd</sup> appellant was an employee of ZCCM and although not a sitting tenant he was offered the house as a way of paying off the 1<sup>st</sup> appellant’s debt to him on retirement. On the other hand, the respondent was a mere tenant in the ordinary sense of Landlord and tenant.*

*It is accepted that he was a legal tenant but this relationship did not go any further. There was no offer for the sale of the house by the 1<sup>st</sup> appellant:*

7.10 There has been no departure from the position taken by the Supreme Court that where no offer has been made one is not entitled to purchase it. In **Brenda Mwale vs Bwalya Daka**<sup>6</sup> After citing the **Beatrice Muimui & ZCCM vs Dr. Francis Khama**<sup>1</sup> cases they concluded in that case as follows:

*“We find that the appellant was not entitled to purchase the said house in dispute because no offer was made to her and that the ZCCM Limited reserved the right of selling it to the respondent in order to liquidate its debt to her.”*

7.11 In a nutshell, therefore, to qualify one has to not only be a sitting tenant but must have an offer.

7.12 Turning to the facts of this case, the appellant at one time had been a sitting tenant by virtue of the house having been

allocated to him. However, the house was categorized as a VIP house which was excluded for sale but to add salt to the injury the appellant did not even qualify for that house because of the rank he held as Inspector which was below the designated ranks for eligibility for the house.

7.13 Furthermore, at the time of commencement of court proceedings, the appellant was no longer in occupation of the house in issue as he had been evicted. The action subsequently taken is akin to locking the stable door after the horse has bolted; to use an adage. In other words, the claim for the house is overtaken by events and cannot stand. The appellant, who is no longer a sitting tenant, has no basis to stand his ground that he was entitled to purchase the house.

7.14 To compound the situation, the facts reveal that there was **no offer** to purchase which is a prerequisite whether or not the appellant claims that the efforts to have the house offered to him were sabotaged by the then Permanent Secretary for Works and Supply Mr. Peter Mumba, the fact still stands that there was no offer. In light of this, the trial Judge, in our view, cannot be faulted for arriving at the finding that the allocation slip and letter to Lusaka Water and Sewerage Company did not constitute proof of an offer to purchase it.

7.15 The reliance on the case of ***Beatrice Muimui vs Sylvia Chanda***<sup>1</sup> was not wrong as it was correctly applied to the facts

of this case. The principle enunciated therein is what she anchored her decision on.

- 7.16 Therefore, we hold the view that ground one on the eligibility question and ground two on the alleged orchestrated frustrations by Mr. Peter Mumba does not have any legal leg to stand on and we accordingly dismiss them.
- 7.17 The displeasure in ground three emanates from the court's interpretation of the words used in the appellant's submission that **by conduct** the committee intended to sell to the appellant the subject house. According to the appellant the import of that submission was that a reasonable expectation was created in light of what had transpired. What we have gathered from this submission is that the court misapprehended their arguments as they did not mean that 'by the conduct of the committee a legal relationship had been created.
- 7.18 In view of what we have stated in relations to ground 1 and 2, the short answer is that it remains as undisputed the fact that there was no offer made and nothing was done to induce a reasonable expectation. That said, this ground is equally devoid of merit and we dismiss it accordingly.
- 7.19 Grounds three and four are intertwined in that they both relate to the sale of VIP houses to other civil servants notwithstanding the fact that they were exempted from sale.

The trial Judge is accused of turning a blind eye to the evidence before her.

7.20 The evidence that is in the print outs does not reveal that Crispin Mushota, Celestina Kabalu, and Francis Kabonde did acquire VIP houses even though these houses were excluded. What can also be gleaned from the evidence is that these three officials did occupy the positions of people eligible to stay in those houses. They were senior officers, Francis Kabonde at the time was Inspector General of Police, Chrispine Mushota, held the position of Senior Private Secretary at State House and Celestina Kabalu, Permanent Secretary Cabinet Office.

7.21 The appellant on the other hand was at the level of Inspector and the house in question was reserved for officers above his rank. It was therefore, above his entitlement. This is so on account of the fact that the Handbook on the sale of houses specifically outlined with regard to VIP houses the rank of officers they were reserved for. The appellant in his evidence conceded that he did not fall into that category

7.22 In as much as the trial Judge made a determination on VIP houses being excluded, she could not proceed to determine whether the three individuals should not have been offered the houses. They were not on trial and there was no evidence led regarding how they had acquired the houses.

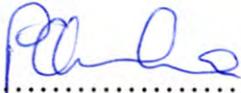
- 7.23 The arguments advanced therefore do not come to the aid of the appellant and we dismiss them for reasons highlighted above.
- 7.24 In the sixth and last ground the trial Judge is being condemned for her evaluation of the evidence. It has been asserted that it was unbalanced and that there is nothing to suggest that she had seriously analysed or evaluated the evidence before her when she came to her conclusions. We have been beseeched to interfere.
- 7.25 A thorough examination of the judgment discloses quite the opposite in our view. The learned trial Judge did carefully evaluate the evidence presented before her and adjudicated upon it. She formulated two questions for resolution of the dispute between the parties. The first issue was whether the plaintiff was eligible to purchase the subject property. The second issue was whether the plaintiff was entitled to a declaratory judgment that he is a sitting tenant of the subject property.
- 7.26 Our attention has not been drawn to what aspect the trial Judge failed to adjudicate upon. In the absence of any specific issue of controversy allegedly unresolved, we are left to wonder whether the appellant is not just grasping at the straws.
- 7.27 In light of what we have stated in the preceding paragraphs, we are inclined to dismiss this ground for want of merit.

7.28 In the ultimate analysis we have found all the six grounds of appeal to be destitute of merit and dismiss them forthwith.

7.29 Costs follow the event to be taxed in default of agreement.



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C.F.R. Mchenga  
**DEPUTY JUDGE PRESIDENT**



.....  
P.C.M. Ngulube  
**COURT OF APPEAL JUDGE**



.....  
M.J. Siavwapa  
**COURT OF APPEAL JUDGE**