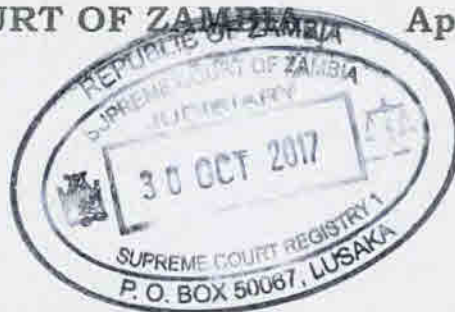


IN THE SUPREME COURT OF ZAMBIA  
HOLDEN AT LUSAKA  
(Civil Jurisdiction)

Appeal No.204/2014



**BETWEEN:**

**ZCCM INVESTMENTS HOLDINGS PLC**

**APPELLANT**

AND

**VIDAH BANDA MUMBA**

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

**BETSONE CHAMBESHI**

**2<sup>ND</sup> RESPONDENT**

**Coram:** Mambilima CJ, Kaoma and Kajimanga, JJS

On 11<sup>th</sup> July 2017 and 30<sup>th</sup> October 2017

**For the Appellant** : No Appearance  
**For the 1<sup>st</sup> Respondent** : In person  
**For the 2<sup>nd</sup> Respondent** : Mrs L. K. Mbaluku, Messrs L. K.  
Mbaluku & Co.

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## J U D G M E N T

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**KAJIMANGA, JS delivered the Judgment of the Court.**

Cases referred to:

1. **Tito and Others v Waddel and Others No. 2 [1977] Ch.D 106**
2. **Grace Muimui v Sylvia Chunda-Appeal No. 50 of 2000**
3. **Anti-Corruption Commission v Barnnet Development Corporation (2008) Vol. 1 ZR 69**
4. **Wilson Masauso Zulu v Avondale Housing Project Limited (1982) ZR 172 (S.C.)**

5. **Zambia Consolidated Copper Mines Limited v Richard Kangwa - Appeal No. 169 of 1999**
6. **Mukumbuta Mukumbuta and Others v Nkwilimba Choobana, Mongu Meat Corporation and Others - SCZ Judgment No. 8 of 2003**
7. **Jane Mwenya and Jason Randee v Paul Kapinga (1987) ZR 17**
8. **Mbazima, Joint Liquidators of Zimco v Reuben Vera - SCZ Judgment No. 6 of 2001**
9. **Edith Nawakwi v Lusaka City Council and Another - Appeal No. 6 of 2001**
10. **Lusaka City Council and National Airports Corporation v Grace Mwamba and Another - Appeal No. 63 of 1998**

**Legislation referred to:**

1. **Industrial and Labour Relations Act, Cap 269, S.97**
2. **Judgments Act, Cap 81, S.2**

When this appeal was lodged by the appellant on 19<sup>th</sup> September 2014, the 1<sup>st</sup> respondent was **ADRONE BANDA** who has since expired. On 19<sup>th</sup> May, 2017 this court granted an *ex parte* order substituting **ADRONE BANDA** with **VIDAH BANDA MUMBA** as 1<sup>st</sup> respondent. For convenience, we shall hereafter refer to the said **ADRONE BANDA** as the deceased.

This is an appeal against the judgment of the High Court at Kitwe delivered on 21<sup>st</sup> August 2014, which ordered the cancellation of the contract of sale between the appellant and the deceased. It also ordered the cancellation of the deceased's certificate of title relating to House No. 162 Zebra Street, Nkana East, Kitwe ("the house").

The background to this appeal is that the deceased (plaintiff in the court below) was employed by Zambia Consolidated Copper Mines Limited (ZCCM), the precursor to the appellant (2<sup>nd</sup> defendant in the court below), from 1982 to September 1999 when he was discharged on medical grounds. In 1994 the deceased bought house number 10 Nerina Street, Kabwe from ZCCM when the Kabwe Mine where he had been working was closed. He was retained by ZCCM to oversee the closure of the mine from 1997 until 1999.

On 29<sup>th</sup> October 1997, while in occupation of House No. 10 Nerina Street in Kabwe, ZCCM offered the house to the deceased for sale at the price of K11,370,000.00 (now K11,370.00), which offer he duly accepted the same day. A contract of sale relating to the house was entered into by the deceased and ZCCM on 20<sup>th</sup> January 1998 and the full purchase price was later deducted from his terminal benefits.

At the time the deceased accepted the offer, he was unaware that the house was being occupied by the 2<sup>nd</sup> respondent (1<sup>st</sup> defendant in the court below). It was only after the contract was

signed that the deceased viewed the house and he found that the 2<sup>nd</sup> respondent and his family were in occupation.

The 2<sup>nd</sup> respondent was also an employee of ZCCM who had been engaged by its Nkana division sometime in 1984. On 15<sup>th</sup> May 1995, ZCCM seconded him to Nkana Red Devils Limited, a company which was formed by ZCCM, as a coach. He was treated as an employee of Nkana Red Devils Limited for purposes of salary, housing, ZNPF and pension contributions but he continued to accrue service related benefits under ZCCM. The 2<sup>nd</sup> respondent had an option of going back to work with ZCCM upon the termination of his contract with Nkana Red Devils Limited at the grade that he was employed prior to his secondment or choose to terminate his services with ZCCM.

When the 2<sup>nd</sup> respondent was seconded to Nkana Red Devils Limited, he was officially allocated the house in dispute by ZCCM and began paying a composite monthly residential charge in the sum of K12,000.00 (now K12.00) per month for electricity, water and other utilities. Since its allocation to him in May 1995, the 2<sup>nd</sup> respondent has remained in occupation of the house to date.

Consequently, on 10<sup>th</sup> March 2004, the deceased issued a writ of summons against the 2<sup>nd</sup> respondent and the appellant claiming:

- i. Specific performance of the contract of sale relating to the house;
- ii. A declaration that the 2<sup>nd</sup> respondent is a tenant of the deceased;
- iii. An order for mesne profits of K400,000.00 (now K400.00) per month;
- iv. An order for reimbursement of all expenses incurred by the 1<sup>st</sup> respondent [such] as municipal charges;
- v. All necessary and consequential accounts, directions and inquiries;
- vi. Any other relief the court may deem fit and expedient; and
- vii. Costs.

In his statement of claim, the deceased contended that by an agreement in writing dated 20<sup>th</sup> January, 1998 between himself and the appellant, the latter agreed to sell and the former agreed to purchase the house. The purchase price was to be offset against the deceased's terminal benefits and title deeds were to be released to the

deceased upon payment of the purchase price. The deceased paid the purchase price in full and notice of the sale was communicated to the 2<sup>nd</sup> respondent by the appellant. However, the 2<sup>nd</sup> respondent has to date, remained in occupation of the house rent free.

In his defence, the 2<sup>nd</sup> respondent asserted that he deserved to purchase the house as a sitting tenant considering that the deceased owned House No.10 Nerina Street, Kabwe which he purchased from ZCCM. That he had been in occupation of the house long before the alleged contract of sale between the deceased and ZCCM. Further, that the deceased has suffered no loss and he abused court process by instituting the court proceedings against him when the case of **Kennedy Kalunga and Others v ZCCM and Others** under **Complaint No. 116/1999** concerning the same house was pending in the Industrial Relations Court ("IRC").

The appellant also filed a defence refuting the deceased's claims but admitted to having sold the house in issue to the deceased who was its employee and sitting tenant.

The deceased's evidence in the court below was that he was employed by ZCCM from 1982 to September 1999 when he was discharged on medical grounds. In 1997, ZCCM began to sell its houses to its employees and he applied to purchase the house which he believed was vacant. At that time, he was staying at House No. 10 Nerina Street in Kabwe which he purchased from ZCCM in 1994 when ZCCM closed Kabwe Mine. According to the deceased, the sale of ZCCM houses in Kabwe in 1994 was different from the sale of ZCCM houses that started in 1997 in that in 1994, it was due to the closure of the Kabwe Mine whereas in 1997, it was due to the privatisation of ZCCM. He stated that ZCCM had decided to sell the houses in order to offset its unbearably huge terminal benefits bill and that the sale was being made to unhoused employees and sitting tenants. This was in accordance with Rule 2 (ii) of the guidelines on the sale of houses which provides that employees occupying institutional houses or are unhoused will be offered any available house across the industry. In his view, he was eligible to purchase the house under the category of unhoused employees as it had nothing to do with his house in Kabwe. ZCCM considered him as an

unhoused Zambian employee in service because he was staying in his own house and ZCCM had never written to him stating that he was not eligible to purchase the house.

It was also his testimony that on 29<sup>th</sup> October 1997, ZCCM offered to sell him the house, which offer he duly accepted. Subsequently, the Human Resource Manager of ZCCM took him to view the property. They found the 2<sup>nd</sup> respondent's wife who allowed them to view the property but expressed displeasure at the fact that ZCCM had offered it to him. However, she did not explain how her family came into occupation of the house. Prior to accepting the offer, the deceased was not allowed to visit or inspect the house and, therefore, he was not aware that the house was occupied by the 2<sup>nd</sup> respondent. On 20<sup>th</sup> January 1998, a contract of sale relating to the house was executed between him and ZCCM. On 20<sup>th</sup> May 1998, the Human Resource Manager of ZCCM wrote to Nkana Business Ventures to inform them that the house which they had been renting from ZCCM, was sold to him. An agreement was then entered into between the deceased and Nkana Business Ventures whereby, they would pay him K275,000.00 (now K275.00) per month as rent but no



tenancy agreement was actually executed by them. Accordingly, Nkana Business Ventures paid rentals to him from January 1998 until December 2000, during which time the 2<sup>nd</sup> respondent and his family were in occupation of the property.

The deceased further testified that in 2001, officials of Nkana Business Ventures verbally informed him that they had stopped paying rent because the 2<sup>nd</sup> respondent was claiming that he was entitled to purchase the house as a sitting tenant. That sometime in 2002, the 2<sup>nd</sup> respondent applied to ZCCM to purchase the same house but he was informed that it had already been sold to one of its employees. Further, that although the IRC ordered that the 2<sup>nd</sup> respondent was not eligible to purchase the house, he has not vacated it. The deceased also stated that he obtained a certificate of title relating to the same house in 1999 and since then he has been paying ground rent and municipal charges.

The 2<sup>nd</sup> respondent's evidence was that he joined ZCCM in 1984 and was employed as a community development officer. However, when ZCCM introduced professional football, he was employed as a professional football player for Nkana Red Devils Limited in 1990 and

