

In his evidence at the trial the Plaintiff testified that the deceased was his son and that prior to his death he used to work for a company called MPELEMBE PROPERTIES and had been allocated the house in issue in 1984 to live in by virtue of his said employment. He said at the time the deceased died on 12th June, 2000 the deceased was still living in that house. By then the Government had introduced a home empowerment scheme through which the houses of public authorities and parastatal companies were to be sold to the employees occupying such houses. In this case house number 2, 5th Street, Mindolo Miseshi, Kitwe was supposed to be sold to the deceased but it was instead sold to the 1st Defendant. The Plaintiff said that when the deceased learnt about the said sale, the Plaintiff and his late brother complained to Government who assured them that the house would be sold to the deceased.

Under cross examination, the Plaintiff said that MPELEMBE PROPERTIES was a subsidiary of the 2nd Defendant but that he did not know what was meant by “**subsidiary**”. He said he was not aware of the existence of rules governing the sale of houses belonging to parastatal companies. He also admitted that he did not have any letter offering him or the deceased the said house to buy. He said he had not paid any money for it and neither was he paying any rent for it. The house is presently occupied by the Plaintiff’s daughter, CHRISTINA LUNGU, because his sister in law left to go and live in the village.

The 1st Defendant testified that she had been working for ZCCM as a nurse attached to Wusakile Hospital between 1977 and 2007. In 1999 she applied to buy one of the ZCCM houses and was offered the house in issue by letter dated 19th July, 1999 which she accepted. She paid a total of K2,450,000 by way of deduction from her accrued benefits with the company. Accordingly a change of title was effected in her favour at the Lands and Deeds Registry on 3rd December, 2008. She said she was not living in the house because the people who are in occupation thereof have refused to vacate it.

Under cross examination she said that although she was entitled to be accommodated by her employer she did not see the need to insist on being accommodated because she was living with her husband in their own house at the

time. She said she had not applied specifically to buy the house in issue when the time to sale houses came. According to her, the person who was living in that house at the time was not a mine employee but used to work for MINESTONE, not MPELEMBE PROPERTIES.

DW2 was GREENWELL MULAMBYA who said he used to work for ZCCM's Nchanga Division from 1988 until 2000 when he retired. He said he was familiar with the rules and procedures for the sale of ZCCM houses in his capacity at the time as ASSISTANT DIVISIONAL Secretary in charge of property management. His duties had included overseeing properties occupied by ZCCM employees as well as those leased to other people, as well as to pay levies to local authorities and Ministry of Lands. He said he was in that position when the sale of ZCCM houses commenced on 22nd July, 1997 and that he was specifically manning the computer and entering data and generating letters of offers of sale of the Company's houses.

DW2 referred to the **“Rules Governing the Sale of ZCCM Houses to Zambian Employees”** in the 2nd Defendant's Bundle of Documents and the clause therein on eligibility. He said at that time there were only three subsidiaries of ZCCM, namely, MPELEMBE DRILLING COMPANY, TECHPRO ZAMBIA, and NDOLA LIME COMPANY. He said MPELEMBE PROPERTIES was not a subsidiary but only a service provider or contractor to ZCCM.

After considering the above evidence I find as a fact that the deceased was not working for either ZCCM or one of its three subsidiaries. The only subsidiaries of ZCCM were those mentioned by DW2. I also find that up to the time of his death the deceased had not received any offer from ZCCM to buy the house in issue. What the Plaintiff produced before me was only a copy of the letter dated 12th November, 1999 from the Deputy Permanent Secretary Copperbelt Province to the Director – Human Resources at ZCCM which reads in part:

“CBP/101/1/16

November 12, 1999

**The Director – Human Resources
ZCCM Limited
Mukuba Pension House
KITWE**

ATTENTION: MR. D.C. MWIMBA

HOUSE NO. 2-5TH STREET, MISESHI MINDOLO – KITWE

I refer you to attached copy of letter AS/C828/99 dated 4th November, 1999 in which your Acting Manager Human Resources has informed Mr. C. Lungu sitting tenant of the allocation of the same house to Ms. Prisca Namukoko.

Also attached is a copy of reference indicating that Mr. Lungu was an employee of Mulungushi Investments Limited at Mpelembe Properties – Nkana Branch. Mr. Lungu who is a sitting tenant has been to this office to complain that Ms. Namukoko has threatened to evict him from the house in question.

The purpose of this minute is to request you to intervene in this matter and deal with it in accordance with the arrangement agreed between you and this office regarding non-miners who are sitting tenants in ZCCM houses. Please ensure that this matter is resolved amicably.

Your fairness in dealing with this matter will be highly appreciated.

**D.H. Hakayobe
DEPUTY PERMANENT SECRETARY
FOR/PERMANENT SECRETARY
COPPERBELT PROVINCE**

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This letter is not, in my view an “**offer letter**” as the Plaintiff claimed.

On the other hand I find as a fact that the 1st Plaintiff was at the material time a direct employee of ZCCM working at Wusakile Hospital.

Indeed there were rules and procedures governing the Sale of ZCCM houses. As who was eligible to buy such houses, Clause 2 provided 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.**

Clearly in my view the deceased was not entitled to buy the house in issue because he did not meet the criteria set out in the Rules.

On the other hand, the 1st Defendant was offered the house in accordance with those Rules. She paid for the house as evidenced by the deduction made from her accrued benefits.

In the circumstances, the Plaintiff's action is dismissed.

I enter judgment for the 1st Defendant on her counter-claim and order whoever is in occupation of the house to give vacant possession thereof to the 1st Defendant within 14 days from the date of this judgment. The 1st Defendant shall also recover damages for non-use of the said house from 3rd December, 2008 until she recovers possession thereof, said damages to be assessed by the Learned Deputy Registrar. The damages so assessed 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 Plaintiff shall bear the costs of this action, including of assessment, and same shall be taxed if not agreed.

Leave to appeal granted.

Delivered at Kitwe in Open Court this 20th day of April, 2012

I.C.T. Chali
JUDGE

