

**MAY VIJAYGIRI GOSWAMI, DR. MOHAMMED ANWAR ESSA AND
COMMISSIONER OF LANDS**

SUPREME COURT
NGULUBE, CJ, CHIRWA AND LATE MUZYAMBA JJS
9TH NOVEMBER, 2000 AND 13TH FEBRUARY, 2001
(SCZ JUDGMENT No. 3/2001)

Flynote:

Land law - re-entry

Headnote:

The appellant used to own Stand No. 8492 Lusaka which she purchased from someone who had also purchased it from another. There was a covenant requiring the erection of developments of not less than twenty thousand Kwacha, a condition long satisfied by the previous owners as witness the state's consent to assign on the various assignments of the property when the values of the unexhausted improvements had to be stated and verified. This land was possessed by the 2nd respondent who served a notice of re-entry for breach of the covenant to pay ground rent and allegedly for breach of the development clause. Following the deportation of her husband, the appellant lived abroad with him and it was not in dispute that the property was generally abandoned and neglected. As counsel put it in relation to the issue of compensation to which we shall be turning in a moment, the buildings there were in a sorry state. The notice was served on a watchman and after the re-entry, the land was swiftly allocated to the 1st respondent and a certificate of title issued to him.

Held:

- (i) Compensation is payable to the dispossessed owner of land whether re-entry was for good or bad cause.
- (ii) Land Tribunal is not exempt from obtaining the requirements of the country.

For the Appellant: Mr. C.K. Banda, S.C., of Chifumu Banda and Associates

For the 1st Respondent: Mr. N.K. Mubonda, of D.H. Kemp & Co.

For the 2nd Respondent: Mr. F.S. Kachamba, Registrar of the Lands Tribunal.

Judgment

After the hearing our brother Mr. Justice Muzyamba who was to have written the judgment of the court since died and accordingly this judgment may now be treated as one by majority.

The appellant used to own Stand No. 8492 Lusaka which she purchased from someone who had also purchased it from another. There was a covenant requiring the erection of developments of not less than twenty thousand Kwacha, a condition long satisfied by the previous owners, as witness the state's consent to assign on the various assignments of the property when the values of the unexhausted improvements had to be stated and verified.

This land was repossessed by the 2nd respondent who served a notice of re-entry for breach of covenant to pay ground rent and allegedly for breach of the development clause. Following the deportation of her husband, the appellant lived abroad with him and it was not in dispute that the property was generally abandoned and neglected. As Mr. Kachamba put it in relation to the issue of compensation to which we shall be turning in a moment, the buildings there were in a sorry state. The notice was served on a watchman and after the re-entry, the land was swiftly allocated to the 1st respondent and a certificate of title issued to him.

Mr. Banda argued that the speed with which the transaction was done to deprive a citizen of her land and give it in record time to another person showed that there was injustice which the Lands Tribunal (from whose decision this appeal comes) should have taken into account to invalidate the re-entry and repossession. Another ground for invalidation which was argued upon us was that though in order to serve notice of re-entry on the watchman, who was an adult person found on the plot, the failure to call him as a witness should have raised doubts whether there was any proper service. We regarded this ground to have fallen of its own inanity. The re-entry was without a doubt effective and these arguments are unsuccessful.

The ground of appeal which has force and unarguable merit in it concerned the failure by the Tribunal to award compensation. As the learned State Counsel pointed out, our Constitution does not countenance the deprivation of property belonging to anyone without compensation: See Article 16. The attitude of the 2nd respondent which appears to have been accepted by the Tribunal was that as long as the re-entry was lawful, there would be no need to pay adequate and proper compensation. This was wrong and Mr. Kachamba very properly conceded in this court that he would not resist an order for the payment of compensation. Compensation, let it be stressed, was payable to the dispossessed owner of land whether the re-entry was for good or bad cause. The only bone of contention was the amount of compensation as between the market value of K35 million deposed to by the appellant's witness Mr. Kapalu and the derisory sum of K3 million suggested by the government's witness Mr. Sangulube who conceded he did not take into account the market value of the developments and who had prepared a report ostensibly to justify the re-entry. The allegations made to justify the small value placed on the buildings, the wall, the borehole and tank (excluding the materials on site) was that the structures were illegal and had no planning permission. These allegations had no support from the evidence and flew in the teeth of the Government's previous owners applied for state's consent to assign. The 2nd respondent can not be allowed to blow hot and cold; he should have been held to be estopped by the same office's previous conduct and dealings.

The right to compensation was clearly unarguable. We have not forgotten Mr. Mubonda's submission that compensation which is not specifically pleaded should not be awarded. The Tribunal is in fact not one fettered by legalistic formal pleadings or technicalities and it is expected to do justice to the parties on the case as found after it has conducted its inquiry. Even the Lands Tribunal is not exempt from observing the requirements of the Constitution of the country. That said, the appellant was very clearly entitled to compensation in the sum of K35 million payable by the Government. This is the sum which more approximates the real value of the property and which meets the justice of this case. Accordingly, the appeal is allowed and judgment is entered for the appellant in the sum of K35 million as compensation for the property taken away from her.

The appellant will also have her costs to be borne by the State and to be taxed if not agreed. With regard to the 1st respondent, there will be no order for costs.
