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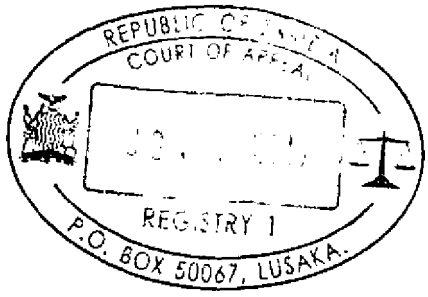
IN THE COURT OF APPEAL OF ZAMBIA **APPEAL NUMBER 137/2019**

HOLDEN AT NDOLA

(Civil Jurisdiction)



BETWEEN:

SANAT LIMITED **APPELLANT**

AND

SHAILESHUKMAR SURYAKANT AMIN **RESPONDENT**

CORAM: ***CHISANGA, JP, SICHINGA, NGULUBE, JJA***
On: 25th August and 3rd September, 2020.

For the Appellant : *Mr. M. Ndalameta and Ms. Nalishuwa, Messrs Musa Dudhia and Company.*

For the Respondent : *Mr A. Tembo, Messrs Tembo, Ngulube and Associates.*

J U D G M E N T

NGULUBE, JA, delivered the Judgment of the Court

Cases referred to:

1. *Tembo vs Chitambala (2009) Z.R.327*
2. *Kambindima Wotela vs Standard Chartered Bank Zambia Plc (2012/HP/138)*
3. *Crabb vs Arun District Council (1975) 3 All ER 865*
4. *Pearlman (Veneers) SA Pty Ltd vs Bartels (1954) 3 All ER 659*
5. *Tisiye Mtonga Matonka vs Fred Mtonga and Another (2017/HPC/008)*
6. *Commercial Bank Limited vs Central Province Marketing Union Limited, SCZ Appeal Number 55 of 1995 (unreported)*
7. *Attorney-General and Another vs Lewanika and others (1993-1994) Z.R.164*
8. *Graf vs Hope Building Corporation, 254 N.Y.1 at 9 (1930)*
9. *Zambia State Insurance Corporation Limited vs Anthony Muyana Musutu (1994) Z.R.133*

Legislation referred to:

1. *Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia*

Other works referred to:

1. *Craies on Statute Law, 5th Edition, S.G.G. Edgar, William Feilden, Sweet and Maxwell*

1.0. INTRODUCTION

1.1. This is an appeal against a Ruling of his Lordship Musona. J, who found that the appellant sought to rely on a trust deed that was not registered and that it did not appear on the lands register, contrary to section 4(1) of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia[1]. The court found that the trust deed was in respect of land, that its life was in excess of one year and that it was null and void ab initio for want of registration. The court accordingly dismissed the matter, with costs to the respondent.

2.0 BACKGROUND

2.1 The appellant (plaintiff in the court below) sued the respondent (defendant in the court below) claiming the following-

1. A declaration that the plaintiff is the legal and rightful owner of plot number 194, 720 and 804 Lusaka;
2. An order that the defendant renders a detailed account of all the money received in respect of rent paid in relation to the three properties since 1983;

3. An order for payment to the plaintiff of all the rent and profits made and collected in respect of the said three properties since 1983;
4. Interest on the payment in (3) above from the date when the cause of action arose to the date of judgment, pursuant to section 4 of the Law Reform (Miscellaneous Provisions) Act, Chapter 74 of the Laws of Zambia and thereafter in accordance with section 2 of the Judgment Act Chapter 81 of the Laws of Zambia;
5. Further and other relief and;
6. Costs of and incidental to the action.

2.2 In the statement of claim, the appellant averred that it was the legal owner of plot number 194, 720 and 804, Lusaka and that it purchased the said properties from Kokilaben Sumanran Patel in 1983 and 1978, respectively. On or about 1985 and 1986, it was resolved by the appellant that the properties be conveyed in trust to the respondent as the major shareholder and managing director of the appellant was leaving Zambia to relocate to Zimbabwe. It was averred that the reason for the resolution to transfer the properties to the respondent to be held in trust for the appellant was made in order to ensure that the properties were properly managed for the benefit of the appellant company.

2.3 In September, 1985 and March 1986, the appellant and the respondent executed a trust deed in which it was agreed that the respondent would not pay the sums of ZMK40,000.00, ZMK12,500.00 and ZMK19,000.00 which had been agreed to be paid by the respondent to the appellant in respect of the properties in assignments that were executed by the appellant and the respondent in 1983.

2.4 The appellant averred that it was an express term of the trust deed that the respondent would, at the request and cost of the appellant, convey the properties to such person or persons whenever he would be so requested and directed by the appellant. The respondent was a trustee of the properties and the appellant was the beneficial owner.

2.5 The appellant wrote a letter of demand to the respondent on 5th September, 2014, requesting for a detailed account of all the money received in respect of rent paid in relation to the properties since the trusts were created as well as payments to the appellant of all the rent and profits made and collected in respect of the properties. The appellant further sought the respondent's consent to the transfer documents which would ensure that the properties vest in the appellant's name or any nominee of the appellant.

2.6 The respondent denied being obliged to account to the appellant and stated that he was the owner of the properties. He further denied the appellant's claims and stated that he was never a trustee of the appellant. The respondent averred that the appellant offered the said properties to him for sale and that he purchased them after paying full and valuable consideration. He averred that no trust was created in his favour and that he was not related to the appellant's current or former shareholders.

2.7 The respondent stated that all the properties were sold and conveyed to him using assignment deeds and not trust deeds as the appellant claimed. He denied having any obligation to account to the appellant over his property and profits realised therefrom. The respondent averred that the appellant's initial managing director, Sumanbhar Patel and his wife Kokilaben Patel died in 2004 and 2014, respectively and did not make any claims regarding the respondent's properties while they were alive because they knew the legal status.

2.8 The appellant filed a reply and averred that the trust deed entered into between the parties was supplementary to the assignments entered into with the respondent and that it was agreed under the trust deed that the consideration for the properties that was agreed between the parties would not be paid by the respondent.

2.9 On 7th November, 2018, the respondent's advocates filed a notice to raise preliminary issues. In the affidavit in support, the learned Counsel for the respondent, Mr Abel Tembo averred that he carried out a search at the Ministry of Lands and found that no trust agreement was entered between the appellant and the respondent regarding plot number 194, 720 and 807 Lusaka.

2.10 Referring to section 4 of the Lands and Deed Registry Act[1], the learned Counsel for the respondent submitted that every document purporting to grant, convey or transfer land or any interest in land for a period longer than one year is required to be registered at the Lands and Deeds Registry and that where such document is not registered within the specific time, then it is null and void. Counsel submitted that the trust deed that the appellant claims to have created between the appellant and the respondent was not registered. The court was referred to the case of **Tembo vs Chitambala**[1] in which Mutuna, J. stated that-

> ***"Any document purporting to grant an interest in land for a period of more that one year must be registered with the Lands and Deeds Registry. Failing such registration shall be null and void."***

Counsel submitted that the trust deed was invalid and that no rights can be enforced against the said document which is ineffective.

2.11 The learned Counsel for the appellant filed an affidavit in opposition and averred that there is no allegation in the statement of claim that the trust deed was registered at the Lands and Deeds Registry. Counsel further averred that a trust deed may be registered in the miscellaneous register and that copies of the trust deed were produced and shown to the court as exhibits "SSP3" and "SSP4" in an affidavit in opposition that was sworn by the respondent under cause number 1993/HP/4973 and that the said trust deeds are valid and fit for consideration at trial.

3.0 CONSIDERATION OF THE PRELIMINARY ISSUE RAISED IN THE LOWER COURT

3.1 The lower court referred to section 4(1) and section 6 of the Lands and Deeds Registry Act[1] and was of the view that all documents that grant an interest in land, which include a trust deed should be registered at the Lands and Deeds Registry. The court was further of the view that the trust deed in casu was in respect of land and that it was in excess of one year, but was never registered. The court opined that the said trust deed was null and void for want of registration and that the appellant's action was not properly before it as the appellant sought to rely on an unregistered trust deed. The court accordingly dismissed the matter, with costs to the respondent.

4.0 THE APPEAL AND THE GROUNDS THEREOF

4.1 Dissatisfied with the lower court's decision, the appellant now appeals to this court on four grounds as follows-

1. **The court below erred in law and fact when it found that the trust deeds are documents required to be registered in terms of section 4 of the Lands and Deeds Registry Act Chapter 185 of the Laws of Zambia and that therefore the unregistered trust deeds entered into by the appellant and the respondent are null and void ab initio.**
2. **The court below erred in law and fact when it did not construe the Lands and Deeds Registry Act in its entirety.**
3. **The court below erred in law and fact in holding that the trust deeds were null and void as it contradicted the lower court's decision on 19th August, 2016; and**
4. **The court below erred in law and fact when it allowed technicalities to override a relationship of trust.**

5.0 THE PARTIES' RESPECTIVE ARGUMENTS ON APPEAL

5.1 Both parties filed written heads of argument. In support of ground one, the learned Counsel for the appellant submitted that according to section 4 of the Lands and Deeds Registry Act, all documents purporting to grant, convey or transfer land and or any interest in land must be registered in a specified registry. Counsel contended that a trust deed is not a document envisaged by section 4 and is therefore not required to be registered in terms of that section.

5.2 The court was referred to section 4 of the Lands and Deeds Act which states that-

1. ***Every document purporting to grant, convey or transfer land or any interest in land , or to be a lease or agreement for lease or permit of occupation of land for a longer term that one year, or to create any charge upon land, whether by way of mortgage or otherwise, or which evidences the satisfaction of any mortgage or charge and all bills of sale of personal property whereof the grantor remains in apparent possession, unless already registered pursuant to the provisions of "The North-Eastern Rhodesia Lands and Deed Registration Regulations, 1905" or "The North-Western Rhodesia Lands and Deeds Registry Proclamation 1910" must be registered within the times hereinafter specified in the Registry or in a District Registry if eligible for registration, in such District Registry."***

It was contended that a trust deed is not a document envisaged by section 4 and is therefore not required to be registered in terms of that section.

5.3 Counsel contended that the trust deeds in question were merely a declaration that the respondent holds plot numbers 194, 720 and 804, all of Lusaka, in trust on the appellant's behalf. It was submitted that the operative clause of the trust deeds provides that-

"THIS DEED WITNESSETH THAT the said Shaileskumar Suryakant Amin hereby declares that he holds the said

> ***property in trust for Sanat Limited and hereby agrees that he will at the request and cost of Sanat Limited convey the said property to such person or persons at such time and in such manner as the said Sanat Limited shall direct save that such conveyance will be effected within the period permitted by the rules of perpetuity."***

5.4 Counsel argued that the documents that conveyed the properties were the assignments which were registered in accordance with the Lands and Deeds Registry Act. It was submitted that the non-registration of the trust deed is not a bar to their enforceability.

5.5 In arguing ground two, it was submitted that the court below solely relied on section 4 of the Lands and Deeds Registry Act[1] to conclude that the trust deeds in question are documents that require to be registered in order to be enforceable. According to counsel, the lower court did not address its mind to the import of section 74 of the Act which specifically relates to the registration of trust deeds. Counsel contended that section 4 does not override other provisions of the Lands and Deeds Registry Act regarding the registration of documents.

5.6 We were referred to Craies on Statute Law 5th Edition[1] in which Romilly MR stated that-

> ***"The general rules which are applicable to particular and general enactments in statutes are very clear. The only difficulty is their application."***

Counsel submitted that the principle of statutory interpretation is that whenever there is a general enactment and a particular one, the latter is deemed to be operative. According to Counsel, section 74(1) of the Act is a particular provision which expressly provides that there are other documents such as trust deeds, that cannot be entered in the lands register created in section 9(a) of the Lands and Deeds Registry Act. It was contended that a trust deed relating to property need not be registered on the certificate of title of the property.

5.7 According to Counsel, the principle of statutory interpretation is that whenever there is a general statement and a particular one, the latter is deemed to be operative. Counsel contended that section 4 is a general provision and cannot override specific provisions of the Lands and Deeds Registry Act such as section 74.

5.8 We were referred to section 74 of the Act which provides that-

74(1) "Except as hereinafter provided in relation to public lands, no entry of any notice of any trust shall be made in the township Lands Register, in the Lands Register, in any provisional certificate or any certificate of title, and any such entry, if made shall have no effect.

(2) Trusts affecting land may be declared by any deed or instrument, and such deed or instrument may be registered in the miscellaneous register."

5.9 According to Counsel, section 74 is categorical that a trust deed relating to property need not be registered on the certificate of title of the property and that in the event that the same is registered, the said registration will be of no effect.

5.10 Counsel referred the court to section 10 of the Act which provides that-

> ***"In the miscellaneous register shall be registered any deed or instrument declaring a trust which it is desired to register and any document other than relating to land, either required by any law to be registered and in respect of which no special registry office is indicated or which is desirable and proper to register."***

5.11 According to Counsel, the wording of sections 9, 10 and 74 is specific and has the effect of overriding the general provisions of section 4. It was submitted that the language of section 74 is clear and that despite the trust deeds not being registered, they are valid and that the appellant's action ought not to have been dismissed.

5.12 In arguing ground three, it was submitted that on 19th August, 2016, the Registrar of the High Court, in delivering Ruling on the respondent's application for an order to dismiss the action for being statute barred found that the trust deed upon which the appellant's action is premised were valid. Counsel submitted that the learned registrar found that a trust relationship existed between the

appellant and the respondent and allowed the matter to proceed to trial. It was argued that the Judge in the court below erred when he concluded and contradicted an issue that had already been decided by the same court.

5.13 In arguing ground four, it was submitted that people in relationships of trust should not be able to convert the trust property to their own use by resorting to technicalities. We were referred to the case of ***Kambindima Wotela vs Standard Chartered Bank Zambia Plc***[2] where the nature of a trust relationship was highlighted with the court stating that-

> ***"A trustee is the nominal owner of the property, while the cestui que trust is the beneficial owner of the property."***

5.14 Counsel contended that the respondent has always been aware of the trust relationship and argued that the lower court ought to have had regard to section 13 of the High Court Act which requires law and equity to be administered concurrently. It was contended that it would be inequitable to allow the respondent to defeat a sacred trust relationship on a technical point as was raised in this case.

5.15 We were referred to the case of ***Crabb vs Arun District Council***[3], in which the court stated that-

> ***"Equity comes in, true to form, to mitigate the rigours of strict law. The early cases did not speak of it as 'estoppel'. They***

> ***spoke of it as 'raising an equity'. If I may expand that, Lord Cairns said in Hughes vs Metropolitan Railway Co ((1877) 2 App Cas 439 at 448, [1874-80] All ER Rep 187 at 191): '... it is the first principle upon which all Courts of Equity proceed...' that it will prevent a person from insisting on his strict legal rights - whether arising under a contract, or on his title deeds, or by statute - when it would be inequitable for him to do so having regard to the dealings which have taken place between the parties. what then are the dealings which will preclude him from insisting on his strict legal rights?"***

Counsel argued that a trustee cannot seek refuge in section 4 of the Lands and Deeds Registry Act and that to focus on non-registration of the trust deed would be inequitable. The court was further referred to the case of ***Pearlman (Veneers) SA Pty Ltd vs Bartels***[4] and Counsel submitted that the respondent knows well what the action is about and ought not to take a contrary stance. We were urged to allow the appeal as the validity of the trust is not dependent on the deeds being registered in terms of section 4 of the Lands and Deeds Registry Act.

5.16 The respondent filed heads of argument responding to those of the appellant. Responding to ground one, the respondent's advocates submitted that the court below was on firm ground when it found that trust deeds are required to be registered in terms of section 4 of the Lands and Deeds Registry Act. Counsel submitted that the trust

deed in question falls within the documents that are required to be registered at the Lands and Deeds Registry as provided in section 4 of the Act. Counsel argued that the parties herein executed assignments on 24th September, 1985, and 31st December, 1985, respectively and that the assignment was registered in the lands register which shows that the property belongs to the respondent.

5.17 According to the appellant's Counsel, the trust deeds were executed in March, 1986 and that the properties were conveyed to the respondent as a trustee of the appellant. It was further submitted that the intention of the appellant was for the respondent to hold the property in trust and not for the respondent to be the beneficial owner of the properties.

5.18 The learned Counsel for the respondent submitted that the nature of the trust deeds was to convey the properties and as such should have been registered in the Lands and Deeds Registry. We were referred to the case of ***Tisiye Mtonga Matonka vs Fred Mtonga and another***[5], in which the court stated that a trust deed that was not registered in the Lands and Deeds Registry was null and void.

5.19 We were further referred to the case of ***Commercial Bank Limited vs Central Province Marketing Union Limited***[6], in which the court considered the effect of non registration of a document which falls in the ambit of section 4 of the Lands and Deeds Registry Act and held

that a writ of eligit creates an interest in land and ought to be registered in the Lands and Deeds Registry within the stipulated period. Counsel submitted that the court was on firm ground when it ruled that the trust deed is null and void ab initio for want of registration.

5.20 Responding to ground two, it was submitted that the court below was on firm ground in the manner in which it construed the Lands and Deeds Registry Act. Counsel submitted that in as much as the lower court may have overlooked sections 10 and 74 of the Lands and Deed Registry Act, the purposive approach rule of statutory provisions is that of adopting a construction or interpretation that promotes the general legislative purpose which requires the court to ascertain the meaning and purpose of the provision and would sometimes require reading the provision the legislature had intended. Counsel submitted that section 4 of the Lands and Deeds Act was inserted in the Act to protect the owners of the pieces of land and give fair notice to the public of what is happening on a property.

5.21 We were referred to the case of ***Attorney-General and Another vs Lewanika and others***[7], where the Supreme Court stated that the present trend is to move away from the rule of literal interpretation to *"purposive approach"* in order to promote the general legislative purpose underlying the provisions. Counsel contended that section

4 of the Lands and Deeds Act is couched in a manner that is obligating and not one that is directory. We were urged to have regard to the real intention of the legislature by carefully attending to the whole scope of the statute to be construed.

5.22 Responding to ground three, Counsel submitted that the respondent was not dissatisfied with the decision made by the registrar and saw no reason to appeal the decision that the appellant's action was not statute barred. On the other hand Musona, J was called upon to determine whether the trust deed that the appellant seeks to rely on is valid or not and ruled that the trust deeds were null and void for want of registration. Counsel contended that the Judge and the Registrar made decisions on two separate issues and that there was no contradiction in the two decisions.

5.23 Responding to ground four, it was submitted that the appellant seeks to rely on a trust deed that was not registered in accordance with section 4 of the Lands and Deeds Registry Act. We were referred to section 6 of the said Act which provides that-

> ***"Any document required to be registered as aforesaid and not registered within the time specified in the last preceding section shall be null and void."***

Counsel contended that the issue is with what the law provides and the court below interpreting and making a ruling in accordance with the law.

5.24 It was argued that the only document that is registered is an assignment which shows the transfer of property from the appellant to the respondent and does not show the purported trust relationship. It was submitted that equity is not superior to the prevailing law and counsel referred to the case of ***Graf vs Hope Building Corporation***[8], where the court held that-

> ***"Equity works as a supplement for law and does not supercede the prevailing law."***

We were urged to dismiss the appeal on the basis that the trust deed that the appellant seeks to rely on is null and void for want of registration. The respondent also prayed for costs. The appellant's advocates filed heads of argument in reply.

5.25 On ground one, it was submitted that the properties on plot numbers 194, 720 and 804, Lusaka were not conveyed to the respondent through trust deeds. Counsel submitted that the properties were conveyed to the respondent by way of assignments which were registered. It was further submitted that the trust created was to terminate when the appellant gave directions to the respondent to convey the properties to such person at such time and manner as

the appellant would direct. Counsel contended that the trust deeds do not require to be registered and that they are therefore valid documents.

5.26 In response to the affidavit in opposition to ground two, the appellant's advocates referred to the case of ***Zambia State Insurance Corporation Limited vs Anthony Muyana Musutu***[9], where the Supreme Court held that all words in a statute must be given effect to and none may be regarded as otiose. Counsel urged the court to read sections 4 and 74 of the Lands and Deeds Registry Act together and determine the purpose of the provisions. It was argued that section 74 is an exception to section 4, the general rule.

5.27 On ground three, it was submitted in reply that the learned Judge in the lower court should not have overruled the decision of the registrar which stood as a decision of the High Court when the registrar ruled that the action could not be statute barred because issues relating to trust relationships have to be determined regardless of the passage of time.

5.28 On ground four, it was submitted in reply that the respondent is fully aware of the existence and effect of the trust deeds and cannot argue that the properties were conveyed to him. Counsel further contended that the respondent is using the Lands and Deeds Registry Act to circumvent the agreement between the parties as

stipulated in the trust deeds. It was submitted that the respondent has converted the properties he holds in trust for his own use, contrary to the agreement in the trust deeds which he has always been aware of. We were urged to allow the appeal because the trust deeds do not require registration and that section 4 of the Lands and Deeds Registry Act does not override section 74 of the said Act. The appellant also prayed for costs.

5.29 At the hearing of the matter, Mr Ndalameta submitted that he would rely on the grounds of appeal and heads of arguments filed. Mr Tembo also submitted that he would rely on the heads of arguments filed.

6.0 CONSIDERATION OF THE APPEAL AND DECISION

6.1 We have examined the Ruling appealed against, the grounds of appeal and the arguments by counsel relating to the same. At the outset, we propose to address the grounds of appeal in the same order in which they were presented or argued before us.

The first ground of appeal, as we see it, raises the question whether the lower court was on firm ground when it found that trust deeds are documents that require to be registered in accordance with section 4 of the Lands and Deeds Registry Act and that the trust deeds that were entered into by the appellant and the respondent, being unregistered are null and void ab initio.

6.2 We have examined the record of appeal. The statement of claim shows that in or about 1985 and 1986, the plaintiff resolved to convey properties on plot numbers. 194, 720 and 804, Lusaka to the respondent as the major shareholder and managing director of the plaintiff was relocating to Zimbabwe. The intention of the parties, according to the plaintiff's averments in the statement of claim was to transfer the properties to the respondent to be held in trust on behalf of the plaintiff so that the defendant would manage the properties for the benefit of the plaintiff company.

6.3 It was further averred that after the appellant and the respondent executed a trust deed, it was agreed that the defendant would not pay the sums of ZMK40,000.00, ZMK12,500.00 and ZMK19,000.00, which had been agreed to be paid by the respondent to the appellant for the properties, as per the assignments that were executed, bearing in mind that the conveyance of the properties was not a sale.

6.4 In 2014, the appellant wrote to the respondent through its advocates, seeking a detailed account of all the monies received in respect of rent paid for the properties since the trusts were created, and sought the respondent's consent to transfer documents which would ensure that the properties vest in the appellant's name or any nominee of the appellant when so requested. The respondent refused to account and alleged that he was the owner of the

properties. He further averred that no trust was created in his favour as all the properties were sold and conveyed to him vide assignment deeds and not by trust deeds.

6.5 The lower court, in its ruling relied on section 4 of the Lands and Deeds Registry Act which provides that-

> ***(1) Every document purporting to grant, convey or transfer land or any interest in land, or to be a lease or an agreement for lease of permit of occupation of land for a longer term than one year, or to create any charge, and all bills of sale of personal; property whereof the grantor remains in apparent possession, unless already registered pursuant to the provisions of "The North-Eastern Rhodesia Lands and Deeds Registry Regulations, 1905" or "The North-Western Rhodesia Lands and Deeds Registry Proclamation 1910" must be registered within the times hereinafter specified in the registry or in a district registry if eligible for registration in such District Registry."***

The lower court then found that the trust deed in casu null and void ab initio for want of registration.

6.6 However, a perusal of the said trust deeds that were executed in September, 1985 and March, 1986 indicates that the deeds were a declaration that the respondent **holds plot numbers 194, 720 and 804 in trust on behalf of the appellant.**

6.7 Section 74 of the Act provides that trust deeds may be registered in the miscellaneous register. In addition to this, section 10 provides as follows:

> ***"In the miscellaneous register shall be registered any deed or instrument declaring a trust which is desired to register and any document, other than relating to land, either required by any law to be registered and in respect of which no special registry office is indicated or which it is desirable and proper to register."***

As such, a trust deed may be registered when it is desired to do so in the miscellaneous register. It is elective and if a party does not desire to register it, he may not do so. On that basis, we are of the view that the lower court misdirected itself when it relied on section 4 of the Lands and Deeds Registry Act and ruled that the trust deeds needed to be registered as they granted an interest in land for a period of more than one year. We find merit in ground one of the appeal for the aforementioned reasons.

6.8 The second ground of appeal raises the issue of the court having erred in law and fact when it did not construe the Lands and Deeds Registry Act in its entirety. It was contended on behalf of the appellant that the learned court did not address its mind to the import of section 74 of the Act which specifically relates to the

registration of trust deeds. Counsel argued that it is a principle of statutory interpretation that whenever there is a general enactment and a particular one, the latter is deemed to be operative. It was further argued that section 4 is a general provision which cannot override section 74 of the Lands and Deeds Registry Act which is specific. According to counsel, section 74 provides that there are other documents such as trust deeds that cannot be entered in the lands register created by section 9(a) of the Lands and Deeds Registry Act.

6.9 We have considered section 4 and section 74 of the said Act. Specifically, section 74 provides that-

> ***"74(1) Except as hereinafter provided in relation to public lands, no entry of any notice of any trust shall be made in the township register, in the lands register, in any provisional certificate or in any such entry, if made, shall have no effect.***
>
> ***(2) Trusts affecting land may be declared by any deed or instrument, and such deed or instrument may be registered in the Miscellaneous Register."***

6.10 In the case of ***Zambia State Insurance Corporation Limited vs Anthony Muyana Musutu (supra)***, the Supreme Court stated that all the words in a statute must be given effect to and none of them may be regarded as otiose.

6.11 Having perused sections 74 (2) and 10 of the Lands and Deeds Registry Act, we are of the view that a deed creating a trust may be registered in the Miscellaneous Register." Our understanding of the wording of section 74(2) is that the registration of trust deed in the Miscellaneous Register is not mandatory. That being the case, we form the view that the lower court erred when it concluded that a trust deed was a document that needed registration within the contemplation of section 4 of the Act. The lower court did not consider the provisions of sections 9, 10 and 74, which are specific relating to trust deeds and did not construe the Act in its entirety. The provisions of section 74 of the Act are particular and operative, thus overriding those of section 4 of the Act. We form the view that the trust deeds in casu are therefore valid even if they were not registered and that the lower court erred when it dismissed them as being void ab initio. We find merit in ground two of the appeal and it succeeds.

6.12 As to the third ground of appeal, it is unnecessary for us to determine this ground as the first and second grounds are determinative of the appeal. We also consider it otiose to address ground four as ground one and two have succeeded. In any case, we would not want to pre-empt the main matter in the court below.

6.13 The lower court's ruling is accordingly set aside and the matter is sent back to the High Court for trial before the same Judge. Costs are awarded to the appellant in this court and in the court below, to be taxed in default of agreement.

F. M. CHISANGA
JUDGE PRESIDENT - COURT OF APPEAL

D.L.Y. SICHINGA
COURT OF APPEAL JUDGE

P.C.M. NGULUBE
COURT OF APPEAL JUDGE