IN THE SUPREME COURT OF ZAMBIA **APPEAL NO.158/2015**
HOLDEN AT NDOLA
(Civil Jurisdiction)

BETWEEN:

OSCAR CHINYANTA AND 31 OTHERS **APPELLANTS**

AND

ALASIA BUILDING CONSTRUCTION LTD **1ST RESPONDENT**

TAP ZAMBIA LIMITED **2ND RESPONDENT**

CORAM: Hamaundu, Kaoma and Kabuka, JJS.

On: 5th June, 2018 and 12th June, 2018.

For the Appellant: Mr. M.Z. Mwandenga of MZ Mwandenga & Company

For the Respondents: N/A

J U D G M E N T

KAOMA, JS, delivered the judgment of the Court.

Cases referred to:

1. **Mwenya and Randee v Kapinga (1998) Z.R. 12**
2. **Kitwe City Council v Ng'uni (2005) Z.R. 57,**
3. **Chibwe v Chibwe (2001) Z.R. 1**
4. **Minister of Home Affairs and anr v Lee Habasonda (2007) Z.R. 2007**
5. **Wilson Masauso Zulu v Avondale Housing Project Ltd (1982) Z.R. 72**
6. **Liamond Choka v Ivor Chilufya (2002) Z.R. 33**
7. **Dutton and Others v Manchester Airport PLC (1999) 2 All ER 691**
8. **Attorney General v Marcus Kapumpa Achiume (1982) Z.R. 72.**
9. **Greater London Council v Jenkins (1975) 1 WLR 155**
10. **Eyles v. Wells (1991) CA Transcript 376**

Legislation referred to:

1. **Rules of the Supreme Court 1999, Orders 2 and 113**
2. **High Court Rules, Chapter 27 of the Laws of Zambia, Order 6 Rule 2**
3. **Rent Act, Chapter 206 of the Laws of Zambia**

This is an appeal against a judgment of the High Court granting the 1st respondent possession of Subdivision "B" of Stand 401a Lusaka which it purchased from the 2nd respondent in 2013.

The 1st respondent commenced legal proceedings against the appellants and the 2nd respondent by Originating Summons pursuant to **Order 113 of the Rules of the Supreme Court 1999** and **Order VI Rule 2 of the High Court Rules, Chapter 27 of the Laws of Zambia**, seeking the following reliefs:

1. **An order and a declaration that the 1st respondent was at all material times the absolute, legal owner and registered proprietor of the property situated at Subdivision "B" of Stand 401a, Lusaka in the Republic of Zambia under and by virtue of the Certificate of Title No. 282210 duly issued to the 1st respondent by the relevant authority in respect of the said piece of land;**
2. **An order for forthwith delivery of vacant possession of the said property and premises to the 1st respondent;**
3. **An order that the appellants do forthwith vacate and yield vacant possession of the 1st respondent's said property and premises or portion thereof forthwith and in default thereof to be removed, evicted and ejected by the 1st respondent;**
4. **Further or other relief that the Court may deem fit and appropriate under the circumstances.**

The affidavit evidence that was placed before the court below shows that the 2nd respondent, Tap Zambia Limited by a written contract of sale made sometime in 2013, offered to sell to the 1st respondent, Alasia Building Construction Limited, Subdivision "B" of Stand 401a, which piece of land measured 150 acres for the contract price of ZMW15,000,000.00. The sale was subject to the Law Association of Zambia Contract and Conditions of Sale 1997. Clause 15 of the Special Conditions allowed the vendor to continue being in occupation of the houses situated on the subject property free of rent until 31st December, 2014. The 1st respondent obtained a certificate of title relating to the property on 17th February, 2014.

At the time of sale of the property, the appellants occupied the houses situated on the subject property as tenants of the 2nd respondent. Tenancy agreements were entered into with all the tenants annually. The tenants included employees and ex-employees of the 2nd respondent while others had no employment connection with the 2nd respondent.

Prior to 2010, the tenancy agreements contained a clause which gave the appellants a right of first refusal to buy the houses they occupied in the event that the 2nd respondent wished to sell

the subject property. However, there was no similar clause in the tenancies signed from 2010.

Following the sale of the property, the 2nd respondent issued notices to vacate to the appellants, indicating that the lease agreements for 2013 would not be renewed in 2014 because the property had been sold. The 1st respondent never served the appellants with notices to terminate or notices to vacate after purchasing the property.

The appellants declined to vacate the property after 31st December, 2014 on the basis that they were entitled to the right of first refusal to purchase the houses. They claimed that the clause on right of first refusal was unilaterally removed by the 2nd respondent and that they had accrued rights to buy the houses. They also averred that they were protected tenants under the **Rent Act,** Chapter 206 of the Laws of Zambia and that the notices of termination issued by the 2nd respondent did not meet the requirements of the Rent Act.

In his submissions, in the court below, Mr. Mwandenga, counsel for the appellants, cited numerous irregularities concerning the manner the action was commenced by the 1st respondent under

Order 113 of the White Book. The core of his arguments really was that the appellants were not trespassers or squatters and therefore, **Order 113** did not apply to them; meaning the proceedings were a nullity, and ought to have been brought under the Rent Act.

On the other, counsel for the 1st respondent, Ms. Sikombe argued that the appellants were in possession of the land without any claim of right as there was no landlord and tenant relationship between them and the 1st respondent; that they were squatters. It was also argued that the notices to terminate were issued by the 2nd respondent before title was transferred to the 1st respondent. The case of **Mwenya and Randee v Kapinga**[1] was cited where we said:

> **"A tenant's occupation is notice of all the tenant's rights. It means that if a purchaser has notice that the vendor is not in possession of the property, he must make inquiries of the person in possession and find out from him what his rights are and, if he does not choose to do that, then whatever title he acquires as purchaser will be subject to the title or rights of the tenant in possession".**

The submission in this regard was that the 1st respondent did carry out ordinary investigations on the rights of the appellants and was a bona fide purchaser for value.

The learned Judge considered the affidavit evidence, skeleton arguments, authorities cited and oral submissions of the parties. He also set out **Order 113, rule 1** of the White Book and the

editorial introduction at paragraph **113/0/2**. He then referred to the contention by the appellants that the application should be dismissed with costs because it ought to have been commenced under the Rent Act and not Order 113, rule 1 as the appellants were tenants of the 2nd respondent.

The Judge dismissed the above argument on the basis that on the evidence, there had never been a landlord and tenant relationship between the 1st respondent and the appellants and absent such a relationship, there was no impropriety on the part of the 1st respondent in commencing the action under **Order 113, rule 1** of the White Book.

The Judge went on to consider the arguments by the appellants that they had accrued rights to buy the houses they were occupying; that the 1st respondent had not served them with notices terminating their tenancies; and that they were protected tenants under the Rent Act and were not squatters.

The Judge examined the evidence, particularly that of the 2nd respondent, that the tenancy agreements were terminated to facilitate the sale of the property to the 1st respondent and that the appellants were given ample time to vacate the houses. On the

documentary evidence, the Judge found that the appellants were given first, three months' notice to vacate the houses and a further six months' notice to vacate. As a result, the Judge dismissed the contention that the appellants were not given notices terminating their tenancies by the 1st respondent.

Further, the Judge looked at the appellants' evidence that in 2010 and subsequent years, the 2nd respondent removed the clause from the tenancy agreements giving them the right of first refusal to purchase the houses they were occupying and found the claim that the appellant had accrued rights to buy their houses untenable.

The Judge also opined that the empowerment scheme relied upon by the appellants ceased to have effect when the 2nd respondent removed the clause from the tenancy agreements giving them the right of first refusal and that the scheme was not a contract capable of enforcement but a mere policy which was overtaken by a later event.

For the foregoing reasons, the court granted the orders sought by the 1st respondent and gave the appellants one month notice from the date of the judgment to vacate the property.

The appellants appealed and filed eight grounds of appeal which we have rephrased in part as follows:

1. **The learned Judge misdirected himself by failing or neglecting to address his mind to a litany of irregularities which were pointed out by the appellants in their submissions in the court below.**
2. **The learned Judge misdirected himself by failing or neglecting to give reasons as to why he did not consider a litany of irregularities which were pointed out or raised by the appellants in their submissions in the court below.**
3. **The learned Judge misdirected himself when he failed to consider the legal implications of all the irregularities that were perpetrated by the 1st respondent in these proceedings as a prelude to deciding whether or not there was any impropriety on the part of the 1st respondent in commencing these proceedings under Order 113 rule 1 of the White Book.**
4. **The learned Judge misdirected himself when he failed or neglected to apply the law and/or practice relating to Order 113 to the facts of this case.**
5. **The learned Judge misdirected himself when he summed up the appellant's case as follows:**

   > **"It has been contended by the defendants that this application should be dismissed with costs because it ought to have been commenced under the Rent Act and not under Order 113 rule 1 of the White Book as the defendants were tenants of the 1st defendant..."**

6. **The learned Judge erred in law and in fact when he said that absent the landlord and tenant relationship between the 1st respondent and appellants, he was satisfied that there was no impropriety on the part of the 1st respondent in commencing this action under Order 113 rule 1.**
7. **The learned Judge erred in law and in fact when he held that the appellants' contention that they were not given notices terminating their tenancies by the 1st respondent is untenable.**
8. **The learned Judge erred in law when he granted reliefs sought without considering whether it was competent for the 1st respondent to have joined the other claims on the Originating Summons with the claim for possession under Order 113.**

In support of the appeal, counsel for the appellants, Mr. Mwandenga filed heads of argument on which he relied entirely.

In ground 1, the essence of the appellants' arguments is that the proceedings in the court below were misconceived, incompetent and a nullity and ought to have been dismissed with costs but the court ignored, without giving reasons, the many irregularities raised by the appellants and only addressed his mind to one. The cases of **Kitwe City Council v Ng'uni**[2] and **Minister of Home Affairs and another v Lee Habasonda**[3] were cited to support this argument.

The gist of the appellants' arguments in ground 2 is that, there is no indication, from the judgment, as to how the Judge considered the authorities in the skeleton arguments and the oral submissions in relation to the irregularities that were raised by the appellants and that the judgment gives no reasons why the issues were not considered. Several authorities were cited, including the case of **Chibwe v Chibwe**[4] where we said that the Courts must be alive to the well-established principle of giving reasons for their decisions.

In ground 3, the import of the appellants' arguments is that the Judge was duty bound to consider all the issues they raised because all were relevant or he ought to have dismissed the

appellants' submissions as being irrelevant or otiose. It was contended that this is not a proper case for this Court to re-write the judgment on behalf of the court below, because the Judge did not deal with all the issues before him. We were urged to remit the matter to the court below for consideration of the issues.

The core of counsel's arguments in ground 4 is that the Judge made reference to **Order 113, rule 1** of the White Book but then neglected to apply the law to the facts. Some case authorities that explain what the elements of a good judgment are were cited, but we do not find it necessary to restate them here.

In respect of ground 5, it was submitted that from the summation referred to in the ground of appeal, the Judge narrowed down the issues before him to one, without stating any reasons and ignored the other issues raised by the appellants, which warranted the dismissal of the action. The case of **Wilson Masauso Zulu v Avondale Housing Project Limited[5],** among others, was quoted where it was emphasised that trial courts must always bear in mind that it is their duty to adjudicate upon every aspect of the suit between the parties so that every matter in controversy is determined in finality.

The kernel of the arguments in ground 6 is that it seems the Judge treated the appellants like trespassers. The case of **Liamond Choka v Ivor Chilufya**[6] was quoted where we held, inter alia, that the summary procedure under **Order 113** can only be suitable for squatters and others without any genuine claim of right or who have since been transformed into squatters.

It was argued that on the expiry of the termination notices issued by the 2nd respondent, the appellants did not vacate the houses. Further, that the 2nd respondent was no longer the owner of the property and the 1st respondent did not issue eviction or termination notices to the appellants after acquiring the property. Therefore, the appellants were not trespassers. They were supposed to be treated as tenants holding over after termination of the tenancies and were exempt from Order 113, rule 1. The case of **Dutton and others v Manchester Airport Plc**[7] was relied on.

Counsel also submitted that the absence of the landlord and tenant relationship between the appellants and the 1st respondent is not the basis for commencing proceedings under Order113 because the persons subject to this Order must be persons who illegally occupied the property. That anyhow, at the time the 1st

respondent bought the property, the appellants were tenants of the 2nd respondent and so, the 1st respondent purchased the property subject to their tenancies and by operation of law, it became the landlord and if it wanted to obtain possession of the houses, it ought to have proceeded under the Rent Act.

In ground 7, it was contended that the 1st and the 2nd respondents are two separate legal entities. Therefore, the notices to vacate given by the 2nd respondent cannot be said to have been given by the 1st respondent. Further and in the alternative, it was argued that the Judge made an inference that the 1st respondent had given the appellants notices terminating their tenancies; that this is a finding of fact which must be reversed on the principles espoused in **Attorney General v Marcus Kapumpa Achiume**[8].

Finally, in respect of ground 8, it was contended that the originating summons was a hybrid between that under Order 113 of the White Book and Order VI rule 2 of the High Court rules, but the Judge recognised the Order 113 part of the action without stating why, especially that it was not in the prescribed format.

It was further submitted that proceedings under Order 113 are special proceedings for claims of possession of land only and no

claim can be joined with the claim for possession. We were referred to the editorial note at paragraph **113/8/14** of the White Book. We were urged to allow the appeal with costs.

We have considered the evidence on record, the judgment appealed against and the arguments by counsel for the appellants. We have not received heads of argument from the respondents who did not also attend the hearing of the appeal. We were informed that AMC Legal Practitioners, advocates for the 1st respondent were served but service on the 2nd respondent failed because the company is closed. It appears that the 2nd respondent did not attend the proceedings in the court below for the same reason.

A perusal of the grounds of appeal shows that they are all entwined and in the main, attack the commencement of the proceedings under **Order 113** of the White Book and the manner the learned Judge dealt with the matter in light of the irregularities pointed out by the appellants. Therefore we shall deal with the eight grounds altogether.

To start with, a tenancy may be terminated by either the landlord or the tenant and the party who intends to terminate the tenancy must serve a valid notice on the other party. However,

where a tenancy that was entered into for a fixed period comes to an end, a notice of termination does not have to be issued. The tenancy is determined by the effluxion of time.

The landlord can give the tenant a notice to vacate at the end of a fixed term but a tenant has a right to challenge a notice to vacate if it is not given properly or if he disagrees with the reason given. It is also important to bear in mind that just because the tenant receives a notice to vacate; it does not necessarily mean that he has to move out. If the landlord wants to evict him, they must apply to court for the grant of a possession order under the **Rent Act, Chapter 206 of the Laws of Zambia**.

In the current case, subject property on which the houses are situated was sold to the 1st respondent by the 2nd respondent in 2013 and that the 1st respondent is the title holder. It was not in dispute that the 2nd respondent issued notices to vacate to the appellants after the property was sold to the 1st respondent and that the 1st respondent did not issue any notices to terminate or to vacate after purchasing the property or acquiring title.

Mr. Mwandenga informed us at the hearing of the appeal that the appellants were in fact given notices by the 2nd respondent

terminating their tenancies before the property was sold to the 1st respondent. Despite that these notices are not on the record of appeal, counsel was insistent that the notices were given except that the appellants did not vacate the property on ground that they had an accrued right to purchase the houses they occupied.

As we see it, two things could have happened here. First, the appellants might have been given notices to terminate before the property was sold as disclosed by counsel. If that is what happened, then the tenancy agreements terminated on the dates indicated in the notices and the appellants should have yielded up possession. Counsel did not allege that the notices to terminate given before the sale of the property were invalid or that the appellants did not agree with the reason given by the 2nd respondent for the termination.

The other thing that could have happened is that the tenancies expired by the effluxion of time. The notices to vacate given by the 2nd respondent on 21st May, 2014 referred to a letter dated 24th January, 2014 wherein the appellants were advised of the expiry of the tenancy agreements for 2013 and that the same would not be renewed in 2014 because the property was sold.

What this means is that the 1st respondent ought to have known about the tenancy agreements prior to finalising the transaction given that the appellants were in occupation of the houses. Following our decision **Mwenya and Randee v Kapinga**[1], the 1st respondent will have bought the property subject to the rights of the appellants as tenants and the title it acquired as purchaser will have been subject to the rights (if any), of the appellants as tenants.

Therefore, the 1st respondent would have become the landlord and if it wanted to gain possession of the property before expiry of the tenancy agreements, it ought to have given termination or eviction notices to the appellants but if the tenancies expired naturally, there would have been no need for the 1st respondent to give notices to terminate or to vacate as argued by the appellants.

Either way, the tenancy agreements terminated. However, because of clause 15 of the Special Conditions in the Contract of Sale, which allowed the 2nd respondent to continue being in occupation of the houses situated on the subject property free of rent until 31st December, 2014 the appellants remained in occupation of the houses with the licence or consent of the

respondents. We agree with the appellants that during that period they could not be considered as trespassers or squatters.

It is also quite clear that the notices to vacate given by the 2nd respondent after the property was sold, were meant to enable the 2nd respondent yield vacant possession of the property to the 1st respondent after 31st December, 2014 as agreed between the parties to the contract of sale. As we have said, the appellants did not challenge the notices to vacate or enter into renew tenancies with the 1st respondent. They simply sat back until the 1st respondent applied to court for possession of the property on 15th April, 2015.

The question then is whether the appellants fell under **Order 113, rule 1** of the White Book. The rule provides that:

> **"Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this order' (underlining ours for emphasis only)**

The editorial introduction at paragraph 113/0/2 of the White Book which the court had referred to also states that:

> **"The circumstances in which the procedure can be used are restricted to cases where the land is occupied by persons who have entered into or remain in possession of the land without the licence or consent of the person claiming possession" (underlining again ours for emphasis only).**

In **Dutton and Others v Manchester Airport PLC**[7] which was cited by counsel for the appellants, the matter was put as follows:

> **"Order 113 was introduced in 1970 (by the Rules of the supreme Court Amendment Act No. 2) ... shortly after the decision of this Court in Manchester Corp v Connolly (1970) 1 All ER 961, (1970) Ch 420. It had been held in that appeal that the court had no power to make an interlocutory order for possession. Order 113 provides a summary procedure by which a person entitled to possession of land can obtain a final order for possession against those who have entered into or remained in occupation without any claim of right – that is to say, against trespassers. The order does not extend or restrict the jurisdiction of the court" (emphasis again ours).**

In the same case, Kennedy L.J held that:

> **"... what matters is that the plaintiff has a right to possession which meets the first of the requirements set out by Stephenson LJ, and the defendants have no right which they can pray in aid to justify their continued possession. It is said that such approach blurs the distinction between different types of rights and different types of remedy, it seems to me that is the effect of the wording of Order 113, and the understandable object of the law has always been to grant relief to a plaintiff seeking possession who can rely on a superior title. In Danford v McAnulty (1883) 8 App 456 at 462 Lord Blackburn said:**
>
> > **'... in ejectment, where a person was in possession those who sought to turn him out were to recover upon the strength of their own title: consequently possession was at law a good defence against anyone, and those who sought to turn the man out must show a superior legal title to his'."**

In **Liamond Choka v Ivor Chilufya**[6] we emphasised the same principle that the summary procedure under **Order 113** can only be suitable for squatters and others without any genuine claim of right or who have since been transformed into squatters.

It is clear from all the above, that the procedure in **Order 113 rule 1** applies only to the category of people prescribed in the rule. The first category is that of people who have entered into occupation of the property without the licence or consent of the person entitled to occupation or his predecessor in title. The second category applies to people who have entered into occupation with the licence or consent of the person entitled to occupation but have remained in such occupation, without the licence or consent of the person entitled to possession or his predecessor in title.

As the learned editors of the White Book have explained at paragraph **113/8/2**, the court has no discretion to prevent the use of this summary procedure where the circumstances are such as to bring them within its terms, e.g. against a person who has held over after his licence to occupy has terminated, although the order will not apply before the licence has expired.

The case of **Greater London Council v Jenkins**[9] which is cited at paragraph **113/8/2** shows that a landlord is entitled to use the summary proceedings under Order 113 if he can demonstrate his right to do so, and the court has no discretion to deny such use

merely on the grounds that the proceedings are rapid and summary and that the defendants did not enter as squatters.

The appellants have argued that they were not trespassers or squatters since they were holding over after the termination of their tenancy agreements. This argument cannot help them because they continued in occupation by licence or consent of the respondents only up to 31st December, 2014. Thereafter, they remained in occupation without the consent or licence of either of the respondents. The 1st respondent had established its right to the property as registered owner. The appellants failed to establish any legal or equitable interest in the property. No doubt they became trespassers. It is irrelevant that the 1st respondent did not issue notices to vacate after they acquired the property.

On the basis of all the foregoing, we agree with the decision of the learned Judge in the court below that in the absence of a landlord and tenant relationship between the 1st respondent and the appellants, there was no impropriety on the part of the 1st respondent in commencing the action under **Order 113, rule 1** of the White Book. We are not persuaded that the proceedings were a nullity or that they should have been brought under the Rent Act.

We may add, that the appellants have not appealed against the Judge's finding that they had no accrued right to purchase the houses they occupied and that they lost the right of first refusal after it was removed from the tenancy agreements in 2010.

We turn now to the other irregularities pointed out by the appellants. In respect of the argument that the 1st respondent should not have joined other claims to the claim for possession, we agree that paragraph **113/8/3 of the White Book** states that the only claim that can be made in the proceedings **Order 113** is for the recovery of possession of land and that no other cause of action can be joined with such a claim, and no other relief or remedy can be claimed in such proceedings.

The above paragraph also states that when the existence of a serious dispute is apparent to a plaintiff he should not use this procedure. However, reference is there made to **Eyles v Wells**[10], where the English Court of Appeal following **Greater London Council v Jenkins**[9], held that the Court had no discretion to prevent the procedure being used in cases that fell within the rule.

At paragraph **113/8/14** of the White Book, the learned editors also explain that if, on the hearing of the summons, it appears that

the claim of the plaintiff is not within the ambit of this Order or the claims for relief or remedy have been joined with the claim for possession of land which could not or ought not to have been so joined or that for some other reason the proceedings are irregular, the Court may dismiss the summons or give leave to amend to correct any irregularity on such terms as it thinks fit.

The same paragraph states that if the Court should hold that there is some issue or question that requires to be tried, or that for some other reason there ought to be a trial, it may give directions as to the further conduct of the proceedings, or may order the proceedings to continue as if begun by writ.

In this case, there was no serious dispute as to the title of the 1st respondent to the subject property to bar the latter from commencing proceedings under Order 113 and it could not have been apparent that the matter would raise serious contentious issues for determination for the court to dismiss the summons or make an order that the matter was to proceed as if begun by writ.

Further, much as we agree with the appellants that the claim for possession should not have been joined with the claim for a declaration, the orders the court granted were all related to the

claim for possession of land, and cannot at this point in time be the reason to nullify the proceedings in the court below.

Moreover, the learned Judge did not just deal with one issue as argued by the appellants. A number of the issues were dealt with and reasons given in the judgment. We do not agree that the judgment fell short of what a proper judgment should be.

In addition, in terms of **Order 2, rule 1** of the White Book if in beginning or purporting to begin any proceedings there has, by reason of anything done or left undone, been a failure to comply with the requirements of the rules, whether in respect of time, place, manner, form or content or in any respect, such failure is to be treated as an irregularity and does not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.

And under **Order 2 rule 2** the court may, on the ground that there has been such failure and on such terms as to costs or as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order. However, the application must

be made within reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.

Further still, **Order 2, rule 3** provides that the court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these rules to be begun by an originating process other than the one employed.

In this case, the appellant never applied under **Order 2, rule 2** to set aside the proceedings for irregularity despite the many irregularities raised most of which did not touch on the issue of jurisdiction. Instead, the appellants filed affidavits in opposition to the originating summons and attended the hearing of the proceedings and then filed detailed submissions pointing out the alleged irregularities. We can safely say that the appellants had waived their right to object when they took fresh steps in the action after becoming aware of the irregularities.

Order 113, rule 8 of the White Book also permits the court, on such terms as it thinks just, to set aside or vary any order made in proceedings under this Order. Yet again, the appellants did not

apply to the court below to set aside or vary any of the orders granted by the court on the basis of the alleged irregularities.

It has since come to light, that after the learned trial Judge refused to stay his judgment pending hearing of this appeal, the appellants obtained a stay of execution from a single Judge of this Court. The end result is that the appellants have remained in the houses on the subject property from 31st December, 2014 when their license expired to date without any tenancy agreement or payment of rent. Obviously, this has prejudiced the 1st respondent which has not been able to utilise its property and no justice can be achieved by nullifying the proceedings and remitting the matter to the court below. Consequently, all the grounds of appeal must fail.

In all, we dismiss the appeal and grant immediate possession of the property to the 1st respondent. We make no order as to costs.

E.M. HAMAUNDU
SUPREME COURT JUDGE

R.M.C. KAOMA
SUPREME COURT JUDGE

J.K. KABUKA
SUPREME COURT JUDGE