

(CIVIL JURISDICTION)

BETWEEN:

STEPHEN MOFYA	-	PLAINTIFF
AND		
JELITA MWALE or any person occupying House Number 37 Kasaba Flats Chililabombwe	-	1 <sup>ST</sup> DEFENDANT
ZCCM INVESTMENTS HOLDINGS	-	2 <sup>ND</sup> DEFENDANT

Before the Hon. Mr. Justice I.C.T. Chali in Chambers on the 20<sup>th</sup> day of April,  
2012

For the Plaintiff: Mr. D. Mazumba – Messrs Mazumba and Company

For the 1<sup>st</sup> Defendant: Present in Person

For the 2<sup>nd</sup> Defendant: Ms. S. Namwinga – ZCCM

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**RULING**

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**Cases referred to:**

1. *Beatrice Muimui v. Sylvia Chunda Appeal No. 50/2000*
2. *Zambia Consolidated Copper Mines Limited v. Richard Kangwa and Others Appeal No. 169/99*

The Plaintiff had sued the two Defendants for, inter alia,

1. A declaration that he is the rightful purchaser of Flat No. 37 Kasaba Flats Chililabombwe;
2. An order for possession of the said house; and
3. Mesne profits from 27<sup>th</sup> January, 1998 plus interest thereon.

The Plaintiff pleaded that whilst in the employ of the 2<sup>nd</sup> Defendant he was on 27<sup>th</sup> January, 1998 offered the said property to purchase, which offer he accepted whereby a contract of sale was duly executed between himself and the 2<sup>nd</sup> Defendant.

In its defence, the 2<sup>nd</sup> Defendant admitted that the Plaintiff had indeed bought the property in issue and was entitled to possession thereof.

For her part, the 1<sup>st</sup> Defendant in her defence pleaded that she had been the sitting tenant in the property at the time it was offered to the Plaintiff. She further pleaded that she had been employed by the 2<sup>nd</sup> Defendant and seconded to Konkola Blades Football Club. She claimed that as sitting tenant she was entitled to purchase the said house and sought a declaration to the said effect and to nullify the sale to the Plaintiff.

At the trial of the action the Plaintiff said that he joined ZCCM in 1989. He said on 22<sup>nd</sup> July, 1997 ZCCM started implementing its policy on the sale of its stock of houses. At that time he was a confirmed employee of ZCCM and he applied to buy a house. ZCCM offered him the flat in issue to buy by letter dated 27<sup>th</sup> October, 1997 at a total price of K1,200,000=00. He accepted the said offer and the parties executed a contract of sale on 27<sup>th</sup> January, 1998 and purchase price was later deducted from his accrued benefits with ZCCM. The Plaintiff further said he could not take possession of the property because the 1<sup>st</sup> Defendant was living there and that she was claiming that she had been promised that it would be sold to her. He said the 1<sup>st</sup> Defendant was not an employee of ZCCM but rather of KONKOLA BLADES BUSINESS VENTURES. He said she had since rented the flat out to someone else. He said he was entitled to buy the flat because he was a Zambian as well as a confirmed employee of ZCCM at the time, while the 1<sup>st</sup> Defendant was not an employee of ZCCM.

The 1<sup>st</sup> Defendant testified that ZCCM set up a new company called Konkola Blades Business Ventures in 1995 and she started working for that company on 21<sup>st</sup> December, 1995.

In 1996 she was given the keys to the flat in issue which she started to occupy from 17<sup>th</sup> January, 1996 since it was vacant. However, some one-and-a-half years later the Plaintiff went to tell her that he had bought the flat. She opposed this because she was the one in occupation and ought to have been offered the flat to buy.

Under cross examination the 1<sup>st</sup> Defendant said she had never been given any offer letter for the flat. She said she was aware that the 2<sup>nd</sup> Defendant was supporting the Plaintiff over the flat. She said she had not applied to ZCCM to buy the flat. She said that she has since put the flat on rent.

On behalf of the 2<sup>nd</sup> Defendant Mr. GREENWELL MULAMBYA (DW2) testified that he used to work for ZCCM Nchanga Division from 1988 until 2000. He said he was familiar with the rules and procedures governing the sale of ZCCM in his capacity as Assistant Divisional Secretary in charge of property management. He said when the sale of ZCCM houses commenced on 22<sup>nd</sup> July, 1997 there were rules which were circulated. He referred to **“Rules Governing The Sale of ZCCM Houses To Zambian Employees”** as such document particularly to Clause 2 thereof as to eligibility. He also identified the letter of offer to the Plaintiff, the contract of sale, and Plaintiff’s pay statement which showed that the purchase price of K1,200,000 had been deducted from the Plaintiff’s benefits. DW2 also stated that the only ZCCM subsidiaries at the time were MPELEMBE DRILLING COMPANY, TECHPRO ZAMBIA, and NDOLA LIME COMPANY. He said Konkola Blades was never a subsidiary of ZCCM. As such Konkola Blades employees were not entitled to buy ZCCM houses. He said not all ZCCM employees were housed at the time but those not housed were still entitled to buy ZCCM houses like those occupied by non-ZCCM employees. Further some employees, who could not secure houses to buy in one area or town were offered houses in another area or town as long as they qualified.

I have considered the entire oral evidence before me and the documents produced before court. I have also considered the submissions that were filed by the 1<sup>st</sup> Defendant as well as by Counsel for the 2<sup>nd</sup> Defendant and the authorities cited therein. From the foregoing I find as a fact that the flat in issue belonged to ZCCM. I also find that the Plaintiff was a Zambian and a confirmed employee of ZCCM.

The 1<sup>st</sup> Defendant did not produce any proof that she was employed by ZCCM. She did not produce any letter of offer of employment or pay statement from ZCCM. Neither could she cite her mine number as evidence of such employment. I find as a fact, from the evidence of DW2, that Konkola Blades, her employer, was not a subsidiary of ZCCM.

There were rules governing the sale of ZCCM house. As to who was eligible to buy those houses, Clause 2 provides as follows:

## **RULES GOVERNING THE SALE OF ZCCM HOUSES TO ZAMBIAN EMPLOYEES**

### **2. ELIGIBILITY**

**All confirmed Zambian ZCCM employees in service shall be eligible to purchase Company houses subject to the following provisions:**

- i) Priority will be given to sitting tenants.**
- ii) employees occupying institutional houses or sub standard houses or are un-housed will be offered any available house across the industry;**
- iii) employees who have retired, have been declared redundant, or have been medically discharged, but have not been paid their terminal benefits at the time the scheme is introduced shall qualify;**
- iv) except in cases where the full purchase price is paid, every employee shall sign an undertaking at the time of applying for the purchase of a house to fully pay up for the house upon termination of employment. Failure to pay will result in repossession of the house;**
- v) employees who are seconded to subsidiary companies or any other institution, shall qualify;**
- vi) married couples both of whom work for ZCCM will each qualify to buy a house in their own right; and**

- vii) spouses or dependants of deceased employees who have not been paid their terminal benefits shall also be eligible to purchase the house intended for sale to the deceased employee.**

The 1<sup>st</sup> Defendant claimed that she was in occupation of the flat or sitting tenant at the time the same was offered to the Plaintiff to purchase. She submitted that on that basis she was entitled to buy it. However, she does not appear to appreciate the holding by the Supreme Court in the case of BEATRICE MUIMUI v. SYLVIA CHUNDA Appeal No. 50/2000 which the 1<sup>st</sup> Defendant cited in her submissions. The Supreme Court said:

***“We do not subscribe to the argument that being a sitting tenant is the sole criterion in purchasing of Government, quasi Government houses in the current policy of empowering employees by Government. We take judicial notice that the important criterion is that the potential purchaser has to be an employee of the Government, quasi-Government organization”.***

This Authority is exactly against the 1<sup>st</sup> Defendant’s position in this case.

Clearly, in my view the 1<sup>st</sup> Defendant was not entitled to buy the flat in issue because she did not meet the criteria set out in the Rules.

The position would have been different had the 1<sup>st</sup> Defendant been an employee of a wholly owned subsidiary of ZCCM at the time the sale of the houses commenced in July, 1997. If that were the case I would have been persuaded to invoke such authorities as that of ZAMBIA CONSOLIDATED COPPER MINES LIMITED v. RICHARD KANGWA AND OTHERS Appeal No. 169/99 to hold that she was entitled to purchase the house. But she was not such employee.

On the other hand the Plaintiff was offered the flat in accordance with those Rules. He accepted the offer and paid for it as evidenced by his pay statement.

In the premises the 1<sup>st</sup> Defendant’s counter claim is dismissed.

I enter judgment for the Plaintiff and declare that he is the rightful owner of the flat. I order whoever is in occupation of the flat to give vacant possession thereof to the Plaintiff within 14 days from the date of this judgment. The Plaintiff shall also recover from the 1<sup>st</sup> Defendant only damages for non-use of the said flat from 27<sup>th</sup> January, 1998 until he recovers possession thereof, said damages to be assessed by Learned Deputy Registrar. The damages shall attract interest at the long term Bank of Zambia rate from the date of the writ to the date of this judgment, thereafter at short-term deposit rate until full payment.

The 1<sup>st</sup> Defendant shall pay the costs of this action, including the costs on assessment, said costs be taxed in default of agreement.

Leave to appeal granted.

Delivered at Kitwe in Chambers this 20<sup>th</sup> day of April, 2012

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I.C.T. Chali  
**JUDGE**