

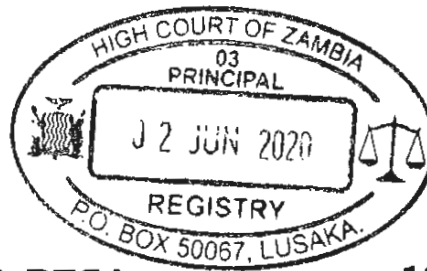
**IN THE HIGH COURT FOR ZAMBIA**

**2016/HP/0231**

**AT THE PRINCIPAL REGISTRY**

**HOLDEN AT LUSAKA**

*(Civil Jurisdiction)*



**BETWEEN:**

**EUSTINA MULENGA BESA**

**1<sup>st</sup> PLAINTIFF**

**FREDDIE MUBANGA**

**2<sup>nd</sup> PLAINTIFF**

**FUNNY KANDOLO**

**3<sup>rd</sup> PLAINTIFF**

**JOSSY PHIRI**

**4<sup>th</sup> PLAINTIFF**

**CHISELA KALIWILE**

**5<sup>th</sup> PLAINTIFF**

**AND**

**NATIONAL FOOD AND NUTRITION**

**DEFENDANT**

**BEFORE HONOURABLE LADY JUSTICE P. K. YANGAILO, IN  
OPEN COURT, ON 2<sup>ND</sup> JUNE, 2020.**

*For the Plaintiffs: Mr. F. Besa - Messrs. Friday Besa &  
Associates.*

*For the Defendant: Mr. P. Kachimba - Senior State Advocate,  
Attorney General.*

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## **JUDGMENT**

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**CASES REFERRED TO:**

1. *Zambia Railways Limited vs. Pauline S. Mundia (2008) Vol. 1 Z.R...;*
2. *Attorney General vs. Frazer and Another - SCZ Judgment No. 14 of 2001;*
3. *Attorney General vs. Steven Luguru - SCZ Judgment No. 20 of 2001;*

4. *Lusaka City Council, National Airports Corporation vs. Grace Mwamba and 4 others -SCZ Judgment No. 21 of 1999;*
5. *Gift Luyako vs. Biton Manje Hamaleke - 2016/CC/A004 Appeal No. 2 of 2016;*
6. *Beatrice Muimui vs. Sylvia Mulenga Chanda - Appeal No. 50/2000;*
7. *Barnabas Ngorima and Rosemary Ngorima vs. Zambia Consolidated Copper Mines Limited and Benson Chomba - Appeal No. 121/2014; and*
8. *J.Z. Car Hire Limited vs. Chala Scirocco & Enterprises Limited (SCZ Judgment No. 26 of 2002).*

**LEGISLATION REFERRED TO:**

1. *National Food and Nutrition Commission Act, Chapter 308, Volume 17 of the Laws of Zambia.*

**OTHER WORKS REFERRED TO:**

1. *Civil Service Home Ownership Scheme Handbook, September, 1996.*

**1 INTRODUCTION**

1.1 The Court has been moved to determine whether or not the Plaintiffs, who are and were at all material times employees of the Defendant in various designations and occupy the Defendant's houses, are eligible to purchase the houses that they occupy as directed by the Government Policy of 1996.

**2 BACKGROUND**

2.1 By Writ of Summons dated 5<sup>th</sup> February, 2016, the Plaintiffs claim the following reliefs: -

- i) *An order directing the Defendant to offer the Plaintiffs the institutional houses as sitting tenants so that they can purchase them;*
- ii) *Damages for mental anguish;*
- iii) *Interest on (ii) above; and*
- iv) *Costs incidental to these proceedings.*

2.2 The Plaintiffs allege that by virtue of their employment status have been occupying institutional houses ("Subject Houses") namely: -

- i) *Eustina Mulenga Besa: Stand No. 7B/441a/2 Kaleya Road, Roma, Lusaka;*
- ii) *Freddie Mubanga: Plot No. 103 B Close, Kareboom Avenue, Avondale, Lusaka;*
- iii) *Funny Kandolo: Plot No. 102 B Close, Kareboom Avenue, Avondale, Lusaka;*
- iv) *Mofu Musonda: Subdivision 16/7/411a, Flat 3 Kaleya Road, Roma, Lusaka;*
- v) *Jossy Phiri: Plot No. 130, Flat 1 Nchoncho Road, Villa Elizabeth, Lusaka; and*
- vi) *Chisela Kaliwele: Plot No. 130, Flat 3 Nchoncho Road, Villa Elizabeth, Lusaka.*

### **3 PLEADINGS**

3.1 The Plaintiffs aver in their Statement of Claim, that around the year 1996, the Government of the Republic of Zambia released a circular, which directed that Government and Quasi-Government institutions should sale its houses to sitting tenants. That following the release of the aforementioned circular, various Government and Quasi-Government institutions sold houses to sitting tenants (a fact that the Plaintiffs urged the Court to take judicial notice of).

3.2 The Plaintiffs claim that they were eligible to purchase their respective Subject Houses as sitting tenants

because the Defendant was a Quasi-Government Institution. Additionally, the Plaintiffs aver that in accordance to the circular aforesaid, the Minister of Health in 2013, wrote to the Defendant approving the sale to the Plaintiffs of the Subject Houses and that the Permanent Secretary, Ministry of Transport Works, Supply and Communication directed the Defendant in August, 2012, to submit applications for the purchase of the Institutional Houses, but that the Defendant has continued to refuse to offer the Subject Houses for purchase by the Plaintiffs as sitting tenants.

- 3.3 The Plaintiffs further claim that following the wilful refusal and neglect by the Defendant, they have suffered loss, inconvenience and anxiety and fear that once they retire, they will lose the opportunity to own the Subject Houses, which the Government gave them approximately twenty years ago.
- 3.4 In its Defence, dated the 3<sup>rd</sup> March, 2016, the Defendant admits that the Plaintiffs are/were its employees at all material times and that the Plaintiffs are occupying the aforementioned institutional houses.
- 3.5 The Defendant avers that as at 17<sup>th</sup> November, 2015, the 3<sup>rd</sup> Plaintiff ceased to be an employee of the Defendant as she retired. The Defendant admits that the Government of the Republic of Zambia did issue a circular in 1996 concerning the sale of Government Houses. The

Defendant avers that some members of Staff were not eligible to purchase the said government houses as they were not employees at the time the circular was issued.

3.6 The Defendant further avers that the claim by the Plaintiffs that various Quasi-Government institutions sold houses to sitting Tenants following the circular is within the Plaintiffs peculiar knowledge. The Defendant denies that the Plaintiffs were eligible to purchase their respective houses as sitting tenants and avers that the Plaintiffs would only have been entitled to purchase the houses if the Defendant had made a decision to sale, which decision was not made. Additionally, the Defendant avers that although houses could be sold, exceptions could be made.

3.7 The Defendant denies the claim by the Plaintiffs that a letter was written to the Defendant by the Ministry of Health in 2013, approving the sale to the Plaintiffs of the Subject Houses and that the Permanent Secretary, Ministry of Transport Works and Supply and Communication directed the Defendant in August of 2012, to submit applications for purchase of institutional houses and that the Defendant refused to offer the Subject Houses to the Plaintiffs as Sitting Tenants to purchase them. The Defendant further denies the Plaintiffs' claim that as a result of the Defendant's wilful neglect, the Plaintiffs have suffered loss, inconvenience

and anxiety. In sum, the Defendant states that the Plaintiffs are not entitled to the reliefs sought.

3.8 In the Reply dated 21<sup>st</sup> July, 2016, the Plaintiffs aver that the fact that the 3<sup>rd</sup> Plaintiff retired does not disentitle her from being offered the Subject House as this was a right that accrued to her when the policy to purchase the institutional houses was introduced. Further, the Plaintiffs aver that as the directive had been issued by the Government, it was not for the Defendant to approve or not and that the Plaintiffs became entitled the moment Government issued the directive regardless of if or when the Defendant implements the Directive. The Plaintiff further denies the claim by the Defendant that there were any exceptions to the Directive by the Minister.

#### **4 EVIDENCE AT TRIAL**

4.1 When the matter came up for trial, the first witness called to testify was the 1<sup>st</sup> Plaintiff Eustina Mulenga Besa (**PW1**), who is the Chief Communications Officer and Head Nutrition Education and Communication of the Defendant Company. During examination in chief, **PW1** mainly reiterated the claims averred in the Statement of Claim.

4.2 **PW1** stated that she had worked for the Defendant since 1989 and that there was a presidential Declaration in 1996 where the President then, Dr. Titus Chiluba, announced the home empowerment scheme for civil

servants, public service workers and quasi-organisations. She testified that the said decision to sell the government pool houses to sitting tenants was a way of empowering workers.

4.3 **PW1** further testified that to her knowledge the Defendant was a body corporate under the Ministry of Health and that following the said Declaration in 1996, the Secretariat of the Defendant wrote to its Board to request that the sitting tenants in the Defendant's housing units be given an opportunity to purchase the said housing units. Furthermore, **PW1** testified that this request was presented to the Board at a meeting and that according to her knowledge the Board agreed that the sitting tenants would benefit from the Presidential Housing Initiative. That the Board further requested the Secretariat or Management to provide the Board with information on the value of the Housing Units to help them make further decisions. **PW1** referred the Court to Page 10 of the Plaintiffs' Bundle of Documents, which contained the minutes of the said Board meeting and invited the Court to the paragraph whose heading reads "**Sale of Commission Houses**", which contained the following: -

*"The Commission requested the secretariat to furnish the Chairman with more information on the value of the houses to enable the Chairman and the Board make the decision. The Board agreed with management that, the houses were built*

*by Government funds, and can be sold, in line with the Government Policy, to sitting Tenants."*

- 4.4 **PW1** testified that she was aware that the Management of the Defendant proceeded to have the housing units valued but thereafter the matter lay dormant as the tenure of the Defendant's Board at the time came to an end. It was her further testimony that **PW1** and other colleagues employed by the Defendant tried to follow up on the sale of Housing Units through correspondence with the Permanent Secretary at the Ministry of Health, who was the controlling officer then. She also testified that the position of the Ministry of Health regarding the sale of the Housing Units kept on changing.
- 4.5 PW1 testified that when President Mwanawasa became President, the Plaintiffs received correspondence from the Ministry of Health, which informed them that Government's position had changed and therefore, the housing units would not be sold. She further testified that at that point she and the other Plaintiffs stopped pursuing the issue.
- 4.6 **PW1** testified that on the 16<sup>th</sup> of April, 2011, when President Michael Sata was in power, during a Press conference on the Copperbelt, he stated that his government would still continue with the home ownership scheme and advised that those that had not benefited from this Presidential Initiative should pursue



it. **PW1** further gave an account of various Government and Quasi-Government institutions that benefitted from this Presidential Housing Initiative.

4.7 **PW1** testified that the Plaintiffs at this point decided to petition the Board again in 2012 and invited the Court to look at Page 20 of the Plaintiffs' Bundle of Documents. She stated that the said document was a follow up, as prior to 2013, the Plaintiffs had petitioned the Board but received no response. **PW1** further testified that upon determining that the tenure of office for the Febby Bwembya-led Board at the time was coming to an end, the Plaintiffs decided to petition the Minister of Health because according to *The National Food and Nutrition Commission Act*<sup>1</sup>, the Minister assumes the responsibility of the Board when there is no Board in place.

4.8 **PW1** stated that following the petition, various correspondence ensued. She referred to page 114 of the Plaintiffs' Bundle of Documents, which contains the letter dated 4<sup>th</sup> March, 2013, from the Minister of Health at the time, Dr Joseph Kasonde to Freddie Mubanga, the 2<sup>nd</sup> Plaintiff herein. According to **PW1**, the Minister of Health stated in that letter that he had written to the Defendant approving in principle the sale of the housing units to sitting tenants, with the proviso that each house be dealt with individually as the Cabinet Office requires that an

exception be made where the house is needed by the institution for security or other reasons, such as, closeness to the institution and that the Permanent Secretary would advise on each case. She further testified that upon receipt of the said letter, the Plaintiffs tried to engage with the then Director of the Defendant, Mr. Casim Massey, but that he was not forthcoming.

4.9 **PW1** further testified that the houses closest to the institution were in Villa Elizabetha and the house where she lives is about 7 kilometres from the institution and that other housing units were in Avondale. She testified that the Handbook which was issued defined which houses were to be considered as institutional houses. Her evidence was that the said definition, was under clause 1.2 of the Civil Service Home Ownership Scheme Handbook and reads as follows: -

*"Dwelling Houses which are attached by use, construction and/or location, to a specialised institution, such as hospitals, schools, colleges, police camps, research stations, military barracks, road camps, immigration and customs posts and used or occupied by an officer of such institution for the benefit and convenience of the institution."*

4.10 **PW1** testified that because the Chief executive at the time, Mr. Massey was not complying with the instruction from the Minister, the Plaintiffs decided to write to the Minister. That whilst the Plaintiffs were pursuing this matter with the Ministry of Health, the Permanent

Secretary - Ministry of Health, Dr. Peter Mwaba at the time, wrote to the Permanent Secretary, Ministry of Works and Supply and attached a list of the respective sitting tenants of the housing units under the Defendant and asked the Permanent Secretary Works and Supply to sale the said Housing Units. According to **PW1**, her house was captured on the said attachment as number 4, Eustina M Besa, Farm Number 441A/7b, Flat 2 Kaleya Road. **PW1** further testified that consequently, the Permanent Secretary of Works and Supply wrote to the Chief Executive of the Defendant at the time, Mr. Massey, to submit the list of names of the sitting tenants and requested that they submit the documentation to apply for the housing units to be sold. She referred to page 104 of the Plaintiffs' Bundle of Documents, which contained the letter from the Permanent Secretary, Works and Supply and Communications to the Chief Executive of the Defendant Commission, dated 13<sup>th</sup> August, 2012.

4.11 **PW1** further stated that during the course of the correspondence, the Chief Executive at the time was changed which period the Plaintiffs continued to further petition the Minister informing him that the Chief Executive had left and that he had not followed the instructions that the Minister had issued. **PW1** further testified that the Plaintiffs were then guided by the

Ministry that the Minister was about to institute a new Board which would carry out his directive. **PW1** stated that a new Board was instituted, led by Robina Koffi and the Plaintiffs decided to brief her on the status of the sale of the Housing Units and requested her to bring the matter before the Board for a conclusion.

4.12 **PW1** testified that in 2015, the 5<sup>th</sup> Plaintiff Jossy Phiri, the 6<sup>th</sup> Plaintiff Chisela Kaliwile and herself, met the Director to discuss the status of the sale of the Housing Units. That the then Executive Director, Robina Koffi, was briefed by the Plaintiffs with the intention that she was going to table the issue to the Board so that the matter could be concluded. That in response, the Executive Director stated that other colleagues within the institution had petitioned against the sale of the Housing Unit to which **PW1** informed her that the Plaintiffs had petitioned the Minister of Health Mr. Kasonde. The Executive Director told her that other colleagues had also petitioned the same Minister of Health. **PW1** further stated that the Plaintiffs were not aware whether the Minister had responded to them or not. **PW1** also testified that the Executive Director then stated that she would present the issue of the sale of Housing Units to the Board. Based on the response by the Executive Director at the briefing, the Plaintiffs resolved that they would take the matter to Court for determination as they

believed they had exhausted all the channels of communication.

4.13 **PW1** testified that the Lawyer that the Plaintiffs engaged wrote a letter to the Defendant's Chief Executive in 2015 instructing that the Subject Houses be sold based on previous correspondences that the Plaintiffs availed to the Lawyer and gave her 7 days within which to respond. **PW1** referred to Pages 115 and 116 of the Plaintiffs' Bundle of Documents, which contained the said letter dated 1<sup>st</sup> September, 2015.

4.14 **PW1** further testified that the Executive Director's response to this letter was that she did not refuse to sale the Subject Houses to the Plaintiffs but that she would bring it to the attention of the Board. **PW1** referred to Page 119 of the Plaintiffs' Bundle of Documents, which contains the said response of the Chief Executive, Madam Robina Koffi, dated 4<sup>th</sup> September, 2015.

4.15 **PW1** stated that following the response from the Executive Director, there has not been any official communication from the Board on the matter. She further stated that another letter was written to the Executive Director by the Plaintiffs' Lawyers and referred to Page 117 which contains the said letter dated 7<sup>th</sup> December, 2015. Furthermore, **PW1** stated that the Plaintiffs then instructed their Lawyer to take the matter to Court.

4.16 **PW1** referred the Court to the Plaintiffs' Bundle of Pleadings at page 9 which contains the Defence and particularly to paragraph five, which reads as follows: -

*"The Defendant will aver at trial that some members of staff were not eligible to purchase the said government houses as they were not employees at the time that the circular was issued."*

4.17 In response to this paragraph, **PW1** testified that as far as she was aware, the circular was issued in 1996, during which time she was already working for the Defendant and was already occupying one of the housing units. That the aforementioned paragraph in the Defence did not apply to her. **PW1** further testified that according to the Minister of Health, Dr. Kasonde's letter dated 4<sup>th</sup> March, 2013, provisions were made for **PW1** and the other Plaintiffs to purchase the housing units. **PW1** also testified that the letter to the Ministry of Works and Supply written by Peter Mwaba, the Permanent Secretary of Ministry of Health at the time, requested the Chief Executive of the Defendant to send names of the sitting tenants, which happens to substantiate her claims that she was entitled to purchase one of the Housing Units.

4.18 **PW1** referred to paragraph 8 of the Defence which states as follows: -

*"The Defendant will aver at trial, that by a letter dated 4<sup>th</sup> March, 2013, the Minister directed that although houses could be sold, exceptions could be made."*

4.19 In response to the above paragraph, **PW1** testified that she did not know of anything that could disentitle her from the directive given. She went on to testify that there was no opportunity given to the Plaintiffs as sitting tenants for the Ministry to determine whether the Plaintiffs were entitled or not. **PW1** further testified that despite receiving instructions through a letter from the Minister of Health, who was writing in his capacity as Board of the Defendant, the Chief Executive disregarded them. Finally, **PW1** prayed for the Court to grant all the claims as set out in the Plaintiffs' Statement of Claim.

4.20 In cross-examination, **PW1** testified that the sale of the Housing Units was a Presidential Initiative. She further stated that according to the Act establishing the Defendant, its Board can decide to sell or purchase Housing Units for the Defendant. **PW1** testified that to her knowledge when the Minister at the time, Honourable Kasonde approved the sale of the Defendant's Housing Units, he did it as a Board in accordance with the Act as he was the Board in place. When referred to Pages 10 and 11 of the Plaintiffs' Bundle of Documents, which contained a portion of the minutes of the 66<sup>th</sup> Board Meeting of the Defendant, in response to why the minutes were not signed, **PW1** stated that to her knowledge minutes are supposed to be signed and went on to state that there were instances when they were not

signed. She further stated that she was not sure if the Board had the power to approve or revoke the sale.

4.21 **PW1** testified that she was not privy to why others petitioned against the sale and was of the view that it may have been because the housing units were few. She further stated that from the time the Presidential Housing Initiative was put in place, the Plaintiffs were and are part of the initial members of staff who requested the Subject Houses be sold to them. She went on to state that the only other person who purchased a housing unit as part of terminal benefits was the former Chief Executive. That this was because the Defendant did not have sufficient funds for his benefits. She further testified that this was done pursuant to a Court settlement where the Court ruled that his benefits would include a house.

4.22 When referred to page 114 of the Plaintiffs' Bundle of Documents, which was the Minister of Health's letter to the 2<sup>nd</sup> Plaintiff, Freddie Mubanga, **PW1** testified that in her understanding, the said letter required the Permanent Secretary, Ministry of Health to advise on each case regarding the sale of the Housing Units, as a follow up. She further testified that there was no follow up by the Permanent Secretary to that letter.

4.23 In re-examination, **PW1** reiterated that the Board was the final approval authority on the sale the Housing Units.



She further stated that when Dr. Kasonde, the Minister of Health at the time, approved the sale of the Housing Units to sitting tenants, he did so in his capacity as the Board of the Defendant as at the time there was no Board in place. **PW1** further testified that the Act provides that when the tenure of the Board comes to an end, the Minister assumes the responsibility of the Board as he constitutes himself as a Board. **PW1** stated that the subsequent Boards, including the then outgoing Chief Executive, Mr. Luneta, agreed to the sale of the housing units. She further stated that she was not aware of any contradictory statements made which indicate that the sitting tenants of the Defendant were not included from benefitting from the Presidential Decree.

4.24 **PW2** was the 2<sup>nd</sup> Plaintiff, Freddie Mubanga, who is the Chief Nutritionist of Public Health and Community Nutrition of the Defendant. His testimony was that he had worked for the Defendant since 1993 and that in 1996 he was staying and is still staying in the Defendants housing unit located in Avondale which is located about 12 to 13 kilometres from the Defendant's offices.

4.25 He further stated that he has been part of the committee that has taken several steps necessary to have this matter resolved in the last 22 years following Government's Decree to sell Housing Units to sitting

tenants. **PW2** testified that in December, 2012 following the Plaintiffs' Petition to the Minister of Health at the time, Honourable Kasonde, he gave the Plaintiffs audience. At the time only **PW1** and the 6<sup>th</sup> Plaintiff Chisela Kaliwile attended the meeting. **PW2** further testified that they presented their case to the said Minister of Health, who was acting as the Chairperson of the Board at the time. After the meeting, the Minister of Health said he would get back to them by 31<sup>st</sup> December, 2012.

4.26 **PW2** testified that in February, 2013, **PW2** and the aforementioned Plaintiffs that had attended the aforementioned meeting wrote a letter to the Minister as a follow up because he had not responded to them by then. He further testified that the Minister responded to him by letter, on his own behalf and as representative of the other colleagues. **PW2** reiterated what was stated by **PW1** with regarding the content of the said letter.

4.27 **PW2** stated that when it became evident to the Plaintiffs herein that the Executive Director and the Board of the Defendant where not going to follow the directive, they sought the Court's intervention. He testified that there had been no letter to him from the Chief Executive Officer regarding the sale of the Housing Units and that he is of the view that the 1996 Government policy to sell units to the sitting tenants is still valid as was evidenced by the

sale of Housing Units to sitting tenants recently by the Forestry Department. **PW2** further testified that the said Policy should be applicable to the Plaintiffs as they qualify in accordance with the guidelines in the Handbook on Sale of Government Institutional Houses to sitting tenants in the Civil Service, copy of which is exhibited on page 43 of the Plaintiffs' Bundle of Documents.

4.28 During cross-examination, **PW2** testified that the Defendant owns twelve houses in Lusaka and one house in Solwezi. He further testified that the Defendant has 58 staff members and that since 1996, a number of employees have left or have died and the housing units that they occupied have been allocated to those engaged after 1996. **PW2** further testified that the high indebtedness of the Defendant should not be a basis for denying him the opportunity to purchase the house as other Quasi-Government institutions are even more indebted.

4.29 In re-examination, **PW2** stated that the criteria for eligibility was seniority and length of service with the Defendant.

4.30 **PW3** was the 6<sup>th</sup> Plaintiff, Jossy Phiri, who is the Media Officer of the Defendant. During examination in chief, **PW3** testified that she had been Media Officer since 1995 and joined the Defendant in 1991 as a Radio Producer.

She referred to the Presidential Directive of 1996 and to the minutes of the Board which were signed by Mr. Chresta Kaluba and co-signed by Mrs. Fanny Kandolo who was the Secretary to the Board, as the basis on which she wanted the House that she is currently occupying offered to her for purchase. She testified that as a basis of her long service to the Defendant she was allocated the house that she is presently residing in. **PW3** reiterated what was stated by **PW1** and **PW2** that Dr. Kasonde, the Minister of Health at the time approved the sale of the Housing Units. She testified that she was eligible to purchase the house she was residing in as she was an employee of the Defendant when the Presidential Directive was issued.

4.31 **PW3** referred to Page 10 of the Plaintiffs' Bundle of Pleadings and particularly to paragraph 8, wherein the Defendant avers that by a letter dated 4<sup>th</sup> March, 2013, the Minister directed that although the houses could be sold, exceptions could be made. In response to the said paragraph, **PW3** testified that her house was 3 kilometres from the Defendant's premises and that she had not received any letter stating that she could not purchase the Housing Unit she was occupying based on the said exceptions. There was no cross-examination conducted for this witness.

4.32 **PW4** was the 3<sup>rd</sup> Plaintiff, Funny Kondolo, who is a former Administration Manager of the Defendant. During examination in chief, **PW4** testified that she joined the Defendant in September of 1987 and went on early retirement on 17<sup>th</sup> November, 2015. She reiterated the previous witnesses' position regarding the Presidential Housing Initiative, the directives issued in 1996 and the approval by the Defendant's Board regarding the sale of the Housing Units. She further testified that the position of the Defendant regarding the sale of the Housing Units has been contrary to the Presidential Policy as the Ministry wants to sell the Housing Units to the Plaintiffs. **PW4** also testified that the Housing Unit that she presently occupies is 10 Kilometres from the Defendant's Head Office and that she has not been informed that she is not eligible to purchase the said Housing Unit.

4.33 **PW4** testified that despite retiring in 2015, she had accrued her right to be offered to purchase the Housing Unit from 1996 and therefore is eligible. She further testified that the Government Policy has never been revoked and applies even to employees that joined the Defendant after 1996. She stated that despite the fact that the Board has not made a decision to sell, the Government Policy gives her and the other Plaintiffs the right to purchase the Housing Units.

4.34 **PW4** referred the Court to the Defendant's Supplementary Bundle of Documents, which contains a letter to the Minister of Health, Dr. Kasonde from the Board Chairperson of the Defendant dated 1<sup>st</sup> December, 2015. The said letter contained a recommendation to the Ministry of Health that the Defendant's Housing Units should not be sold based on the following reasons: -

1. *The Commission struggles financially and entirely relies on Government Grants to run its operations;*
2. *The Commission assets can be rented out on a commercial basis to generate funds to supplement the government grant;*
3. *Selling houses will be stripping the institution and it is unlikely that the institution would acquire similar assets at any time in the future; and*
4. *Staff who are not housed had petitioned the Ministry's office to stop the sale of the houses in their letter dated 7<sup>th</sup> May, 2013.*

4.35 **PW4** testified that she had never seen this letter before. She further testified that the letter was written by a Chairperson of the Board, but made no reference to a Board Meeting where the contents of the said letter were articulated nor does it refer to a Board resolution and requested the Court not to consider the Contents of the said letter.

4.36 During cross-examination, **PW4** testified that according to the letter written by the Minister of Health, Dr.

Kasonde, the sale of the Defendant's Housing Units to sitting tenants had been approved subject to conditions. PW4 further testified that in the said letter, closeness to the Defendant's premises was one of the conditions to be considered when selling the Housing Units and that the Permanent Secretary was given the authority to advise on the other conditions.

4.37 **PW4** testified that she was aware of the financial challenges that the Defendant was facing but was of the view that the said challenges should not supersede the Government's Policy to sell the housing units. When referred to Page 82 of the Plaintiffs' Bundle of Documents, which contained a letter dated 20<sup>th</sup> May, 2004, to the Permanent Secretary, Ministry of Health from the Permanent Secretary, Ministry of Works and Supply informing him of the Government's position not to sale the Defendant's Institutional Houses, **PW4** testified that the said letter was written in 2004 while the Government Policy directive on Housing was issued in 1996.

4.38 In re-examination, **PW4** testified that following the letter of approval of the sale written by the Minister of Health, Dr. Kasonde, in 2013, she was not aware of any final or subsequent decision that was made regarding the sale of the Defendant's Housing Units. She further stated that nothing has been advised by the Permanent Secretary

regarding the sale of the Housing Units as directed by the Minister of Health in the said letter.

4.39 **PW5** was the 4<sup>th</sup> Plaintiff, Musonda Mofu, who is the Deputy Executive Director of the Defendant. He testified that at the time he joined the Defendant on 29<sup>th</sup> October, 2001, the Policy to sell the Housing Units was and still is in place and that he is therefore entitled to purchase the housing unit that he is currently occupying. **PW5** further testified that he was aware of the contents of the letter written by the Minister of Health, Dr. Kasonde and that there have not been any contrary subsequent decisions. He furthermore testified that it was the first time that he had seen the letter contained in the Defendant's Supplementary Bundle of Documents. He also testified that no reason was given to him as to why he could not purchase the Housing Unit. He further prayed for the Court to grant him the reliefs as set out in the Plaintiffs' Statement of Claim.

4.40 During cross-examination, **PW5** testified that the houses cannot be sold without Board's decision and that the letter written by the Minister of Health, was written by him in his capacity as the Board. He further stated that the letter contained in the Defendant's Supplementary Bundle of Pleadings is dated 1<sup>st</sup> December, 2015 and that at the time, a Board was in place. **PW5** testified that the



Board had authority to sell the Housing Units but needed clearance from the Minister.

4.41 During re-examination, **PW5** testified that according to the minutes of the Special Board Meeting held on 23<sup>rd</sup> July, 2004 contained on Page 12 of the Plaintiffs' Bundle of Documents, the decision to sell the housing units was upheld and that no subsequent Board resolution overturning this decision was made. He further testified that there were no minutes to support the decision set out in the letter contained in the Defendant's Supplementary Bundle of Documents and that although the Commission is independent, it is not empowered to disregard Government Policy. He further testified that certain decisions have to be ratified by the Minister before they are effected.

4.42 **PW6** was the 6<sup>th</sup> Plaintiff, Chisela Kaliwile, who is the Principal Nutritionist of the Defendant. During examination in chief, she mainly reiterated what the other witnesses had said. Her further testimony was that she joined the Defendant in 1996 and that she was eligible to purchase the housing unit she was presently occupying. **PW6** referred to Page 43 of the Plaintiffs' Bundle of Documents, which contained the Handbook on the Civil Service Home Ownership Scheme and particularly to section 2 of the said Handbook, which outlined the criteria on eligibility. She testified that she

was eligible as she is a confirmed Civil Servant who is in service and is a legal tenant.

4.43 During cross-examination, **PW6** testified that other employees similar to herself and the Plaintiffs, such as the Flying Doctor Services, were sold houses. She further testified that the minutes of the 66<sup>th</sup> Board meeting and those of the Extra Ordinary Special Board meeting contained in the Plaintiffs' Bundle of Documents were not signed and stated that a document that is not signed is not authentic. **PW6** further testified that she was aware that the Ministry of Works and Supply is in charge of Government Houses.

4.44 During re-examination, **PW6** testified that he was basing his claims against the Defendant on the letter from the Minister of Health, Dr. Kasonde.

4.45 That marked the close of the Plaintiffs' case.

4.46 The Defendant called one witness, who is Phoebe Albina Bwembya (**DW1**), who was a member of the Board of the Defendant whose tenure ended in 2015. **DW1** testified that as a Board member, the Board provided oversight on the financial budgets and programs brought to the Board each year and that this included safeguarding the assets of the Defendant. **DW1** further testified that the decisions of the Board were taken to the Minister for approval as the final authority pursuant to the Act of 1967. That the matter before this Court was brought

before the Board but that the Board refused to authorise the sale of the Subject Houses. **DW1** stated that the Professor Chintu led Board wrote to the Minister informing him of why the houses should not be sold. She referred to the Defendant's Supplementary Bundle of Documents which contained a copy of the said letter. **DW1** recalled that one of the reasons for the refusal was the unfairness it would cause as only a few people would benefit. She also testified that previously, some union members had petitioned against the sale of the houses. That at no time did the Board of the Defendant agree to sell the Subject Houses.

4.47 During cross-examination, **DW1** testified that she was a member of the Board in 2013 and 2015 and that she was not part of the Board led by Professor Oliver Saasa. She further testified that the Minister is the final authority and that the Board reports to the Minister. **DW1** furthermore testified that she was aware of the Presidential Decree of 1996 and that Cabinet gave guidelines. She stated that she did not know whether the Plaintiffs were eligible. **DW1** also testified that what the Board at the time considered was whether there were letters of offer and did not consider the guidelines as set out in the Handbook on Home ownership.

4.48 **DW1** was referred to Page 107 of the Plaintiffs' Bundle of Documents which contained a letter dated 5<sup>th</sup> November,

2012, addressed to the Minister of Health and written by **DW1**. The letter outlined to the Minister the basis on which the Board resolved not to sale the Housing Units. **DW1** testified that she wrote the said letter and that the Board was advised by the Minister to look for offer letters as the basis on which each case could be treated individually. **DW1** further testified that the said letter containing this advice was not before the Court. She testified that she did not know if the Board's decision not to sell the Housing Units was in line with the Government's directive and that she did not know that the Minister had approved the sale.

4.49 **DW1** testified that the letter by the Minister of Health, Dr. Kasonde, wherein he approved in principle the sale of the Housing Units was written in 2013, which was much later than the letter which she wrote to the same Minister informing him of the decision of the Board not to sale the Defendant's Housing Units, written in 2012. She further testified that the Minister was the final authority and his letter meant that each employee of the Defendant was to present his/her case for consideration. **DW1** further testified that there had not been any subsequent letter that indicated a position contrary to the Minister's letter of 2013. **DW1** furthermore testified that the contents of the letter of 2012 was repeated in 2015 and sent to the Minister of Health but that no communication from the

Minster has been received indicating a position contrary to that of his letter of 2013.

4.50 **DW1** testified that she was aware that the role of the Ministry of Works and Supply was to evaluate Government property but that she was not aware that the Housing Units were evaluated. She was referred to Page 86 of the Plaintiffs' Bundle of Documents which contained the Valuation Report, which was signed by Mr. Jumba, a Valuation Officer of the Government Valuation Department, dated 27<sup>th</sup> December, 1996. In response, **DW1** testified that she had never seen the valuation report, which she believed should have been brought before the Board. She further testified that she did not know that the Ministry of Works and Supply was processing the sale as per the letter dated 13<sup>th</sup> August, 2012 at Page 104 of the Plaintiffs' Bundle of Documents. She stated that to her knowledge there was no letter from the Permanent Secretary, Ministry of Health stating that the Board should not sell the Subject Houses.

4.51 In re-examination, **DW1** testified that over time, because of the prolonged period since 1996, there had been changes such as the Government rescinding the Sell of Houses and those Civil Servants that had not bought houses at the time were prevented from buying.

4.52 That marked the close of the Defendant's case.

## **5 SUBMISSIONS**

- 5.1 The Plaintiff's submissions were filed herein on 19th August, 2019. Learned Counsel for the Plaintiff, began by restating the Plaintiff's claim and facts in dispute. He proceeded to highlight the evidence at trial with special emphasis on the fact that the Plaintiffs were entitled to the reliefs sought in their Statement of Claim as they were eligible to purchase the Subject Houses.
- 5.2 It was submitted that the Plaintiffs had proved their claims on the requisite standard of proof and invited the Court to the case of **Zambia Railways Limited vs. Pauline S. Mundia Sialumba**<sup>1</sup>, where the Court stated as follows: -

*"... (the standard of proof) is not as rigorous as the one obtaining in a criminal case. Simply stated, the proof required is on a balance of probability as opposed to beyond all reasonable doubt in a criminal case. The old adage is true that he who asserts a claim in a civil trial must prove on a balance of probability, that the other party is liable..."*

- 5.3 The Court's attention was drawn to the fact that all the evidence adduced by the Plaintiffs was not challenged at trial nor did the Defendant through its sole witness give any credible evidence. Counsel submitted that the Defendant's witness expressly conceded that in refusing to sell the houses, the Board did not consider the guidelines set out in the Cabinet Memorandum of the

sale of houses and that the Board used irrelevant considerations in refusing to sell the houses.

- 5.4 Regarding the eligibility of the Plaintiffs to be sold the Institution Housing Units, by the Defendant, Counsel drew the Court's attention to paragraph 2.1 of the Handbook for the **Civil Service Home Ownership Scheme of 1996**<sup>1</sup>. He further drew the Court's attention to the Supreme Court case of **Attorney General and Other vs. Frazer and Another**<sup>2</sup> where it was held that the introduction to the Handbook on Sale of Government Pool Houses made it clear that the empowerment was for Zambians. The Court adopted the said Handbook for the purpose of providing guidelines on how the sale of houses was to be conducted. Counsel further cited the case of **Attorney General vs. Steven Luguru**<sup>3</sup>, where it was held that it was Government's intention to make it a Condition of Service to offer pool houses to the Zambian Civil Servants who were sitting Tenants.
- 5.5 Counsel submitted that the Plaintiffs have satisfied and still satisfy the requirements both at law and according to the Handbook to enable them purchase the said institutional houses they occupy. He further submitted that despite the Permanent Secretary, Ministry of Transport, Works, Supply and Communications issuing a directive to the Board of the Defendant to submit the applications and documentation necessary to enable the

Ministry process the sale of Houses to the Plaintiffs, the said Board expressly refused to sale the institutional houses. Furthermore, Counsel submitted that the reasons cited by the Defendant for its refusal were outside those stipulated in the Handbook and thus it disregarded the eligibility and ineligibility guidelines set out in the Handbook. Counsel also added that **DW1** conceded that the Board ignored the said guidelines.

- 5.6 With regards the request by the Plaintiffs that the Court take Judicial Notice of the fact that government was selling houses, Counsel drew the Court's attention to the case of ***Lusaka City Council, National Airports Corporation Limited vs. Grace Mwaba and 4 others***<sup>4</sup>. In this case, the Supreme Court held that it is common cause and this Court takes judicial notice that the government pronounced a policy of empowering sitting tenants by directing various government agents to sell houses to sitting tenants at reasonable prices.
- 5.7 Counsel submitted that according to the case law he had cited, once the standard relating to the sale of the housing units to sitting tenants was met by Civil Servants, the institutions had no option but to offer and sale the housing units. He further submitted that the reasons given for the refusal to sell by the Board cannot be recognised as the law is clear regarding the procedure to be employed when selling governments institutional



houses. Furthermore, Counsel submitted that in addition to the law and the guidelines set out in the Cabinet Memorandum, a directive was given by the Minister directing the Defendant's Board to sell the Subject Houses. The Court's attention was drawn to the provisions of **Section 11 (1) of *The National Food and Nutrition Commission Act***<sup>1</sup>, which provides as follows: -

*"The Minister may give to the commission such general or special directions with respect to the exercise of the power and duties of the Commission as the Minister may consider necessary and the Commission shall comply with all such directions."*

5.8 Counsel submitted that the Defendant, is mandated to comply with the Minister's Directive and as such it has no authority to exercise its discretion in the determination of a matter. That the Defendant's witness conceded that the Minister had the final decision-making power. Therefore, the Defendant had neglected to act on instructions given by the Minister in the letter dated 4<sup>th</sup> March, 2013. Counsel further submitted that based on the testimonies given at trial and the evidence on record there had been no subsequent decision by the Minister regarding the sale of the housing units. Counsel also submitted that the Defendant was mandated to perform the procedures required in selling the Subject Houses to the Plaintiffs which without justification refused to do.

5.9 At the time of writing this Judgment, the Defendant had not filed its written submissions.

## 6 THE LAW

6.1 I have considered the Pleadings filed herein and the evidence adduced at trial. I have also considered the written submissions and list of authorities, for which I am grateful to Learned Counsel for the Plaintiffs.

6.2 The issues that call for determination are whether or not the Defendant could offer its institutional houses for sale to its sitting tenants; and whether or not the Plaintiffs herein were eligible to be offered the Defendant's Subject Houses for purchase.

6.3 The Defendant is established by ***The National Food and Nutrition Commission Act***<sup>1</sup>. **Section 11 (1)** of ***The National Food and Nutrition Commission Act***<sup>1</sup> empowers the Minister of Health to give directions on issues affecting the Defendant. The said section is couched as follows: -

***"The Minister may give to the commission such general or special directions with respect to the exercise of the power and duties of the Commission as the Minister may consider necessary and the Commission shall comply with all such directions."*** (Court's emphasis)

6.4 In the spirit of empowering Zambians to acquire their own houses, in 1996 the Government decided to sell some of its pool houses to sitting tenants. To this end,

the Government issued a Circular directing Government and Quasi-Government institutions to sell institutional pool houses to sitting tenants. Further, guidelines were issued by the Government for the sale of government pool houses. These guidelines include information on the categories of houses, eligibility/ineligibility criteria of the sitting tenants, administrative procedures, modes of payment and supervision of the sale.

6.5 According to ***The Civil Service Home Ownership Scheme Handbook***<sup>1</sup>, the basis on which institutional houses could not be sold is as outlined in ***Section 1.2*** and ***Section 1.2 (a)*** as follows: -

***"1.2 Dwelling Houses which are attached by use, construction and/or location, to a specialised institution, such as hospitals, schools, colleges, police camps, research stations, military barracks, road camps, immigration and customs posts and used or occupied by an officer of such institution for the benefit and convenience of the institution.***

***2.1(a) Institutional houses described above will not be sold because this would deprive user institutions of the facility for attracting and retaining qualified staff at the stations they are serving."***

6.6 The eligibility criteria to be met for one to be offered an institutional House for purchase is set out in ***Section 2.1***

of **The Civil Service Home Ownership Scheme Handbook of 1996<sup>1</sup>** as follows: -

- "(a) A confirmed civil servant who is in service and is a legal tenant;*
- (b) A civil servant who retired or was retrenched but was not paid terminal benefits and is a legal tenant;*
- (c) A civil servant who retired and was re-appointed on contract/gratuity terms and conditions of service;*
- (d) A spouse or children of a civil servant who died but was not paid terminal benefits and was a legal tenant; and a civil servant who qualifies to own land under the provisions of Section 3 (2) of the Lands Act, No. 29 of 1995."*

6.7 The ineligibility criteria is as set out in **Section 2.2 of The Civil Service Home Ownership Scheme Handbook of 1996<sup>1</sup>** as follows: -

- "(a) A civil servant who retired, was retrenched or died and was paid terminal/death benefits, and*
- (b) A civil servant who is a sitting tenant and benefitted from the sale of council houses."*

## **7 ANALYSIS AND FINDINGS**

7.1 I will start with determining the first issue of whether or not the Defendant could offer its institutional houses for sale to its sitting tenants. It is common knowledge that in 1996, the Government of the Republic of Zambia decided to sell some of its pool houses to sitting tenants

who were civil servants. The intention of Government was to make it a condition of service to offer pool houses to the Zambian Civil Servants, who were sitting tenants as stated by the Supreme Court in the case cited by the Plaintiffs of the **Attorney General vs. Steven Luguru**<sup>3</sup>. To this effect, Cabinet Office issued a circular which provided guidelines on how the sale of Government Pool Houses would be conducted. As a result, parastatal companies and other institutions which were wholly or partly owned by the Government decided to sell their houses to their respective employees who met the criteria they determined. Judicial notice of the aforementioned facts was taken by the Supreme Court in the case of **Lusaka City Council, National Airports Corporation vs. Grace Mwamba and 4 Others**<sup>4</sup> when it stated as follows: -

"It is common cause and this court takes a judicial notice that the government pronounced a policy of empowering sitting tenants by directing various agents of the government to sell at reasonable prices the houses occupied by sitting tenants. The 1<sup>st</sup> Appellant is one of the government agents. The government through the Ministry of Local Government and Housing issued instructions and directed how the exercise should be carried out." (Court's emphasis)

7.2 The Defendant is a statutory body established under the **Section 3** of **The National Food and Nutrition**

**Commission Act**<sup>1</sup>. Therefore, I find and hold that as a parastatal, the Defendant qualified as an institution that could offer its institutional houses for sale to its sitting tenants.

7.3 The Defendant was directed by the Minister of Health to sell the Subject Houses to the Plaintiffs. The law is very clear that the Minister has the power to give directives to the Defendant and the Defendant is obligated to abide by the directives issued by the Minister as can be seen from **Section 11 (1) of The National Food and Nutrition Commission Act**<sup>1</sup>, I have cited above in paragraph 6.3 where I emphasised the word "Shall". I concur with the Plaintiffs that by the use of the word "Shall", the aforementioned provision of the law is couched in mandatory terms. I am fortified by the case cited by the Plaintiffs of **Gift Luyako Chilombo vs. Biton Manje Hamaleke**<sup>5</sup>, where the Constitutional Court stated as follows: -

*"Having considered the provisions that guide the form of a petition to be filed with the Tribunal, we consider it important at this stage to state the principles governing the use of the word "shall" in legislative language in order to appreciate the true import of section 100(3) of the Act. In its ordinary usage, "shall" is a word of command and is normally given a compulsory meaning because it is intended to show obligation and is generally imperative or mandatory. It has a potential to exclude the idea of discretion and impose an*

*obligation which would be enforceable particularly if it is in the public interest." (Court's emphasis)*

7.4 Therefore, the effect of the aforementioned provision is that the Minister is empowered to issue directives to the Defendant through its Board regarding the use of its powers and the carrying out of its duties and that the said directives must be complied with. It is therefore my considered view, that the Defendant has no authority to exercise its discretion in carrying out the said directives.

7.5 At trial, **DW1**, the Chairperson of the Defendant's Board during the period in question, testified that in 2012, she in her capacity as Chairperson of the Board wrote to the Minister of Health at the time outlining various reasons as the basis on which the institutional houses could not be sold. **DW1** further testified that in 2013 she received a letter from the Minister of Health where he approved in principle that the institutional houses could be sold and that the Permanent Secretary, Ministry of health could make exceptions where the house being considered for sale is needed by the institution for security reasons or other reasons such as proximity to the institution. **DW1** also testified that in 2015, the Board wrote to the Minister of Health again, re-stating the reasons on which the Board of the Defendant believed that the institutional houses should not be sold as follows: -

*"(1) The Commission struggles financially and entirely relies on Government Grants to run its operations;*

- (2) *The Commission assets can be rented out on a commercial basis to generate funds to supplement the government grant;*
- (3) *Selling houses will be stripping the institution and it is unlikely that the institution would acquire similar assets at any time in the future; and*
- (4) *Staff who are not housed had petitioned the Ministry's office to stop the sale of the houses in their letter dated 7<sup>th</sup> May, 2013."*

7.6 However, **DW1** did not receive a response from the Minister that was contrary to the position that he gave in 2013. From the provisions of the Act cited above, it is clear that Defendant could not disregard the directives of the Minister regarding the Sale of the Institutional houses and was in breach of its legal obligations by doing so.

7.8 I further find that the reasons cited by **DW1** as the basis on which the housing units could not be sold are contrary to what was set out in the guidelines. According to ***The Civil Service Home Ownership Scheme Handbook***<sup>1</sup>, the basis on which institutional houses could not be sold is as outlined in **Section 1.2** and **Section 1.2 (a)**, which are reproduced in paragraph 6.5 above.

7.9 Looking at the said provisions of **Section 1.2** and **Section 1.2 (a)**, it can be determined that none of the exceptions outlined in ***The Civil Service Home***



**Ownership Scheme Handbook**<sup>1</sup> were mentioned in the letter to the Minister as the basis on which the Defendant's Subject Houses could not be sold. Therefore, I find and hold that the only exceptions that were to be considered by the Defendant in considering which houses to offer for sale were as set out in **The Civil Service Home Ownership Scheme Handbook**<sup>1</sup> and in the letter from the Minister.

7.10 This now brings me to the second and final issue for determination of whether or not the Plaintiffs herein were eligible to be offered the Defendant's Housing Units for purchase. The eligibility criteria to be met for one to be offered an institutional House for purchase is set out in **Section 2.1 of The Civil Service Home Ownership Scheme Handbook of 1996**<sup>1</sup>, which I cited in paragraph 6.6 above, while the ineligibility criteria is as set out in **Section 2.2 of The Civil Service Home Ownership Scheme Handbook of 1996**<sup>1</sup> as cited above in paragraph 6.7.

7.11 In the case of **Beatrice Muimui vs. Sylvia Mulenga Chanda**<sup>6</sup>, the Supreme Court stated as follows: -

*"We do not subscribe to the argument that being a sitting tenant alone is the sole criterion in the purchasing of government houses or quasi-government house in the current policy of empowering employees, we take judicial notice that the potential purchaser has to be an employee."* (Court's emphasis)

7.12 The Plaintiffs' evidence at trial was that they all met the eligibility criteria as set out in **Section 2.1 (a)** of **The Civil Service Home Ownership Scheme Handbook of 1996**<sup>1</sup>. The Plaintiffs, who are presently occupying the Defendant's institutional houses as sitting tenants, including **DW4** Fanny Kondolo, the 3<sup>rd</sup> Plaintiff herein who has since retired, testified that they were confirmed employees of the Defendant when the Presidential Directive was issued in 1996, which has not been revoked and that they are currently still employees of Defendant.

7.13 With regards to the 3<sup>rd</sup> Plaintiff's eligibility, the Defendant's contention is that Funny Kondolo, is retired and is not eligible to purchase a housing unit. In her response Funny Kondolo stated that the right to be offered a housing unit to purchase had accrued to her in 1996 when the President issued the directive.

7.14 In the case of **Barnabas Ngorima and Rosemary Ngorima vs. Zambia Consolidated Copper Mines Limited and Benson Chomba**<sup>7</sup>, the Supreme Court held that the 2<sup>nd</sup> Appellant who had retired in 1993 and had no offer from the 1<sup>st</sup> Respondent to purchase the housing unit was not eligible to purchase the house in issue.

7.15 The said case can be distinguished from the one at hand in that, Funny Kondolo was an employee at the time of

the government's directive in 1996 and when the Minister of Health in principle approved that the Defendant's houses could be sold to the sitting tenants in 2013. She had met the eligibility criteria to be offered a housing unit to purchase as set out in the Handbook and a directive had been issued by the Minister to sell her the Subject House. Her eligibility is further substantiated by the fact that her name and current home address was included on the list of names of sitting tenants submitted in a letter from the Permanent Secretary, Ministry of Health to the Permanent Secretary, Ministry of Transport, Works, Supply and Communication as the employees who were eligible to purchase the Housing Units as sitting tenants. The said letter and list is exhibited on Page 105 of the Plaintiffs' Bundle of Documents. Additionally, Funny Kondolo was not informed of any reason why she did not qualify to be sold a housing unit at the time. This position was not challenged at trial by the Defence. In fact, by her own admission, **DW1** testified that the Board did not consider the guidelines on eligibility as set out in the Handbook when they decided not to sell the Subject Houses. The 3<sup>rd</sup> Plaintiff therefore, is also eligible to be offered the Housing unit for purchase as this right accrued to her whilst she was in employed by the Defendant. I therefore find and hold that all the Plaintiffs

are eligible to be offered the Defendant's Housing Units for purchase.

7.15 With regard to the Plaintiffs' claim for damages for mental anguish, none of the Plaintiffs led any cogent evidence to substantiate this claim. The law on the recovery of damages has been clearly stated in a plethora of cases to the effect that not only must they be specifically pleaded, but they must also be proved. In the case of **J.Z. Car Hire Limited vs. Chala Scirocco & Enterprises Limited**<sup>8</sup>, the Supreme Court stated as follows: -

*"This Court has said it in a number of cases such as Zulu v Avondale Housing Project and Mhango v Ngulube & Others that it is for the party claiming the damages to prove the damage, never mind the opponent's case. If left alone, the court is at large and it may award intelligent awards if any. In the present case, the court was not assisted by the appellant with any evidence at all." (Court's emphasis)*

## **8 CONCLUSION**

8.1 I find and hold that the Minister of Health, being the final authority on issues to do with the Defendant issued a directive to sale the institutional houses to its employees that met the prescribed conditions. Therefore, the Defendant could not disregard the directive as doing so was a breach of its legal obligations.

- 8.2 With regards eligibility to be offered a Housing Unit to Purchase, I find and hold that all the 6 Plaintiffs herein met the eligibility criteria as set out in ***The Civil Servants Home Ownership Scheme Handbook***<sup>1</sup> and as stated by the Minister of Health in his letter. Additionally, no further exceptions were made nor were communicated to the Plaintiffs regarding their eligibility.
- 8.3 The Plaintiffs have proved their case as found above and are therefore entitled to those specific claims as set out in their statement of claim. The Defendant is ordered to offer the Subject Houses to the Plaintiffs as sitting tenants.
- 8.4 I decline to award the claim for damages.
- 8.5 Costs are for the Plaintiffs to be taxed in default of agreement.
- 8.6 Leave to Appeal is granted.

**Delivered at Lusaka this 2<sup>nd</sup> day of June, 2020.**



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**P. K. YANGAILO  
HIGH COURT JUDGE**