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

Appeal No. 09/2011

BETWEEN:

ODIA CHATE

APPELLANT

AND

SELITA MUMENA

RESPONDENT

Coram: Chirwa, Ag/DCJ, Mwanamwambwa and Muyovwe, JJS
on the 20th March, 2012 and 18th July, 2014

For the Appellant: In person

For the Respondent: In person

J U D G M E N T

MUYOVWE, JS, delivered the Judgment of the Court.

Cases referred to:

- 1. Kennedy Kalunga and Others vs. Zambia Consolidated Copper Mines Case No. Comp 161/1999**
- 2. Brenda Mwale vs. Bwalya Daka SCZ Appeal No. 48/2006**
- 3. Melise Lubanda and 72 Others vs. Pearson Mwale, Lameck Chiti and ZCCM SCZ Appeal No. 84/2011**
- 4. Beatrice Muimui vs. Sylvia Chanda SCZ Appeal No. 50 of 2000**

When we heard this appeal, Hon. Justice D. K. Chirwa sat with us. He has since retired and, therefore, this Judgment is by the majority.

This is an appeal against the Judgment of the Ndola High Court which found in favour of the respondent. The Court found that the appellant who occupied House No. 116B/24 Mpatamatu Township, Luanshya was not entitled to purchase the said house as she was not an employee of ZCCM.

The background to this case is that the respondent commenced proceedings in the Subordinate Court claiming, inter alia, vacant possession of house number 116B/24 Mpatamatu Township, Luanshya. The Subordinate Court found that the appellant was employed by Roan United Football Club (RUFC) and was the sitting tenant of the house in dispute at the time the house was sold to the respondent. That the respondent was the employee of ZCCM at the time when she bought the house. The respondent relied heavily on the case of **Kennedy Kalunga and Others vs. ZCCM**¹ where the Industrial Relations Court held that:

“Clearly from the evidence it was not meant that everybody who occupied a ZCCM house was meant to benefit from the sale of such house. There must in the first place have been a connection between that person and ZCCM by way of employment. In this regard, looking at the evidence before us, although ZCCM did second officials to Clubs to help them set up, we are satisfied that club employees were not ZCCM employees and as such we

are further satisfied they had no claim whatsoever to the purchase of ZCCM houses.”

On the strength of the **Kalunga**¹ case, the Magistrate found in favour of the respondent and ordered the appellant to vacate the house within 90 days.

The appellant herein appealed to the High Court. The learned High Court Judge upheld the decision of the Subordinate Court. The learned Judge agreed with the Subordinate Court that the appellant was not an employee of ZCCM in line with the holding in **Kennedy Kalunga and Others**¹. The learned Judge relied on the case of **Brenda Mwale vs. Bwalya Daka**², which according to the learned Judge was on all fours with this case. In Brenda Mwale, we stated that:

“the appellant in that case was not entitled to purchase the said house in dispute because no offer was made to her and that the ZCCM Limited reserved the right of selling it to the respondent in order to liquidate its debt to her.”

The learned Judge came to the conclusion that the appellant was not entitled to purchase the house from ZCCM as it had decided to sell the house to the respondent as part of her terminal benefits. That the subsequent offer to the appellant was null and

void and that ZCCM properly withdrew the offer to the appellant. The learned Judge dismissed the appeal for lack of merit.

The appellant being dissatisfied with the judgment of the High Court appealed to this Court. Bearing in mind that the parties appeared in person, we have reproduced the grounds of appeal as they appear in the memorandum of appeal as follows:

“GROUND ONE

That the learned Judge erred to have judged that the house No. 116B/24 Mpatamatu Luanshya was sold to SELITA MUMENA following the right procedure by ZCCM. The House was sold to SELITA MUMENA at the time when it was already a subject of case litigation in the Ndola High Court. ZCCM should have in the **FIRST PLACE RESOLVED THE DISPUTE in the Court of Law before it could go on to SALE the house to SELITA MUMENA. This is contained in paragraph three (3) of my grounds of appeal to the high court. The subsequent Officer and Sale of THE Same house to Selita Mumena is **NULL and VOID, UNTIL** the court determines that Roan United F.C. Employees **WERE NOT UNDER ZCCM LTD IN CONNECTION WITH EMPLOYMENT.****

GROUND 2

That the learned Judge erred to have COMPLETELY AVOIDED the grounds of Appeal to the high court which I had submitted in the Subordinate Court contained in exhibit marked – “G.P.” and “C.G.A” for it is from this contents were **POTENTIAL FACTS of my **STRONG CONTEST** are **BASED**. The **OMISSION** of the contents of my grounds of appeal to the high Court from the equation, is **DETRIMENTAL** in this matter **ESPECIALLY** the contents in paragraphs seven (7) and eight (8), I now reproduce the grounds of Appeal to the High Court as exhibit marked “G.P.” and certificate of exhibits as exhibit marked “C.G.A.”**

GROUND 3

That the learned Judge erred and MISDIRECTED himself when he mentioned in his Judgment that, and I quote - "SHE FURTHER SUBMITTED THAT TWO OF THE CO-PLAINTIFFS WITHDREW FROM THE PROCEEDINGS AND WERE SOLD THE HOUSES THEY WERE OCCUPYING WHILE SHE AND THE OTHERS CONTINUED WITH THE CASE" End of quote. "This is contained in the Judgment of the High Court hon. Judge Mr. J.M. SIAVWAPA dated 5th August, 2010 on page (J2) last paragraph which I have highlighted. I now mark the Judgment copy as exhibit - "H.J.C". the above quoted sentence is DETRIMENTAL, MISLEADING and CONTRARY to the contents of submission in my grounds of appeal to the high court referred to in paragraph seven (7) and eight (8) in which I explained the WINNING OF THE CASE BY THE TWO PLAINTIFFS and how we CITED the SAME as PRECEDENT for the Rest of the plaintiffs.

GROUND 4

That the learned Judge MISDIRECTED himself when he concluded that our matter was adjudicated upon by the Industrial Relations Court in the case of Kennedy Kalunga and Others vs. ZCCM Judgment delivered on 14th October, 2005, case No. Comp 161/1999. Our case is STILL independent in the Ndola high Court which happens to have been RE-ALLOCATED to the SAME honourable Judge in this matter Mr. J.M. Siavwapa after the transfer of Justice Judge Florence Lengalenga who formerly handled the matter to Lusaka High Court Refer to the date of hearing the case on 29th July, 2010 which was adjourned to 13th October, 2010, then further adjourned to 1st November, 2010 for continued trials. On 1st November, 2010 the court ordered 28th February 2011 as judgment day. If the complainants in the case of Kennedy Kalunga and others vs. ZCCM had NO EVIDENCE to show that "their clubs were under ZCCM IN CONNECTION WITH EMPLOYMENT then that should NOT affect Roan United F.C. which has STRONG CONTEST and EVIDENCE contained in the BUNDLE of EVIDENCE Exhibit marked - "GN 2" IT CAN ONLY BE ESTABLISHED that Roan United F.C. Employees were DIRECTLY EMPLOYED BY ZCCM UNDER Human Resources Department after STUDYING Carefully the Appellants Bundle of Documents exhibit marked "GN2" which was submitted in paragraph seven (7) of my grounds of appeal to the high court and the subsequent Evidence to pay the Two plaintiffs by

ZCCM contained in paragraph eight (8) of the SAME, which UNVEILS the TRUTH of the FACTS IN THE MATTER. Refer to exhibits marked - "JK 2", "JK 3, "JK 4" and "K"

GROUND 5

That ZCCM used the same formular to Employee the REST of the Plaintiff's as in the case of MELISE LUBANDA and NOAH PELETE refer to exhibit marked - "GN 2" this is contained in paragraph three (3) EMPLOYMENT PROCEDURE

GROUND 6

That Zccm used to CHARGE, DISMISS or SUSPEND Roan United F.C. Employees. The final APPEAL for cases were HELD by the ZCCM GENERAL MANAGER who used to UPHOLD or UPLIFT any dismissal. Refer to exhibit marked "GN 2 "This is contained in paragraph Four (4) and Five (5) DISCIPLINARY and GRIEVANCE PROCEDURE.

GROUND 7

That ZCCM DECLARED REDUNDANCY OF Roan United F.C. Excess Labour. Refer to exhibit marked "GN2"this contained in paragraph thirteen (13). Also refer to exhibit marked No. "1" and "2" on the bundle of documents filed by Zccm Counsel in the Ndola High Court and exhibit marked - "O.S.P." filed herein SHOWING THE outstanding payments by Zccm limited to the plaintiffs in the Melise Lubanda and Others vs. Zccm CASE No. 1998/HN/233 during the period (1993 - 1997)

GROUND 8

That if ZCCM used to Employ, Dismiss, Suspend and Declare Redundancy of Employees at Roan United F.C. working at Zccm Business ventures. Then it CAN'T be said that: "ROAN UNITED FOOTBALL CLUB EMPLOYEES were not ZCCM EMPLOYEES" as per sentence which the Judge had referred to in the Judgment of the Industrial Relations Court Case No. Comp 161/1999 (IRC) Kennedy Kalunga and others Vs ZCCM, which reads as follows and I quote ".... Club employees were not Zccm employees and such they had NO claim whatsoever to the Purchase of ZCCM houses" "End of quote.

May be there were some clubs which had NO DIRECT CONNECTION IN EMPLOYMENT WITH ZCCM at the time but NOT in the case of

Roan United Football Club which had DIRECT CONNECTION IN EMPLOYMENT WITH ZCCM

GROUND 9

That it will be discrimination against me and the Rest of my colleagues. NOT to benefit from the SALE of Zccm houses which we are living in by virtue of being employed by Zccm ESPECIALLY when the PRECEDENT had ALREADY been SET in the judgment on admission from ZCCM to pay the TWO plaintiff Melise Lubanda and Noah Pelete, and SALE them houses they are living in and subsequent NOTICE OF PAYMENT into court by Zccm legal counsel Mr. P.M. Chamutangi to the claims by Melise Lubanda and Noah Pelete. Refer to exhibits marked "B "Judgment on Admission and (N.P.C) 1 – notice of payment into court which have been EFFECTED

GROUND 10

That the CITED judgment by the High Court Justice Mr. J.M. Siavwapa of the Industrial Relations court case No. Comp 161/1999 has been over ruled by the supreme court judgment in which it Ruled that the industrial relations court HAD NO JURISDICTION to preside over the SALE OF ZCCM Houses. Subsequently the (I.R) court judgment had been thrown out and is NULL and VOID."

The appellant filed Heads of Argument which she relied on. In support of ground one, she questioned the learned trial Judge's finding that ZCCM followed the correct procedure in offering the house for sale to the respondent. She pointed out that the house in dispute was the subject of litigation in the case of **Melise Lubanda and 72 Others vs. Pearson Mwale, Lameck Chiti and ZCCM³** under Cause No. 1998/HN/233 and that ZCCM had not yet repossessed the houses and, therefore, could not sell the house in

dispute. It was submitted that, therefore, the sale to the respondent was null and void. The appellant argued that the issue for determination was whether RUFC employees were employees of ZCCM and, therefore, were entitled to purchase the houses which they were occupying.

The gist of the appellant's argument in ground two is that the learned Judge did not consider her grounds of appeal in the Court below.

In support of ground three, she argued that the learned Judge misapprehended her arguments in relation to the case of **Melise Lubanda and 72 Others**³. She pointed out that in her submissions in the Court below, she did not state that Melise Lubanda and Pelete Banda withdrew from the proceedings. It was submitted that the learned Judge diverted from the facts on record which was detrimental to her case.

In support of ground four, she submitted that the learned Judge should not have relied on the case of **Kennedy Kalunga and Others vs. Zambia Consolidated Copper Mines**¹, especially in

view of the fact that the case of **Melise Lubanda and Others**³ was still pending in the Supreme Court.

In support of grounds five to eight, the gist of the appellant's arguments was that the learned Judge misdirected himself when he held that Club employees were not ZCCM employees on the basis of the **Kennedy Kalunga**¹ case.

In support of ground nine, the appellant repeated her arguments that the respondent who was not even a sitting tenant was not entitled to purchase the house. She also alluded to the fact that she felt discriminated against together with other plaintiffs in the **Melise Lubanda**³ case in that ZCCM decided to proceed to trial yet it entered interlocutory judgment in respect of Melise Lubanda and Noah Pelete.

We note that the arguments in ground ten are basically on the same lines as those raised in ground four and so we will not repeat them.

The respondent filed Heads of Argument which she relied on. In response to ground one, she submitted that the learned Judge

was on firm ground when he found in her favour as she was an employee of ZCCM which was the legal owner of the said property and that the purchase price was deducted from her terminal benefits. She pointed out that ZCCM never offered the house to the appellant adding that the said property was being rented by RUFC.

In response to ground two, the respondent submitted that the learned Judge took into account all the evidence before him when he arrived at the conclusion that ZCCM acted correctly when it offered the house to her.

In response to ground three, it was submitted that the learned trial Judge was on firm ground when he upheld the Judgment of the Subordinate Court.

In support of ground four, it was submitted that the learned Judge was correct to rely on the case of **Kennedy Kalunga and Others**¹.

Turning to grounds five to eight, the respondent submitted that these grounds were mere repetitions of the earlier grounds

advanced by the appellant against the Judgment of the Subordinate Court and the High Court.

We note that the respondent did not respond to grounds nine and ten. However, in conclusion it was submitted that the exercise of the sale of ZCCM houses was embarked upon to reduce the company's indebtedness to its employees by selling them houses as part payment of their terminal benefits and the purchase price was deducted from their terminal benefits. The respondent lamented that she has lost out in rentals over the years that the appellant has continued residing in the disputed house. She submitted that allowing this appeal would open a pandora box as all former Club employees would claim the houses and confusion of untold proportion would reign. She prayed that the appeal be dismissed so that justice prevails.

We have considered the evidence in the Court below, the Judgment appealed against and the submissions by the parties.

We shall deal with all the grounds of appeal simultaneously as they are inter-related.

From the outset we want to state that judgment in the case of **Melise Lubanda and 72 Others**³ was delivered by this Court on the 30th January, 2014 and we will refer to it in the course of our judgment.

We must state that in this case it is an undisputed fact that the appellant who was the sitting tenant in the house had no offer letter from ZCCM. This is a cardinal point because as we said in the case of **Beatrice Muimui vs. Sylvia Chanda**⁴, being a sitting tenant was not the sole criteria in the sale of government pool houses or parastatal organization houses. The appellant in this appeal put much emphasis on the case of **Melise Lubanda**³. In that case, the claim by the appellant and her colleagues was, inter alia, for an order that Club members were entitled to purchase the houses that they were occupying by virtue of being ZCCM employees. It is apparent that the appellant misapprehended the implication of the Judgment on Admission. In the case of **Melise Lubanda**³, ZCCM which was the 3rd defendant in the Court below entered into an interlocutory judgment with Melise Lubanda and Pelete Banda. Indeed, the said interlocutory judgment was only in

respect of Melise Lubanda and Pelete Banda. Therefore, the appellant could not bring the argument in this appeal, to which ZCCM is not a party, that she was discriminated against by ZCCM. It is clear that in that case, the main matter proceeded in respect of the other plaintiffs who included the appellant. The learned Judge in the Court below could also not stay proceedings in the present case on account of the fact that the appeal in the case of **Melise Lubanda**³ was still pending. The appellant's arguments show that she had placed so much reliance on the case of **Melise Lubanda**³ hoping that the judgment of the Supreme Court would be in her favour. Unfortunately, the appeal was unsuccessful.

Having considered the evidence in the Court below, the appellant's spirited arguments have not convinced us that the learned Judge erred in his judgment. The learned Judge was entitled to rely on the **Kalunga**¹ case and the evidence before him pointed to the fact that employees of Football Clubs were not employees of ZCCM. Although ZCCM supported the Clubs, the employees in those Clubs were not employees of ZCCM.

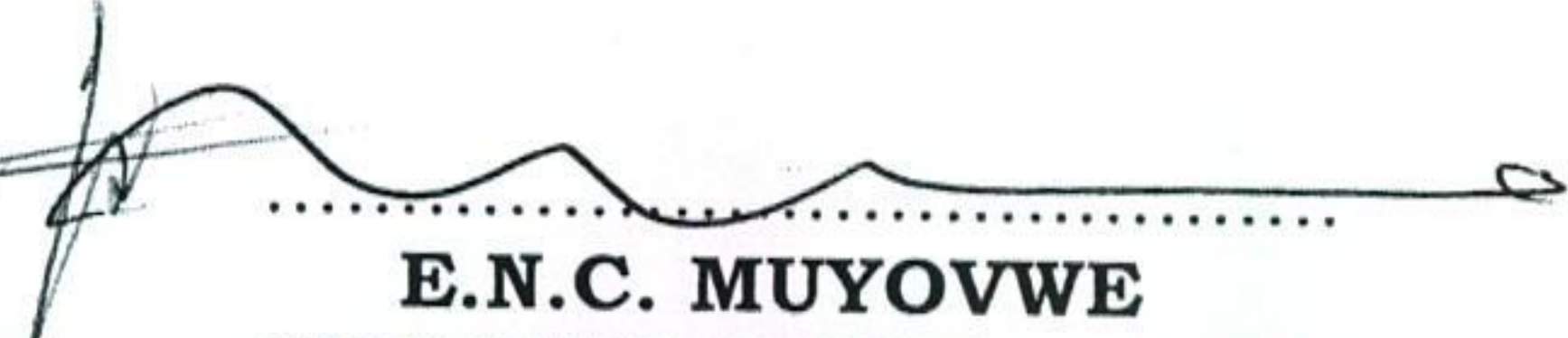
In this case, it is obvious that ZCCM decided to sell the house in issue to the respondent who qualified to purchase the house. Looking at the facts of this case, it is clear that the learned Judge was on firm ground when he found that the appellant was not entitled to purchase the house in issue as she had no letter of offer from ZCCM. Certainly, it was up to the appellant to pursue ZCCM over the same instead of the respondent who legitimately bought the house as part of her terminal benefits. From the evidence before us, it is clear that the respondent is entitled to vacant possession of the house. And as we have stated herein, we dismissed the appellant's appeal in the case of **Melise Lubanda**³ where we held that employees of Roan United Football Club were not entitled to purchase the houses they occupied because they were not employees of ZCCM.

In sum, this appeal has no merit and it is dismissed. Each party to bear its costs.

(RTD)

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D. K. CHIRWA
ACTING DEPUTY CHIEF JUSTICE


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M.S. MWANAMWAMBWA
ACTING DEPUTY CHIEF JUSTICE


.....
E.N.C. MUYOVWE
SUPREME COURT JUDGE