

IN THE SUPREME COURT FOR ZAMBIA

- **APPEAL NO. 90/2000**

HOLDEN AT KABWE AND LUSAKA
(CIVIL JURISDICTION)

IN THE MATTER OF

- **SECTION 3(1) OF THE
SUPREME COURT ACT,
CAP 25 OF THE LAWS
OF ZAMBIA.**

IN THE MATTER OF

- **RULE 78 OF THE
SUPREME COURT CAP
25 OF THE LAWS OF
ZAMBIA.**

BETWEEN:

MARTHA NGOBOLA

- **APPELLANT**

AND

ATTORNEY-GENERAL

- **1ST RESPONDENT**

COMMISSIONER OF LANDS

- **2ND RESPONDENT**

CHARLES MUCHINDU

- **3RD RESPONDENT**

Coram: Lewanika, DCJ, Mambilima and Chitengi, JJS

On the 16th July, 2003 and 28th October, 2003.

RULING

Mambilima JS, delivered the Ruling of the Court.

The Appellant has filed a Notice of Motion under Rule 78 of the Rules of the Supreme Court, Cap 25 of the Laws of Zambia. She is seeking an Order that her appeal, which was disposed of by this Court on 6th November, 2002 be reheard on the grounds inter alia that the lower Court was partial in that it deliberately ignored facts exhibited by the Appellant and her witnesses and that the lower Court acknowledged the signature of Mr. Sweta, the Secretary to the Committee on Sale of Government Houses but deliberately ignored it. She has filed a long affidavit in support of the Motion in which she referred us to the eligibility criteria in the Handbook on Civil Service Home Ownership and Government Circular No. 129 of 1996 relating to the sale of Government Pool Houses. She also deposed:

"That I have advised by my legal advisors and verily believe the same to be true. That the Court erred by purposely ignoring the fact that the Appellant has been a tenant since 1984 up to date 2002 which is 18 years as a sitting tenant.

That the new deal Government policy empowers sitting tenants and supercedes the civil service handbook which is discriminatory and exploitative and known as colonial cemented and further more the conditions covering the sale of houses stipulates that the sitting tenants should buy the houses regardless of the status one holds in the society.

That the court acknowledges the fact that the Appellant was allocated the house earlier than the Respondent but ignored the fact and favoured the Respondent simply because the Respondent holds a high post in the office of the President.

That the irregularity in the 3rd Respondent's dates of 1st April, 1999 for the Certificate of title and the 21st April, 1999 being for date of offer was deliberately ignored which is a clear indication of undeniable favoritism exercised.

That I have been advised by my legal advisers and believe the same to be true the tribunal's findings that the Appellants stay in the house was illegal was a false and that the tribunal misdirected itself in that the Appellant followed stipulated procedures but were deliberately ignored by the tribunal.

That the whole Judgment was passed under the influence of colonial cemented mentality of nepotism, favouritism and racial discriminatory principles therefore it should not be relied upon and should be dismissed.

As quoted in the Judgment that clause 2.1 of cabinet circular No. 126 of 1996 upon which the Appellant was disqualified is null

and void in that the Appellant was and is a civil servant, a government policy which supercedes that clause".

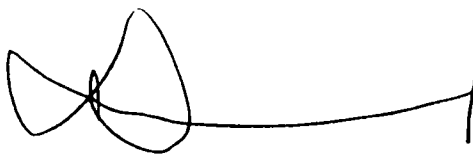
In her oral submissions before us, the Appellant submitted that as a sitting tenant, she was entitled to buy the house. She denied that she was an illegal tenant and maintained that she bought the house and she qualified to own land under the Lands Act. She submitted further that the Respondent's Certificate of Title was not properly obtained because there was a caveat on the property. She asked us to reconsider our decision or in the alternative, to order a retrial.

Mr. Chanda, in his response submitted that Rule 78 of the Supreme Court Rules under which this Motion has been brought is very clear. It allows this Court to correct clerical errors and accidental slips or omissions. It does not import the re-hearing which the Appellant is seeking. Mr. Chanda further submitted that the Appellant is seeking to set aside the Judgment of this Court and to re-open the appeal. He went on to state that this Court has no jurisdiction to do so, let alone review its own Judgment. Mr. Chanda referred us to our decision in the case of **Trinity Engineers (PVT) Limited vs Zambia National Commercial Bank Limited SCZ Appeal No. 76 of 1995** in which we held that this Court has no jurisdiction to reopen an appeal or to review its own Judgment. All it can do under Rule 78 is to correct clerical errors or errors arising from an accidental slip or omission. Mr. Chanda has also referred us to

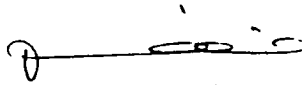
our decision in the case of Bank of Zambia vs Jonus Tembo and Others, Appeal No. 159 of 2001 in which we held that it is in the public interest that there should be finality to litigation.

We have considered the submission by the Appellant and Mr. Chanda. The Appeal clearly states in the Notice of Motion that she is asking this Court to re-hear the Appeal. In her oral submissions in Court, she added another prayer which is that in the alternative, the matter should be sent back for retrial. We have carefully perused the Appellant's Affidavit in Support of the Motion. It brings our issues which go to the root of the evidence which was adduced in the Court below and/or which we have already pronounced our decision. It is clear to us that the Appellant's intention is to make us re-hear this case in the hope that we may arrive at a verdict which is favourable to her. She is not asking us to correct any clerical errors or accidental slips or omissions.

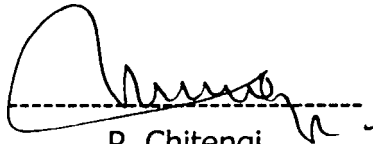
Rule 78 is very clear. It cannot be used to bless a re-hearing or setting aside of a Judgment, which jurisdiction we do not have. The matters in issue in this case have already been adjudicated upon. The application is clearly misconceived. It is refused with costs to the Respondent, to be taxed in default of agreement.



D. M. Lewanika
DEPUTY CHIEF JUSTICE



I. C. Mambilima
JUDGE SUPREME COURT



P. Chitengi
JUDGE SUPREME COURT