

**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA  
(Civil Jurisdiction)**



**2018/HP/0560**

**IN THE MATTER OF: ORDER 53 RULE 3 OF THE RULES OF THE  
SUPREME COURT (RSC) WHITE BOOK  
(1999 EDITION)**

**IN THE MATTER OF: AN APPLICATION FOR LEAVE TO APPLY FOR  
JUDICIAL REVIEW OF A DECISION BY THE  
NATIONAL HOUSING AUTHORITY ORDERING  
THAT THE APPLICANTS DO PAY AN INITIAL  
DEPOSIT OF FORTY PERCENT (40%) OF K  
539,000 WITHIN 30 DAYS TOWARDS THE  
PURCHASE OF THE HOUSES ADMINISTERED  
BY THE RESPONDENT AND THE DECISION BY  
THE RESPONDENT THAT THE APPLICANTS BE  
EVICTED FROM THE SAID HOUSES BEFORE  
RESPONDING TO THE LETTER OF COMPLAINT  
FILED BY THE APPLICANTS.**

**BETWEEN:**

**SUZYO KAMANGA  
YOLANTA MUNDOPU  
MUSONDA OBRIEN CHOLA  
AARON KAMANGA  
SAMUEL CHINKOMBE PHIRI  
CHIBALE ZULU  
RHODA MUBANGA HAAMOTE**

**1<sup>ST</sup> APPLICANT  
2<sup>ND</sup> APPLICANT  
3<sup>RD</sup> APPLICANT  
4<sup>TH</sup> APPLICANT  
5<sup>TH</sup> APPLICANT  
6<sup>TH</sup> APPLICANT  
7<sup>TH</sup> APPLICANT**

**AND**

**NATIONAL HOUSING AUTHORITY**

**RESPONDENT**

**BEFORE THE HON. MRS JUSTICE S. M WANJELANI IN CHAMBERS ON  
THE 5<sup>TH</sup> DAY OF APRIL, 2018**

*For the Applicant: N/A*

*For the Respondent: N/A*

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## RULING

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### **Cases referred to:**

1. *Attorney General V Mutuna and Others*(2012) 3 ZR, 565
2. *R V Disciplinary Committee of the Jockey Club, Ex.p, The Aga Khan* (1993) 2 ALL ER 85
3. *C K Scientific Group Zambia Limited V Zambia Wildlife Authority* Appeal No. 162/2008
4. *Nyampala Safaris Ltd & Others v Zambia Wildlife Authority & Others* (2004) Z.R 49

### **Legislation referred to:**

1. *The Rules of the Supreme Court, 1999 Edition (White Book)*

This is a Ruling on the Applicants' application for Leave to commence Judicial Review proceedings against the Respondent's decision "*ordering that the Applicants do pay an initial deposit of forty percent (40%) of the K539, 000.00, purchase price of the houses administered by the Respondent and to evict the Applicants before responding to their letter of complaint*".

Having perused the application and the Affidavit in support with its exhibits, I decided to determine the application for Leave without a hearing pursuant to **Order 53 rule (3)(3)** which states:

***"The Judge may determine the application without a hearing, unless a hearing is requested in the notice of application, and need not sit in open Court; in any case, the Crown Office shall serve a copy of the Judge's order on the applicant."***

The Application is supported by an Affidavit sworn by the 1<sup>st</sup> Applicant, **Suzyo Kamanga**, in which he avers that the Applicants are tenants in the Respondent's houses and that they were offered the houses to purchase on terms and conditions as contained in the Conditional Offer Letters. He avers that the Applicants were aggrieved by some of the conditions of the Offer, including the decision stated therein, to require them make an initial payment of forty percent (40%) of the purchase price within 30 days and that they had counter-proposed some terms to which the Respondent had not yet responded. He averred further that the Applicants had also written to the Permanent Secretary of the Ministry of Infrastructure and Housing Development as per the exhibits. The Deponent avers that he was advised to meet the Respondent's Estate Manager and has since re-submitted the letter of complaint and there has been no response yet.

In making a determination in this application, I have considered the purpose for applying for Leave to commence Judicial Review proceedings as alluded to by the Supreme Court in the case of **Attorney General V Mutuna and Others**<sup>(1)</sup> where it was stated:

*"it is common ground that according to the provisions of Order 53, there are two stages in any application for judicial review. In the first stage, there is a mandatory requirement of applying for leave, a filter procedure meant to remove unarguable applications or frivolous and vexatious applications from matters before the court. At that stage, the applicant is duty bound to*

***bring material available which on quick perusal, the court would see that it discloses what might on further consideration turn to be an arguable case or raise arguable issues fit for further investigations".***

The record shows that the basis of this application arises from the Respondent's terms and conditions of the Offer to sale the Applicants its houses and the Applicants are aggrieved by some of the conditions which they consider to be unreasonable. This is quite clearly a matter involving a contract of sale between the Applicants and the Respondent, which falls in the realm of private law.

According to **Order 53/14/25** judicial review will not lie against a person or body carrying out private law and not public law functions. Thus it is only decisions that infringe on rights that should be protected by public law that can be properly challenged by way of judicial review. This was further illustrated in the case of **R V Disciplinary Committee of the Jockey Club, Ex.p, the Aga Khan<sup>(2)</sup>** where the Court of Appeal held that judicial review does not lie against a decision of a Jockey Club's Disciplinary Committee because the Applicant was someone who had entered into a contract with the club and therefore the case was within the province of private law and not public law. In the case in casu, the decision being complained of was made by a party to a contract of sale and not someone exercising public law function.

Thus on the totality of the foregoing facts and authorities cited herein, I find that this matter falls outside the realm of public law and thus not amenable to judicial review. I am further fortified in my view by the case of **C K Scientific Group Zambia Limited v Zambia Wildlife Authority**<sup>(3)</sup> in a matter where the application for leave to commence judicial review arose out of a failure by the Respondent to award a tender, it was held inter alia:

***"...that Judicial Review is not concerned with challenging decisions that infringe on private law rights but with those that infringe on public law rights... The Respondent was exercising private law and not public law functions when it cancelled the tender. It is clear from the reading of Order 53, Rules of the Supreme Court, 1999 that matters of private law are not amenable to Judicial Review proceedings..."***

Furthermore, it is trite that judicial review is concerned with the decision making process and not the merits of the decision as elucidated in a number of the Supreme Court authorities including **Nyampala Safaris (Z) Limited and Four Others vs. Zambia Wildlife Authority and Six Others**<sup>(4)</sup> where it was held , inter alia that:

***"the remedy of judicial review is concerned not with the merits of the decision but with the decision making process itself..."***

A cursory look at the record reveals that decision sought to be challenged relates to the merits of the decision itself as opposed to the decision making process.

In the premise I find that although the Applicants have sufficient interest in the matter, I am not satisfied that there is an arguable case or a case fit for further investigation. I, therefore decline to grant Leave to commence judicial review as prayed by the Applicants.

**Delivered at Lusaka this 5<sup>th</sup> day of April, 2018.**



S. M. Wanjelani

**HIGH COURT JUDGE**