

IN THE HIGH COURT FOR ZAMBIA

2006/HK/247

AT THE DISTRICT REGISTRY

HOLDEN AT KITWE

(CIVIL JURISDICTION)

BETWEEN:

FRED BANDA

- PLAINTIFF

AND

ZCCM INVESTMENT HOLDINGS PLC

- 1ST DEFENDANT

LORRAINE BANDA

- 2ND

DEFENDANT

ASTRIDA MWAPE

- 3RD DEFENDANT

Before Honourable Madam Justice C.K. Makungu

For the Plaintiff: Mr. A. Imonda of Messrs A. Imonda & Co.

For the 1st Defendant: Mr. P. Chamutangi - In-house Legal
Counsel ZCCM (IH) Plc

For the 2nd Defendant: Mr. P. Kasonde of Messrs Patrick Kasonde
& Co.

For the 3rd Defendant: Mr. E. Banda of Messrs MNB Legal
Practitioners.

JUDGMENT

Cases Referred to:

1. *Timothy Hamaundu Muuka Mudenda vs Tobacco Board of*

Zambia SCZ No. 49 of 1998.

2. *ZCCM Ltd & O. K. Simwinga vs Francis Khama Appeal No. 71 of 2001*
3. *G. F. Construction (1976) Ltd vs Rudnap (Z) Ltd and Another (1999) ZR 134*
4. *Titus Chinyoyi vs ZCCM Investment Holdings Plc and Angela Mwape Kashiwa Appeal No. 120/2007 (Unreported).*

This matter is a consolidation of cause No. 2006/HK/247 where Fred Banda sued ZCCM Investment Holdings Plc and Lorraine Nankonde Banda as 1st and 2nd Defendant respectively, claiming for a declaration that he is the rightful owner of House No. 121 Kalungwishi Street Nkana East Kitwe which he purchased from ZCCM and for possession of the house, mesne profits to be paid by the 2nd Defendant from 31st March 1999 to date of vacating at K900,000 per month, interest and costs. AND cause No. 2007/HK/508 where Astrida Mwape has sued Fred Banda, Moffat Banda and ZCCM Investment Holdings Plc as 1st, 2nd and 3rd Defendants respectively. Her claims are as follows:

1. An Order or declaration that she and the 1st and 2nd Defendants are entitled to occupy the houses purchased by them as an incidence of their employment with the 3rd Defendant.
2. An order compelling the 2nd Defendant to vacate house No. 121 Kalungwish Street in favour of the 1st Defendant and a

consequent order against the 1st Defendant to vacate Flat No. 32 club Street in her favour.

3. Against the 3rd Defendant payment of mesne profits at the rate of K1,000,000.00 from the date of the judgment granting her possession of House No. 149 Luella Street.
4. Against the 3rd Defendant an order that they execute all such documents as will be required to convey the subject properties to their respective purchasers including payment of all statutory charges.
5. Interest on all amounts adjudged to be due to the Plaintiff.
6. Costs

On 18th February, 2008, Moffat Banda applied that his name be struck out from cause No. 2007/HK/508 for misjoinder and the application was granted by the Deputy Registrar on the ground that Astrida Mwape had no cause of action against him.

In case No. 2006/HK/247, ZCCM Investment Holdings Plc filed a Notice of Admission of Plaintiff's claims on 26th July, 2006. The Notice reads as follows:-

- “1. ZCCM Limited duly sold and the Plaintiff duly purchased House No. 121 Kalungwishi Street Nkana East - Kitwe.
2. The Plaintiff has fully paid the purchase price and is entitled to an order for vacant possession.
3. That ZCCM Limited has no Tenancy

Agreement or contract of Sale of House No. 121 Kalungwish Street, Nkana East, Kitwe with Lorraine Nankonde Banda.

4. That House No. 121 Kalungwish Street, Nkana East - Kitwe was officially allocated to Moffat Banda as an incidence of his employment with ZCCM Limited.
5. That the official occupant of House No. 121 Kalungwishi Street, Nkana East, Kitwe Moffat Banda declined to purchase the house as sitting tenant and was offered an alternative House No. 149 Luela Street Nkana East, Kitwe which Moffat Banda accepted, paid for and is in possession or control of the said house.
6. That Lorraine Nankonde Banda was not an employee of ZCCM Limited.
7. That the claim to purchase ZCCM houses by former employees of ZCCM clubs was dismissed by the Industrial Relations court in the complaint of Kennedy Kalunga & Others vs ZCCM Comp. No. 161 of 1999 and the 2nd Defendant is bound by the provisions of Section 85 (6) of the Industrial and Labour Relations Act Cap 269.”

Lorraine Nankonde Banda’s Amended Defence and Counter Claim

filed in cause No. 2006/HK/247 on 28th November 2007 is briefly that:

“She denies the allegations made by the Plaintiff. She will aver that she is the sitting tenant entitled to purchase the house she occupies in accordance with the home empowerment policy. And that the action is statute barred as it was instituted after 6 years. The action is irregular as there is already another case involving the same parties and the same subject matter before the Supreme Court. Lorraine Banda counter claims that she has always been the sitting tenant of the house in question. And that the Plaintiff has never been a sitting tenant and that the offer to the Plaintiff was wrongful and therefore null and void. So the court should dismiss the action and make an order that since she was seconded to Power Dyanamos Football Club, she is entitled to purchase the house she occupies as a sitting tenant. In the alternative an order that the 1st Defendant do find a suitable house and offer it to her to purchase and damages to be paid by ZCCM to her for wrongful refusal to sell her the house. She also claims interest and costs.”

The Reply and Defence to Counter Claim filed on behalf of Fred Banda on 18th August 2006 in cause No. 2006/HK/247 is as follows

:

“Save in so far as the same consists of admissions, the Plaintiff joins issue with the 2nd Defendant on her defence and will state as follows:

- (i) That there is no contract between the Plaintiff and the 2nd Defendant to give rise to reference to the statute of limitation.
- (ii) That the Contract between the Plaintiff and ZCCM Limited for the Sale or Purchase of House No. 121 Kalungwishi Street Nkana East Kitwe has not been breached by any of the parties thereto and the 2nd Defendant is not a party thereto.
- (iii) That the obligation of the 2nd Defendant to pay mesne profits or rent for occupation of the house is continuing obligation and cannot be extinguished by lapse of time.
- (iv) That Power Dynamos Football Club was not a subsidiary of ZCCM Limited and was not a registered Club under the Societies Act or Club Registration Act. The 2nd Defendant was therefore employed by an illegal and illegitimate entity.”

In summary, Astrida Mwape's claims contained in her statement of claim in cause No. 2001/HK/508 are as follows:

Lorraine Banda is not entitled to possession of House No.121 Kalungwishi Street which belongs to Fred Banda. Fred Banda has been occupying Flat No. 32 club Street Nkana East Kitwe which she (Asrida) bought from ZCCM as an incidence of her employment.

It is clear from the defence that was filed by Moffat Banda before his name was struck out from the proceedings for misjoinder that Lorraine Nankonde Banda is his wife who claims that she was also employed by ZCCM and applied to ZCCM to purchase House No. 121 Kalungwishi Street which ZCCM refused to sell her, so she has challenged ZCCM in that regard. They are in occupation of that house as a couple but Moffat Banda who also worked for ZCCM bought House No. 149 Luella Street Nkana East - Kitwe from ZCCM as a former employee of that Company.

In case No. 2007/HK/508 Fred Banda's defence was in summary that:

"Vacation of House No. 121 Kalungwishi Street, Nkana East Kitwe by Lorraine Nankonde Banda and her husband to allow him occupy it is a pre-requisite to Astrida Mwape taking possession

of Flat No. 32 Club Street, Nkana West, Kitwe.”

In case No. 2006/HK/247 ZCCM’s defence to Lorraine Banda’s amended Counter Claim filed herein on 9th January 2008 is as follows:

1. The contents of the 2nd Defendant’s counter claim are denied as the 2nd Defendant has never entered into a tenancy agreement with the 1st Defendant.
2. The 1st Defendant will aver that the offer of house No. 121 Kalungwishi Street, Nkana East Kitwe to the Plaintiff was lawful as the said Plaintiff was an employee of the ZCCM at the material time and the Plaintiff and 1st Defendant will further aver that house No. 121 Kalungwishi Street, Nkana East - Kitwe was allocated and occupied by Moffat Banda as an incident of his employment with ZCCM.
3. The 1st Defendant will also aver that when Moffat Banda declined to buy House No. 121 Kalungwishi Street Nkana East, Kitwe he was sold House No. 149 Luella Street Nkana East, Kitwe by the 1st Defendant.
4. The 1st Defendant admits that the 2nd Defendant was its employee but was not allocated any house by the 1st Defendant.

5. Save as herein specifically admitted the 1st Defendant denies each and every allegation contained in the 2nd Defendants amended Counter Claim.”

A summary of the evidence adduced herein is as follows:

PW1 Fred Banda testified that he worked for ZCCM Nkana Division from 31st March 1995 until 31st March, 2000. In July 1997 when ZCCM started selling its stock of houses to its employees he was staying at 78 Kpark Flats, Nkana West, Kitwe. He said under the scheme of selling houses, ZCCM had allowed employees to buy houses they were staying in as sitting tenants or on application to buy any other available Company house. He did not apply to purchase the flat he was occupying but for House No. 121 Kalungwishi Street, Nkana East Kitwe from a list of houses that were advertised for sale. Before making the application he checked with Nkana Division Housing Department as to who the official sitting tenant of the house was and why it was advertised. He was informed that the sitting tenant of the house was one Mr Moffat Banda who was working for ZCCM at Nkana Division Concentrator Department. Thereafter he went and confirmed with Moffat Banda that he was the sitting tenant. Moffat Banda informed him that he had opted to buy House No. 149 Luella Street Nkana East, Kitwe instead of 121 Kalungwishi Street.

PW1 explained that after lodging his application, Nkana Division Housing Sale Committee invited him for interviews. After attending the interviews, he was offered the house in November, 1998. His letter of offer is on pages 1 - 3 of the Plaintiff's bundle of documents filed herein on 24th August 2006. He endorsed the last page of the offer in acceptance of the offer. On 10th November 2009 he entered into a Contract of Sale with ZCCM in relation to the same house, copy of which is on pages 4 - 6 of the Plaintiffs bundle of documents. He later received a letter dated 17th March 1999 from the vendor informing him that the full purchase price had been deducted from his accrued terminal benefits. The letter is on page 7 of his bundle of documents. Thereafter he received a copy of the letter dated 22nd March 1999 written by the company to Moffat Banda informing him that house No. 121 Kalungwishi Street which he was renting from ZCCM had been sold to him (PW1). PW1 said he later requested Moffat Banda to vacate the house but he declined saying that House No 149 Luela Street Nkana East Kitwe that he had bought from ZCCM was occupied by somebody else who had obtained an injunction restraining him from evicting her.

PW1 further stated that whilst waiting for Moffat Banda to vacate the house, he received a writ of summons and an injunction restraining the defendants from evicting her from the house. He was sued with ZCCM over the same house by Moffat Banda's sister in law by the name of Florence Nankonde who was claiming

to be the sitting tenant entitled to purchase it. Copies of the Writ of summons, a Statement of claim, Affidavit of Service and Notice of Discontinuance filed in that matter are exhibited in the Plaintiff's Bundle of documents from pages 9 to 15. The case was wholly discontinued on 18th August, 1999.

The said affidavit of service was sworn by Lorraine Nankonde Banda the 2nd Defendant herein. PW1 said Lorraine Nankonde Banda is the one who actually served him with the court process relating to Florence Nankonde's case. When that matter was discontinued, he sued Moffat Banda for Possession of the house in the Kitwe Magistrate Courts where it turned out that Moffat Banda had no interest in that house but his wife. Thereafter he instituted this action.

Under cross examination he said that to the best of his knowledge Moffat Banda has vacant possession of house No. 149 Luella Street Nkana East - Kitwe. He did not know whether Lorraine Banda ever worked for ZCCM. He was evicted from the Kpark Flat by the person who had bought it. Then ZCCM allocated him with Flat No. 32 Club Street which he still occupies. He has never lived in House No. 121 Kalungwishi Street Nkana East - Kitwe. He further stated that he has no interest in the flat that he occupies. He just resides there because he has been unable to take possession of house No. 121 Kalungwishi Street Nkana East Kitwe.

He is aware that the Flat in question was sold to Astrida Mwape Ndlovu by ZCCM.

DW1 Lesa Patrick Kanyanta who was called on behalf of the 1st Defendant testified that in 1999 he was working for ZCCM Nkana Division as an Artisan. He was also the Vice Chairman of the Mine Workers Union of Zambia. He was also a member of the Nkana Division House Sale Committee. He said the persons eligible to purchase ZCCM houses were employees of ZCCM and each division had its own employees and its own houses. Each Division House Sale Committee was responsible for selling houses to employees of that particular division. If the occupant of a ZCCM house refused to purchase it, that house would be advertised for sale to other ZCCM employees. Fred Banda applied for a house and was offered house No. 121 Kalungwishi Street Nkana East - Kitwe which Moffat Banda who was a sitting tenant had refused to purchase. That house was advertised upon Mr Banda's refusal to purchase it.

The 2nd Defendant gave evidence as DW2. She said that in 1995 she was employed by ZCCM Power Department as an Accountant. In the same year she was seconded to Power Dynamo's Football Club where she worked until 1998 when she was declared redundant by ZCCM. She referred to page 2 of the Defendant's bundle of documents which she filed herein on 5th February, 2007 which is a copy of her letter of employment dated 8th April, 1995

indicating her conditions of service. She also referred to page 3 of the same bundle of documents which is a copy of her redundancy letter dated 18th December 1998. She also referred to pages 5 to 11 of the same bundle of documents where she has exhibited the Rules Governing the sale of ZCCM houses to Zambian Employees.

She further stated that she has been a sitting tenant of House No. 121 Kalungwishi Street Nkana East - Kitwe for about 20 years. The house was sold to a ZCCM employee who was not a sitting tenant. She added that she qualifies to buy the house pursuant to Clause 2 (1), (3), (6) of the rules governing the sale of ZCCM houses. She said at the material time she was married to a ZCCM employee with whom she was staying in the house as ZCCM did not offer her alternative accommodation. She maintained her Counter Claim.

Under cross examination she said that by the time that she applied to ZCCM for employment, she was staying at house No. 121 Kalungwishi Street, Nkana East - Kitwe which was allocated to her husband Moffat Banda who was an employee of ZCCM. She further stated that her application for employment on page 1 of her bundle of documents indicates the said address as her residential address. She was being paid under mine No. ZP3241. Her husband never applied to ZCCM to buy House No. 121 Kalungwishi Street, Nkana East - Kitwe instead he bought house

No. 149 Luela Street Nkana East - Kitwe which he had never lived in.

She admitted that her sister Florence Nankonde had sued ZCCM and Fred Banda in case No. 1999/HN/24. In that matter, in paragraph 1 of the Statement of Claim her sister had claimed that she was occupying House No. 121 Kalungwishi Street Nkana East - Kitwe which was allocated to her in 1991 by her employer ZCCM. She said she had sworn an affidavit of service in that matter describing herself as a business lady and sister to the Plaintiff. She further stated that she was employed by ZCCM in salary grade SG1 and was not allocated a house as she was already staying in a ZCCM house by virtue of her marriage.

DW3 Noel Sandukiya called by the 2nd Defendant testified that he has known the 2nd Defendant since February 1995 when he started working with her at ZCCM power division. He said he was seconded to Power Dynamos Football Club in February 1995 and qualified to buy a ZCCM Company house. ZCCM offered him a house in which he was a sitting tenant, which he bought.

At the end of DW3's testimony, Learned Counsel for the 3rd Defendant said that his client had agreed with him not to give evidence or call witnesses. So she was relying on the evidence adduced by Fred Banda because she is based in England with her

family and does not dispute Fred Banda's claims against ZCCM, just like ZCCM.

It is not in dispute that the Plaintiff is a former employee of the 1st Defendant Company who bought house No. 121 Kalungwishi Street, Nkana East - Kitwe from the company in November 1998. The said house was advertised for sale when Moffat Banda who is also a former employee of ZCCM was in occupation as a sitting tenant.

It is also not in dispute that the 2nd Defendant was employed by the 1st Defendant when her husband Moffat Banda had already been allocated the house. Moffat Banda had an opportunity to purchase the said house from the 1st Defendant Company but opted to buy house No. 149 Luella Street Nkana East - Kitwe from the same Company. The 2nd Defendant and her family have remained in occupation of house No. 121 Kalungwishi Street Nkana East - Kitwe to date. Therefore, the Plaintiff has been unable to move to the house that he bought and has remained in occupation of Flat No. 32 Club Street Flats Nkana West, Kitwe which ZCCM had sold to its former employee the 3rd Defendant.

The of Sale of Flat No. 32 Club Street on 31st August 1999 is not in issue. Neither is the sale of house No. 149 Luella.

It is also not in dispute that the 1st Defendant never allocated house No. 121 Kalungwishi Street Nkana East - Kitwe to the 2nd Defendant. The Company did not even offer the said house for sale to the 2nd Defendant.

The issues to be determined are as follows:

1. Whether or not the 2nd Defendant was employed by ZCCM
2. Whether or not the 2nd Defendant has the right to purchase the house that she is occupying or to continue staying there.
3. Whether or not the Plaintiff has the right to continue staying in the 3rd Defendant's Flat.

To answer the first question I have carefully read the documents with regard to the 2nd Defendant's employment in the Defendant's bundle of Documents filed herein on 5th February 2007. From document No. 2 dated 8th April, 1995 which is on the ZCCM Ltd Power Division Kitwe letter head I am satisfied that the 2nd Defendant was employed by ZCCM Ltd which after privatization was changed to ZCCM Investment Holdings Plc. The letter reads as follows:

" 8th April, 1995

Mrs Lorraine N Banda

Mine No. PDS0092

Dear Madam,

CONDITIONS OF EMPLOYMENT AND SERVICES

We are pleased to inform you that you are seconded to Power Dynamos Football Club. During the period of tenure as Accountant for Power Dynamos Football Club, you will be treated as being on unpaid leave of absence from ZCCM, Power Division.

Upon termination of your contract with Power Dynamos Football Club you will retake your appointment under ZCCM Limited, Power Division and you will be redeployed in the same grade you were employed prior to your secondment to Power Dynamos football Club.

Yours faithfully

ZCCM POWER DIVISION

J. Chisenga

SUPERINTENDENT - HUMAN RESOURCES

- cc: - Head of Finance*
- Manager - Power Dynamos football Club
- SPO Welfare
- File."

It is important to note that in the pleadings the 1st Defendant initially denied that the 2nd Defendant was its employee but later admitted that she was employed by the Company.

It is clear from document No. 3 in the 2nd Defendants Bundle of documents which is a copy of a letter of redundancy from ZCCM Ltd Power Division to the 2nd Defendant that she was declared redundant on 18th December, 1998 before ZCCM started selling houses to its employees.

I find that ZCCM started selling its stock of houses to its Zambian employees, giving priority to sitting tenants on 22nd July 1997. There were written rules governing the sale of those houses.

To tackle the second question, I have carefully considered the rules governing the sale of ZCCM houses, the evidence on record and the written submissions filed by all the advocates in support of their clients cases. I will not reproduce the submissions but will follow some of the authorities cited therein.

Mr Imonda cited and relied upon the case of **Timothy Hamaundu Muuka Mudenda vs Tobacco Board of Zambia (1)** to fortify his argument that the 2nd Defendant has no legal right to purchase house No. 121 Kalungwishi Street Nkana East - Kitwe. In that case the Supreme Court held inter alia that:

“ We hold the view that in this case although there may have been political pronouncements, the legal position has always been that a licensee

is not a sitting tenant at law and has no legal right to purchase the house he is living in except where there has been a firm offer and acceptance of the offer to purchase of that house.”

I accept Mr Imonda's submission that since the 2nd Defendant went into occupation of the house because of her marriage to Moffat Banda whom she resides with and has not been offered the house to purchase, she has failed to establish a legal right to purchase it.

I do not accept Mr Kasonde's submissions that the 2nd Defendant as a sitting tenant should have been given first priority to purchase the house. And that only if she had refused to buy the house should the Company have advertised it for sale to other workers. Mr Kasonde argued that there was no evidence that the Plaintiff abided by the procedure of applying to buy House No. 121 Kalungwish Street, Nkana East - Kitwe. The vital document (an application for the house) was not before court. The only document before Court was an offer made by the first Defendant to the Plaintiff which refers to his application, which could have been quite accessible if requested for, and if indeed it did exist.

Mr Kasonde further submitted that his client should be offered the house on the same terms. Alternatively if the 1st Defendant fails to secure a house to sell to the Plaintiff, damages to the time of

vacating the house she currently occupies be ordered payable to her so that she could acquire a house of similar standing in a similar residential area. He said his client should not suffer any disadvantage at all because she qualifies to purchase the house.

My reasons for not accepting Mr Kasonde's submissions are as follows:

The Rules governing the sale of ZCCM houses to Zambian employees provide under clause 2 on Eligibility that:

“(i) Priority will be given to sitting tenants.”

“(v) That the employees who are seconded to subsidiary companies or any other institution, shall qualify”

“(vi) Married couples both of whom work for ZCCM will each quality to buy a house of their own right.”

In this case priority to buy house No. 121 Kalungwishi Street Nkana East - Kitwe was given to the 2nd Defendant's husband who was the sitting tenant recognized by the Company. When he refused to buy it, the Company was free to advertise it for sale. Since there is no evidence that the 2nd Defendant had applied to purchase it, the company was free to deal with the persons who had applied for it. The Plaintiffs evidence that he had applied for the house and was interviewed before an offer was made to him was not challenged in cross examination and there is no evidence to the contrary. So I find that he did apply for the house and that

is why the offer refers to his application. I find that proper procedure was followed when the house was sold to the Plaintiff.

It is clear that when the Plaintiff asked Moffat Banda whether he was buying the house, he said that he had opted to buy 149 Luella Street, Nkana East - Kitwe. He did not say that his wife wanted to buy House No. 121 Kalungwishi Street Nkana East - Kitwe. So the Plaintiff was not aware that the 2nd Defendant was interested in buying the house.

In the case of **ZCCM Ltd and O.K. Simwinga vs Francis Nkama (2)** which was cited by counsel for the 1st Defendant, the Supreme Court ruled that:

“Although the Respondent was a sitting tenant he was not such a sitting tenant as to come within the general policy empowering Zambians to own houses”

The Supreme Court went on to say that:

“The Respondent failed to establish his legal right to purchase the house as he had not shown any offer from the 1st Respondent and he had not shown that his tenancy agreement had a provision of first offer to buy the house.”

In the present case I find that although the 2nd Defendant has lived in the house for a long time, she has never had a tenancy agreement with ZCCM and was not offered the house. She was permitted to occupy the house by her husband. In other words she was her husband's licensee.

The 2nd Defendant was not even sure that she was a sitting tenant thus she swore an Affidavit of Service in cause No. 1999/HN/24.

For the foregoing reasons, I order that the Plaintiff is entitled to possession of house No. 121 Kalungwishi Street Nkana East - Kitwe as the rightful owner. The Plaintiff is at liberty to issue a writ of possession if the 2nd Defendant does not vacate the house within 30 days from the date of this judgment.

As regards the Plaintiff's claim for rent or mesne profits from the 2nd Defendant, in the case of **G. F. Construction (1976) Ltd vs Rudnap (Z) Ltd and Another (3)** the Supreme Court said that mesne profits are damages awarded to a Landlord for holding over a tenancy by a tenant and did not award mesne profits to the respondents as there was no tenancy agreement. However, in the case of **Titus Chinyonyi vs ZCCM Investments Holdings Plc and Angela Mwape Kashiwa (4)** where the High Court had refused to grant mesne profits on the ground that there was no tenancy agreement, the Supreme Court after reaffirming

the law as pronounced in the **G. F. Construction case** said that equity compelled them that the appellant ought to pay for the use of the house from the time he occupied it up to the time he vacates it and the same to be assessed by the Deputy Registrar. So, following the **Titus Chinyonyi case** and for the facts that the 2nd Defendant has continued occupying the house without lawful authority and without paying rent for slightly over 12 years from March 1999 when the house was sold to the Plaintiff and has unlawfully deprived the Plaintiff of the use of that house, I find it equitable to order that the 2nd Defendant must pay for the use of the house from 31st March 1999 until she vacates it. This award should be assessed by the Deputy Director of the Court Operations. I also grant the Plaintiff costs against the 2nd Defendant only. Such costs to be agreed upon or taxed in default of agreement.

I find no merit in the 2nd Defendant's counter claim and dismiss it.

I will now tackle the third issue. I find that the Plaintiff's right to continue occupying Flat No. 32 Club Street, ended when the Flat was sold to the 3rd Defendant. I therefore order that he should yield vacant possession of it to the 3rd Defendant within 30 days from the date hereof, failure to which the 3rd Defendant shall be at liberty to issue a writ of possession.

The 3rd Defendant's claim against Moffat Banda for mesne profits falls away as Moffat Banda is no longer a party to this action and has all along not been in occupation of the Flat.

I grant the 3rd Defendant's claim against ZCCM to execute all documents required to convey the said Flat to her although there is no evidence that the Company had refused to do so. I further find that the 3rd Defendant has no locus standi to make similar claims on behalf of owners of the other properties.

The Plaintiff's costs shall be borne by the 2nd Defendant for obvious reasons. The 3rd Defendant's costs shall be borne equally by the Plaintiff and 2nd Defendant as they are the ones who caused her to commence the action. The 1st Defendant's costs shall be borne by the 2nd Defendant as she is the one who caused the Plaintiff to institute an action against the Company. The costs should be agreed upon or taxed in default of agreement.

Delivered in open Courtday of 2011.

C. K. MAKUNGU
JUDGE

