

LAKE KARIBA BOATING SERVICES LTD v KARIBA NORTH BANK COMPANY LIMITED  
(1982) Z.R. 35 (S.C.)

SUPREME COURT  
NGULUBE, D.C.J., MUWO, J.S. AND BWEUPE, AG. J.S.  
10TH MAY AND 16TH JULY, 1982.  
(S.C.Z. JUDGMENT NO.19 OF 1982)  
APPEAL NO. 6 OF 1980

Flynote

Company - Issued share capital - Purchase of - Acquisition of control of company - Effects of.  
Land - Caveat - Right to lodge - Need to come within s. 76 of Lands and Deeds Registry Act.

Headnote

The appellants were the registered proprietors of leasehold properties in Siavonga. The respondent lodged caveats on the said properties maintaining that it had a beneficial interest in the properties having acquired complete control of the assets of the appellant company through purchasing all the shares in the latter. An application by the appellants for the removal of the caveats was refused. They appealed against the refusal.

**Held :**

- (i) One company can acquire complete control over the assets of another company by the acquisition from the shareholders of the whole of the issued share capital of the company whose assets it is sought to control.
- (ii) A company having such control has legitimate beneficial interest the assets arising out of the trust created and is in a proper position to lodge a caveat over the said assets.

**Cases referred to:**

- (1) D. H. N. Food Distributors Ltd. v London Borough Tower of Hamlets [1976] 3 All E.R. 462.

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**Legislation referred to:**

Lands and Deeds Registry Act, Cap. 287 s. 76.

For the appellant: A. M. Hamir, Solly Patel, Hamir and Lawrence.

For the respondent: E. T. E. Martin, State Counsel, Martin and Co.

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**Judgment**

**NGULUBE, D.C.J.:** The appellants are the registered proprietors of the leasehold properties being plot 51, 52 and 53, Siavonga. The respondent lodged caveats over the said properties, and an application by the appellants for their removal was refused and they now appeal to this court against such refusal.

The facts as found by the learned High Court Commissioner from the documents and affidavits filed were these. By contract between the respondent and the Mitchell Construction Kinnear

Moodie Group Ltd. (for convenience called the Mitchell Group) it was agreed, *inter alia*, that the Mitchell Group would construct the hydro-electric works on the north bank of Lake Kariba; that the respondent would provide to the constructor certain facilities including accommodation, and that the Mitchell Group would register a local company to execute the contract while nevertheless retaining full responsibility for the contractual obligations. There was evidence that the Mitchell Group would carry out its contractual obligations through its subsidiary or associate companies. One of the obligations of the contractor was to return to the respondent in fair condition all the facilities including accommodation provided by the respondent. Acting upon the terms as summarised, the Mitchell Group embarked upon the construction works through a subsidiary which, in turn, registered a local company called Mitchell Construction Co. Zambia Ltd. The local company thereafter made arrangements to acquire the properties, the subject of this appeal, for a sum of K39,000, and in terms of the contract between the respondent and the Mitchell Group the latter obtained through Mitchell Construction Ltd. full reimbursement of the sum of K39,000 which the respondent duly paid. To put it briefly, or in other words, the houses were, in the final analysis paid for by the respondent in fulfilment of their contractual obligation to provide accommodation which would be returned to the respondent by the contractors at the conclusion of the contract.

Mr Hamir has argued that the respondent was not entitled to maintain these caveats on the ground that there was no contractual relationship between the appellant company and the respondent. He argued that the appellant company could not have been a party to any arrangement entered into by the Mitchell Group, despite the fact that the respondent has paid for the houses which were acquired by the local company by way of purchasing the shares of the appellant company Mr Hamir further argues that the various contractual arrangements between the Mitchell Group of Companies and the respondent were severable and that, even if the shareholders of the appellant company were a subsidiary of one appellant company were a subsidiary of one of the companies in the Mitchell Group, the remedy open to the respondent was not in placing caveats over the properties as that would lie to invite further

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litigation, more especially that the High Court had not determined the nature of the respondent's interest in the properties. It was Mr Hamir's further submission that the respondent's interest was limited to the return of money paid and not in the buildings, and that as such their interest did not fall within the purview of s. 76 of the Lands and Deeds Registry Act. As will be seen, these submissions cannot be sustained.

On behalf of the respondent, Mr Martin has argued that s. 76 is very wide in its terms and covers the situation in this case. He has referred us to the case of *D.H.N. Food Distributors Ltd v London Borough of Tower Hamlets* (1). The relevant portions of that case have been extracted from a digest and read:

"In 1965 a company, D.H.N. 'was formed to carry on the business of importing and distributing groceries. In order to purchase premises from which to trade, D.H.N. made certain borrowing arrangements with a bank. It was agreed that the bank would buy the property and then sell it to D.H.N. for £120,000, £20,000 to be paid on exchange of contracts and the remainder within one year. The premises were bought for £115,000 and transferred to Bronze, a wholly owned subsidiary of the bank. D. H. N. went into possession and began trading. In May, 1964, Bronze contracted to sell the property to D.H.N.; the date for completion was subsequently postponed until 1966, but the contract was not completed. D.H.N. in the meantime arranged a loan of £100,000 from separate a source and in order to save stamp duty on a conveyance by Bronze, instead agreed with the bank to purchase the share capital of Bronze and then to repay the loan from the bank for a total sum of £120,000. That transaction was carried out and thereafter D.H.N. and Bronze had the same directors. Bronze retained the legal title to the premises and D.H.N. continued to use them for the purpose of their business. In 1969 the local authority made a compulsory purchase order and paid Bronze compensation for the value of the land under rule (2) of s. 5 of Land Compensation Act 1961. D.H.N. claimed also to be entitled, by

virtue of s. 5, r. (6), of 1961 Act, to compensation for disturbance. The local authority contended that D.H.N. were only a licensee of Bronze and therefore were not entitled to compensation for disturbance except for the value of their interest in the land, as a tenant from year to year, within s. 20 (1) of Compulsory Purchase Act 1965: *Held*: D.H.N. were entitled to compensation for disturbance because - (1) since Bronze was a wholly owned subsidiary of D.H.N. with common directors running both companies, D.H.N. were treated as having an irrevocable contractual licence to carry on their business on the premises. That licence gave rise to a constructive trust under which Bronze could not turn out D.H.N. D.H.N. accordingly had a sufficient interest in the land to qualify them for compensation for disturbance; (2) moreover, in the circumstances the court was entitled to look at the realities of the situation and to pierce the corporate veil. The group was

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virtually a partnership and for the purpose of compensation the two companies should be treated as one which was effectively D.H.N. D.H.N. were therefore entitled to claim compensation for disturbance; (3) furthermore the effect of the conveyance to Bronze 1964 was to create a resulting trust, in favour of the bank and when D.H.N. repaid the bank in 1966 that equitable interest settled on them. D.H.N. could have called for an assignment at any time and had, therefore, a sufficient interest in the land to make a competent and proper claim for compensation for disturbance.

Mr Martin argues therefore that there was a continuous chain of agencies and trusts from the Mitchell Group to Mitchell Construction Ltd, and from there to Mitchell Construction Zambia Ltd, and finally to the appellant company, the control of which is within the Mitchell Group's power. He has argued not only on the strength of the authority quoted above but also that, under s. 76 of the Lands and Deeds Registry Act, the respondent has a beneficial interest, and that the appellant company and those who control it could avoid further litigation by assigning the properties to the respondent, which step would accord with the contractual obligation undertaken by the Mitchell Group.

I find that there is a lot of merit in Mr Martin's argument. The position in this case, as far as I have been able to see it, is that the Mitchell Group chose to perform its part of the contract by using a number of agents with the result that their subsidiary Mitchell Construction Co. Ltd, who floated a local company, acquired accommodation through such local company acquiring the control of the appellant company by effectively purchasing all the shares in the appellant company. I have no doubt in my mind that one company can acquire complete control over the assets of another company by the acquisition from the share holders of the whole of the issued share capital of the company whose assets it is sought to control. I would agree with Mr Martin that the *D.H.N.* case (1) is in point, and that accordingly there was a chain of trusts traceable from the Mitchell Group right down to the appellant company and vice versa. This would explain why the respondent was requested to pay for these houses on a bill submitted by one of the companies the Mitchell Group. Such payment could only relate to the contractual obligation on the part of the respondent to provide accommodation which the Mitchell Group was obliged to return to the respondent at the conclusion of the contract. The facts of this case disclose the clearest possible beneficial interest on the part of the respondent and the clearest trust on the part of all the companies controlled by the contractors within the meaning of s. 76. This section reads:

"76. Any person:

(a) claiming to be entitled to or to be beneficially interested in any land or any estate or interest therein by virtue of any unregistered agreement or other instrument or

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(b) transferring any estate or interest in land to any other person to be held in trust; or  
(c) being an intending purchaser or mortgagee of any land; may at any time lodge

with the Registrar a caveat in Form 8 in the Schedule."

The language of the section is clear and permits of no exotic construction in order for it to be plainly seen that the respondent in this case has a legitimate beneficial interest in the properties which ought, in the first place, to have been assigned to them in fulfilment of a contractual undertaking on the part of the contractors.

For the reasons stated above, I would dismiss this appeal with costs.

Appeal dismissed

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