

ZAMBIA CONSOLIDATED COPPER MINES LIMITED, EDDIE KATALAYI AND MAX CHILONGO

SUPREME COURT
NGULUBE, CJ, SAKALA, AG. DCJ, LATE MUZYAMBA, JS
8TH NOVEMBER, 2000 AND 13TH FEBRUARY, 2001.
(SCZ JUDGMENT No. 2 OF 2001)

Flynote:

Landlaw: Innocent purchaser for value - equity.

Headnote:

This was a case in relation to sale of various properties through tender when the appellants were winding up their operations in Kabwe. The respondent represented the members of the Bowling Club which was one of the properties advertised. The property was sold to another individual. The club members also wanted to buy property. The purchaser then sued the club members for possession of the building he had bought and sued the appellants for specific performance. The trial judge awarded specific performance to the respondents and ordered the appellants to give the other purchaser an alternative house. The first purchaser appealed.

Held:

(i) The first purchaser was an innocent purchaser for value so injustice should not be inflicted on him. Compensation for club members was adequate.

Appeal allowed.

For the Appellant: J.K. Kaite, of Zambia Consolidated Copper Mines.

For the Respondent: C. Muneku, of Charles and Charles.

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Judgment

Ngulube, CJ, delivered the judgment of the Court.

Our brother Mr. Justice Muzyamba who sat with us having since died, this judgment may now be treated as by the majority.

When the appellants were winding up their operations in Kabwe, they advertised the sale of various properties and invited tenders to that end. The respondents represented the members of the bowling club which was one of the properties advertised for sale. One Alex Kangali successfully put in a bid and the property was sold to him. Meanwhile, the respondents and other members as ex employees of the appellant and club members were equally desirous of purchasing the clubhouse for the benefit of the members and the bowling fraternity in Kabwe. Representatives of the bowling club had seen one Mr. Sichula, the Property Superintendent at Zambia Consolidated Copper Mines Headquarters in Lusaka, and discussed their desire. He advised them to register trustees under the Land (Perpetual Succession) Act and undertook to help them in such exercise. There was communication with Mr. Sichula and the members were relying on him to process their intended purchase of the clubhouse with the relevant authorities within Zambia Consolidated Copper Mines with the result that they do not do what they expected of him, saying there was no request to put in a bid for the members, only to

request to help register the trustees under the Land (Perpetual Succession) Act. Mr. Kangali sued the members for possession of the building he had since purchased while the latter sued the appellants for specific performance of an alleged undertaking that the Bowling Club would be sold to them as sitting tenants and ex miners, in the alternative, compensation for the unexhausted improvements effected by the members to the clubhouse from 1991 to February, 1996.

The two actions were consolidated and the members made the plaintiffs. The learned trial Judge believed the members who had testified that Mr. Sichula was specifically requested to facilitate the purchase of the clubhouse and that the whole point of registering trustees of the club (an exercise which he admitted) was so that they could own this clubhouse on behalf of the membership. The Judge found in effect that Mr. Sichula had mishandled the request made to him and that those others in Zambia Consolidated Copper Mines with whom he dealt had equally mishandled the matter, thereby reneging on the assurances and undertaking he had made to the members who were promised priority in the purchase and acquisition of the clubhouse. The learned trial Judge awarded specific performance of the sale of the clubhouse to the respondents and ordered that the appellants give the other purchaser Kangali an alternative house.

The appellants have appealed to this Court on a number of grounds to preserve the sale already concluded with Mr. Kangali who was undoubtedly an innocent and bona fide purchaser for value and without notice of the adverse claim. As they have no alternative premises to offer, the appellants have offered to pay compensation in accordance with the respondents' alternative prayer. The upshot of Mr. Kaite's submissions and arguments was this: The respondents would undoubtedly have been given priority to buy the clubhouse if they had applied in response to the advertisement. They did not do so and Mr. Sichula who was said to have been requested to do so on their behalf denied this and in any event did not do so. In contrast, an innocent third party had since responded to the advertisement and purchased the house. It was submitted that the learned trial Judge was wrong to say the sale of the clubhouse – which was originally a residential property – was voidable without specifying on what grounds the sale to the innocent third party was to be regarded as voidable. The Court below took the view that Mr. Sichula must have been asked to process the purchase in addition to incorporation of the club trustees under the relevant statute previously mentioned. On that basis, the club members were to be allowed to buy the property notwithstanding the absence of any agreement or contract to that effect. Mr. Kaite indicated that the appellant would rather pay compensation of the amount said to have been in excess of K5 million which was admitted in the pleadings.

The foregoing were powerful arguments with much force and merit in them. M. Muneku's response was that the learned trial Judge be upheld since he must have taken into account the public interest in the recreational facilities which were of benefit to the community. The respondents should have been given the first option to buy the premises and the appellants should be regarded as having been duty bound to facilitate the purchase of these premises by the respondents.

These were very strong moral arguments. However, the legal position, as we see it, was that it was not possible without proper basis to ignore the rights of Kangali who was an innocent purchaser for value and who had no reason to suspect there was to be an adverse claim. There would be no justification to inflict injustice on the third party in the name of justice for the appellants. The simple truth is that the alternative prayer for compensation was the more realistic one and there can be no ground for the appellants to resist such alternative. The amount involved was said to exceed K5 million; we put it at K6 million with interest at 30% from the date of the writ to the date of payment. Accordingly, we allow the appeal and reverse the learned trial Judge. Instead, there will be judgment for the club members as already indicated.

There will be no order for costs in this Court.
