

IN THE SUPREME COURT OF ZAMBIA

SCZ APPEAL No.138 OF 1998

HOLDEN AT LUSAKA

(CIVIL JURISDICTION)

B E T W E E N:

WYNTER MUNACAAMBWA KABIMBA

APPELLANT

AND

LUSAKA CITY COUNCIL

RESPONDENT

Coram: Muzyamba, Lewanika and Chibesakunda, JJS

12th October and 2nd November 2000

For the Appellant: A.J. Shonga, Shamwana and Company

For the Respondent: P. Chisi, Chifumu Banda and Associates

J U D G M E N T

Muzyamba, J.S. delivered the judgment of the court

This is an appeal against a refusal by the High Court to issue a writ of certiorari to bring up into court for quashing the respondent's decision rejecting the appellant's application to buy house number 16 Nalubuto Road, Rhodes Park, Lusaka which the appellant occupied as a sitting tenant and by virtue of his employment with the respondent.

The facts verifying the application in the court below were that the appellant was employed by the respondent as Town Clerk and occupied the house in question. The Government, through the Ministry of Local Government and Housing issued a circular, No.2 of 1996 Titled 'REVISED PROCEDURES FOR SALE OF COUNCIL HOUSES'. Following that circular, the appellant applied to the respondent on 12th July 1996 to buy the house. On 16th June 1997 the full Council Meeting of the respondent rejected the appellant's application. The appellant then moved the High Court for a writ of certiorari. He was unsuccessful and he now appeal to this court.

The appellant filed four grounds of appeal the thrust of which is that the learned trial Judge failed to properly evaluate the evidence before him and erred in taking into account extraneous matters in arriving at his decision. But as we see it the real issue is whether or not the appellant's application was caught by and subject to the revised procedures in the circular. It is common cause that prior to the circular the appellant had bought a house from the respondent as a sitting tenant. It is also common cause that the appellant applied to buy the house in question after the circular came into being. The circular superseded all previous circulars on sale of Council houses and came into force immediately. The relevant part of the circular reads as follows:

"Pursuant to Cabinet decision to sale Council houses and the Presidential directives as a result of his tour of some Cities and Municipal Councils all Council houses are on sale and the following procedures shall apply:
© Councils shall identify all houses designated as official residences for their staff and the same shall not be put on sale. An officer of any Local Authority shall not be allowed to purchase more than one Council house during the officer's tenure of office in the Local Government Service."

It is again common cause that the respondent designated number 16 Nalubuto road as official residence for its staff.

In rejecting the appellant's application the respondent's full meeting said, at page 34 of the record of appeal:

"HOUSE No.16 NALUBUTO ROAD, RHODES PARK

The Director of Housing and Social Services presented a report on an application by the former Town Clerk, Mr. W.M. Kabimba through his lawyers to purchase the above house. Members were of the view that since the guidelines on the sale of houses state that no officer of any Local Authority shall be allowed to purchase more than one Council house, and that this house had been designated as official residence for staff and therefore put on the reserve list as such his

application be rejected. Members deliberated upon the matter at length and consequently:

RESOVED TO RECOMMEND

- (a) That the application from the former Town Clerk, Mr. W.M. Kabimba to purchase House No.16, Nalubuto Road, Rhodes Park be rejected.
- (b) That the said house remains reserved for a deserving serving member of staff
- © That Mr. W.M. Kabimba be given notice to vacate the house as soon as possible."

We have considered the evidence on record, the Judgment of the Court below and the detailed written submissions by both learned Counsel for which we are indebted. From the facts set out above there can be no doubt that the circular applied to the appellant's application. According to that circular the appellant was not allowed to buy another house since he had already bought one and he could not buy the house in question because it was reserved for members of staff.

It was argued by Mr. Shonga that after the above resolution and not withstanding what the circular said the respondent resolved to sell even those houses which were reserved for members of staff to sitting tenants. He referred us to page 39 of the record of appeal. We have examined this page. The item is headed

**'REPORT OF THE SUB COMMITTEE TO THE
MANAGEMENT COMMITTEE MEETING TO BE
HELD ON 31ST JULY 1996'**

The report contains a recommendation to sell some Council houses that were reserved for members of staff. It is not a full Council Meeting decision. Moreover, even if it was a decision of the full Council Meeting that decision would not, contrary to Mr. Shonga's argument, vary a circular from a parent Ministry, more so that the circular affected all the

Municipal Councils in Zambia. What the respondent did, if it so resolved to sell the pool houses, was a complete disregard of the circular. We are consoled here by the fact that the appellant himself, in paragraph 14 of his affidavit uses the word ‘disregard’. The paragraph reads as follows:

“14 That although the Defendants have rejected the Plaintiff’s application on the grounds given in their notice dated 16th June, 1997, there are a number of applications which have been approved in complete disregard of the conditions and provisions of circular No.2 of 1996”.

We do not condone that action by the respondent. Nor do we bless it.

For the foregoing reasons we would dismiss the appeal with costs to be taxed if not agreed upon.

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W.M. MUZYAMBA
SUPREME COURT JUDGE

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D.M. LEWANIKA
SUPREME COURT JUDGE

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L.P. CHIBESAKUNDA
SUPREME COURT JUDGE