

HOLDEN AT LUSAKA.

(Civil Jurisdiction)

NAVNITLAL BALUBHAI PATEL (T/A AMUNA THE GENTS SHOP) Appellant

and

NOOR PROPERTIES AND INVESTMENTS LIMITED

Respondent

Coram: Sakala, Chaila and Chirwa, JJJS.

31st May, 1994.

For the appellant, Mr. C. Hakasenke of Shamwana & Company.

For the respondent, Mr. E.B. Mwansa of EBM Chambers.

J U D G M E N T

Sakala JS delivered the judgment of the court.

This is an appeal by the appellant against a judgment of the High Court refusing granting the appellant a new tenancy.

According to the memorandum of appeal, there were three grounds of appeal. First, that the learned trial judge erred in law and fact in the assessment of the credibility of the appellant and his witnesses. Second, that the learned trial judge erred in law and fact in refusing to grant the appellant a new tenancy with costs. Third, that the learned trial judge erred in law and fact in refusing to grant the appellant an alternative order of compensation under section 19 of Cap 440 of the laws of Zambia.

Before arguing the appeal before us Mr. Hakasenke informed the court that he was only going to argue grounds one and three and in relation to ground two he was only going to advance an alternative prayer. After we heard the arguments in support of the appeal from

the appellant's counsel as well as from the counsel representing the respondent, it was quite clear to us that on a number of issues, both parties were agreed. We therefore propose to make a very brief ruling. The ruling being that the appellant having withdrawn his prayer for a new tenancy, the application to withdraw is granted. Both parties are agreed that the assessment of the appellant and his witness's evidence was a misdirection and that it was on the basis of this assessment that the learned trial judge refused to award compensation. We agree that the judge misdirected himself in the assessment of the appellant and his witness's evidence. It follows therefore that on this ground the appeal succeeds and the appellant is entitled to some compensation to be assessed by the Deputy Registrar, but bearing in mind the mitigating factors by the respondent that he had offered alternative premises. The appellant is ordered to yield possession of the premises within sixty days from today. In the light of the outcome of this appeal, each party will bear its own costs.

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E.L. Sakala,
SUPREME COURT JUDGE.

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M.S. Challa,
SUPREME COURT JUDGE.

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D.K. Chirwa,
SUPREME COURT JUDGE.