

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

**APPEAL No. 121/2014**

**BETWEEN:**

**BARNABAS NGORIMA**

**1<sup>ST</sup> APPELLANT**

**ROSEMARY NGORIMA**

**2<sup>ND</sup> APPELLANT**

**AND**

**ZAMBIA CONSOLIDATED COPPER  
MINES LIMITED**

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

**BENSON CHOMBA**

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

**CORAM: Muyovwe, Kabuka, Chinyama, JJS**  
**on 7<sup>th</sup> March, 2017 and 14<sup>th</sup> March, 2017**

For the Appellants: Messrs Eric Silwamba, Linyama and Jalasi  
Legal Practitioners

For the 1<sup>st</sup> Respondent: No appearance

For the 2<sup>nd</sup> Respondent: Mr. S.A.G. Twumasi, Messrs Kitwe  
Chambers

---

**J U D G M E N T**

---

**MUYOVWE, JS delivered the judgment of the court.**

**Cases referred to:**

1. Beatrice Muimui vs. Sylvia Chunda Appeal No. 50/2000
2. Crabb vs. Arun District Council (1975) 3 All ER 865, CA
3. Inwards vs. Baker (1965) 1 All ER at 448, 449
4. Buchman vs. The Attorney-General (1995/97) Z.R. 131

5. **Mususu Kalenga Building Ltd; Winnie Kalenga vs. Richman's Money Lenders Enterprises (1999) Z.R. 27**
6. **Simwanza Namposya vs. Zambia State Insurance Corporation (2010) Z.R. Vol. 2 339**
7. **Attorney-General Ministry of Works and Supply and Rose Makano vs. Joseph Emmanuel Frazer and Peggy Sikumba Frazer (2001) Z.R. 87**

On the 27<sup>th</sup> December, 2013 the High Court sitting at Ndola delivered a judgment dismissing the appellants' claim against the respondents which included a claim for specific performance and a declaration that the 1<sup>st</sup> respondent should have sold House No. 16 Entebbe Avenue, Mufulira, Zambia to the appellants. The lower court also granted vacant possession to the 2<sup>nd</sup> respondent as the bona fide purchaser of the house.

The undisputed facts on which the judgment of the lower court is premised is that the 1<sup>st</sup> appellant is the husband to the 2<sup>nd</sup> appellant and they were both employed by the 1<sup>st</sup> respondent. The 1<sup>st</sup> appellant came from Southern Rhodesia (later re-named Zimbabwe) in 1959. He joined the then Mufulira Mine in 1961 and was allocated the house in issue. In 1974 he became an established resident and acquired Zambian citizenship in 2006. The 1<sup>st</sup> appellant retired in 1996 though he was offered a two year

contract a month after retirement. According to the 1<sup>st</sup> appellant, he should have been offered the house as a sitting tenant having occupied the house for over 40 years.

The 2<sup>nd</sup> appellant retired in 1993. Together with other retirees she took out an action against the 1<sup>st</sup> respondent claiming underpayment of their retirement benefits. The case was determined in their favour in 2001 and she was then paid the balance of her retirement benefits. According to the 2<sup>nd</sup> appellant, she was eligible to purchase the house as a sitting tenant and as a retired employee of the 1<sup>st</sup> respondent who was underpaid her benefits.

The 1<sup>st</sup> respondent's defence is that in 1997, the appellants were not eligible to purchase the house as the 1<sup>st</sup> appellant was not a Zambian and the 2<sup>nd</sup> appellant had retired and was paid her terminal benefits. The 1<sup>st</sup> respondent did not offer the house to the appellants but instead offered it to the 2<sup>nd</sup> respondent. By notification dated 27<sup>th</sup> March 1998, the 1<sup>st</sup> respondent notified the 1<sup>st</sup> appellant as lessee of the said house, of the sale of the house to

the 2<sup>nd</sup> respondent. Further, the 1<sup>st</sup> respondent entered into a contract of sale with the 2<sup>nd</sup> respondent on 10<sup>th</sup> January 1998.

According to the 2<sup>nd</sup> respondent, he was offered the house for sale on 15<sup>th</sup> September 1997 and on 10<sup>th</sup> January, 1998 a contract of sale was executed between himself and the 1<sup>st</sup> respondent. The purchase price of K9,887,000.00 was thereafter deducted from his benefits in full and final settlement of the sale.

In his judgment, the learned judge relying, *inter alia*, on the case of **Beatrice Muimui vs. Sylvia Chunda**<sup>1</sup> was alive to the fact that being a sitting tenant was not the only criteria for eligibility to purchase a government or quasi-government house. The learned judge addressed his mind to the rules governing the sale of ZCCM houses and held that the 1<sup>st</sup> appellant was not eligible to purchase the house as he was not a Zambian. With regard to the 2<sup>nd</sup> appellant she was not eligible to purchase the house as she had already retired at the time of sale of the houses.

While acknowledging that the 2<sup>nd</sup> appellant with her colleagues sued the 1<sup>st</sup> respondent for underpayment of their

retirement package, the learned judge pointed out that this had nothing to do with the sale of the house in issue and could not be of any assistance to the 2<sup>nd</sup> appellant in this case. In addition, the 2<sup>nd</sup> appellant received no offer to purchase the house. On the other hand, the learned judge found that the 2<sup>nd</sup> respondent, was given an offer although he was not a sitting tenant and was therefore a bona fide purchaser.

The learned judge accordingly dismissed the appellants' case with costs.

In their notice of appeal filed on 29<sup>th</sup> January, 2014 the appellants advanced four grounds of appeal couched in the following terms:

- 1. The court below erred both at law and in fact when it found that the 1<sup>st</sup> appellant was not entitled to purchase House No. 16 Entebbe Avenue, Mufulira on the grounds that he was not Zambian when in fact he later acquired citizenship and as such became eligible;**
- 2. The court below erred both at law and in fact when having found that the 1<sup>st</sup> appellant later acquired Zambian citizenship he failed to exercise his equitable**

**jurisdiction under Section 13 of the High Court Act, Chapter 27 of the Laws of Zambia;**

- 3. The court below erred both at law and in fact when it found that notwithstanding the 2<sup>nd</sup> appellant had taken out an action for under payment of her terminal benefit the learned trial judge still proceeded to deem the partial payment as full and final settlement and as such disqualified the 2<sup>nd</sup> appellant from her right to purchase House No. 16 Entebbe Avenue, Mufulira; and**
- 4. The court below erred both at law and in fact when it failed to exercise his equitable jurisdiction under Section 13 of the High Court Act, Chapter 27 of the Laws of Zambia.**

On behalf of the appellants, Messrs Eric Silwamba, Jalasi and Linyama Legal Practitioners filed heads of argument. On 24<sup>th</sup> February, 2017 they filed a Notice of Non- Appearance. Suffice to note that the four grounds of appeal were argued as one ground. Although Messrs Tembò Mulengeshi and Chanda Legal Practitioners filed a Notice of Appointment as Additional Advocates, no submissions were filed by Counsel.

The gist of Counsel's argument is that since the appellants were sitting tenants who had resided in the house for 46 years , the lower court should have exercised its equitable jurisdiction under

Section 13 of the High Court Act. According to Counsel, the fact that the 1<sup>st</sup> appellant became a Zambian subsequently and the fact that the 2<sup>nd</sup> appellant was only paid full benefits after determination of her case in the High Court, these special circumstances should have compelled the learned judge to exercise his equitable jurisdiction under the High Court Act. Counsel argued that the cases relied on by the learned judge such as the case of **Beatrice Muimui vs. Sylvia Chundu**<sup>1</sup> can be distinguished from this case as in those cases, the Court was not called upon to exercise its equitable jurisdiction. It was argued that should we apply the strict principles of common law, this would result in unfairness as the appellants will lose a house they have lived in for 46 years when equity would have granted the relief sought. The case of **Crabb vs. Arun District Council**<sup>2</sup> was relied on where it was stated, *inter alia*, that:

**"And it was the Privy Council who said that the court must look at the circumstances in each case to decide in what way the equity can be satisfied..."**

We were also referred, *inter alia*, to the case of **Inwards vs. Baker**<sup>3</sup> particularly the observation by Lord Denning where he

stated that in order to determine whether the court should exercise its equitable jurisdiction, it must consider the following:

**"First is there equity established? Secondly, what is the extent of the equity, if one is established? And, thirdly, what is the relief appropriate to satisfy the equity?"**

Counsel took the view that the circumstances of this case clearly established an equity which qualified the appellants to purchase the house which has been their home for 46 years.

We were urged to allow this appeal with costs.

Mr. Twumasi, learned Counsel for the 2<sup>nd</sup> respondent relied on his heads of argument filed herein.

Counsel argued grounds two and four together. Relying on the cases of **Buchman vs. The Attorney-General**<sup>4</sup> and **Mususu Kalenga Building Ltd, Winnie Kalenga vs. Richman's Money Lenders Enterprises**<sup>5</sup> it was submitted that the appellants did not plead equity in the court below and are therefore precluded from raising it in this court.

