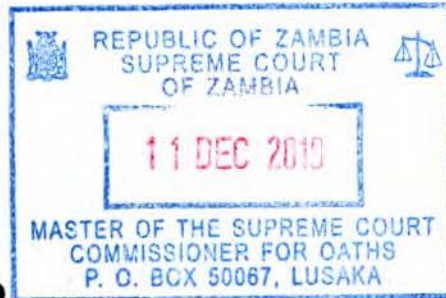


IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT NDOLA
(Civil Jurisdiction)

APPEAL NO. 69/2016

BETWEEN:

ELIZA TEMBO
THOMAS TEMBO
KABONGO MBEYA



1ST APPELLANT
2ND APPELLANT
3RD APPELLANT

AND

BOUSSO INDRISSO

RESPONDENT

Coram: Hamaundu, Kaoma and Kajimanga, JJS

On 4th December, 2018 and 11th December, 2018

For the appellants : Messrs Sharpe & Howard Legal Practitioners
For the respondent : Messrs Nhari Mushemi & Associates

JUDGMENT

HAMAUNDU, JS, delivered the Judgment of the Court.

Case referred to:

Attorney General & 2 Ors v Joseph Emmanuel Frazer & Anr (2001) ZR 87

Legislation referred to;

The Lands Act, Chapter 184 of the Laws of Zambia

The appellants appeal against a judgment of the High Court which granted the respondent specific performance of the sale to him of house number C130 in Marrapodi Township, Lusaka.

The brief facts of this case are these: The respondent is a foreign national from Sierra Leone. In 2003, there was an arrangement between the 1st and 2nd appellants on one hand, and the respondent, on the other, for the sale of the house, which is referred to as House No. C130 Marapodi, by the former to the latter. The respondent paid a total of K23,000,000 (old currency) towards the purchase price. Differences arose between them as to whether or not there was still a balance on the price. While discussions were going on with regard to their differences, the 1st appellant sold the house to the 3rd appellant, another foreign national, who was eventually issued with an occupancy licence. The respondent sued the 1st and 2nd appellants for specific performance of their agreement. The 3rd appellant was later joined to the action as intervener.

On the evidence presented by both sides the court below found for the respondent and granted an order of specific performance to him.

We must observe at the outset that the parties overlooked a very important fact that the respondent was required to prove. House No. C130 Marapodi is situate on land. According to the provisions of **section 3** of the **Lands Act, Chapter 184** of the **Laws of Zambia**, all land in Zambia, whether it be State land, customary land or land which is administered by local authorities under the Housing (Statutory and Improvement Areas) Act, (a category in which this particular house fell) vests in the President of the Republic of Zambia, who holds it in perpetuity for and on behalf of the people of Zambia. Subsection (10) of section 3 sets out the circumstances in which land may be alienated to a foreign national; one such circumstance is that of a foreign national who is a permanent resident. Another circumstance is that of a foreign national who has obtained the consent of the President in writing under his hand. In **Attorney General & 2 Ors v Joseph Emmanuel Frazer & Anr (2001) ZR 87** we held:

“The Lands Act requires that for a non-Zambian who is a permanent resident to qualify to own land he must obtain consent in writing under the President’s hand.”

In this case, the record of proceedings in the court below shows that the respondent merely told the court orally that he was a permanent resident by virtue of being in possession of an entry immigration permit. The respondent did not produce a copy of his entry permit in his bundles of documents. As for the President's consent, the respondent made absolutely no mention of it. Since this is a requirement of the law, there is need for strict proof of the circumstances that qualify a foreign national to own land. He should not merely, by word of mouth, say that he is in possession of an entry permit or that he has the President's consent, without producing copies of such documents. The court below glossed over this issue as it neither made any finding as to the immigration status of the respondent nor did it make any finding as to his qualification to own land. For a foreign national, the qualification to own land is a cardinal ingredient to be proved in land matters. So, the court must always make a finding of fact on that issue.

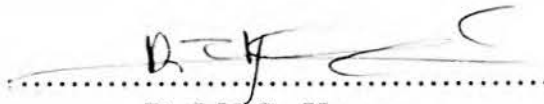
We therefore find merit in the appeal. We allow it and set aside the order of specific performance granted by the court below; and order that the money paid by the respondent towards the purchase of the house be refunded by the 1st and 2nd appellants. We are

aware that the 1st appellant has always tried to distance herself from the contract of sale with the respondent. However, the appellant had adduced viva voce evidence showing that the 1st appellant had benefitted from the money paid. That testimony was not shaken.

In view of the reasons for which this appeal has succeeded, we order that each party will bear their own costs, here and in the court below.



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E. M. Hamaundu
SUPREME COURT JUDGE



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R. M. C. Kaoma
SUPREME COURT JUDGE



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C. Kajimanga
SUPREME COURT JUDGE