

DAMIANO MUKUNKAMI AND IDAH MWALE

SUPREME COURT

CHIRWA, J. S.

25TH MARCH AND SEPTEMBER, 2000

S.C.Z. APPEAL NO. 48A/99

Flynote

Tenancy - subtenancy - whether subtenant entitled to buy from City Council when there is a previous owner - question of fraud.

Headnote

The house in issue was originally lawfully rented out by Ndola City Council to one Dennis Mwale, a relation to the respondent. Around 1976 the appellant came to live with the respondent on a temporary basis. In 1977 the respondent left the house to join her husband. The appellant remained as a caretaker. In 1995 the respondent learnt that the appellant had bought the house. The appellant refused to allow the respondent to re-posses the house. The respondent sued the appellant in the local court and succeeded. The Appellants consequent appeals in the Subordinate Court and the High Court failed. In arguing the Appeal the Appellant submitted that the Council as landlord changed ownership of tenancy to the appellant and after change of tenancy the respondent did nothing for over 12 years.

Held :

The appellant was left in the house as a caretaker by the respondent and the change in tenancy card or ownership was done surreptitious by the appellant, completely without the knowledge of the respondent. This is fraud and fraud is a good ground to cancel any title deeds issued. Appeal dismissed.

For the Appellant L.P. Mwanawasa, S.C., Mwanawasa & Co.

For the Respondent Col. Mudenda, National Legal Aid Clinic.

Judgment