

IN THE SUPREME COURT FOR ZAMBIA APPEAL NO. 174 OF 2000

HOLDEN AT LUSAKA

(Civil Jurisdiction)

B E T W E E N:

**GORDON ALEXANDER MURRAY**

**APPELLANT**

**AND**

**ATTORNEY-GENERAL**

**RESPONDENT**

CORAM: NGULUBE, CJ., LATE CHAILA AND CHIBESAKUNDA,JJS

On 3<sup>rd</sup> May 2001 and on 28<sup>th</sup> August, 2002

For the Appellant - Mr. P. Chisi, of Chifumu Banda & Associates

For the Respondent - Mr. M. Kondolo, Senior State Advocate

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### **J U D G M E N T**

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Ngulube, CJ., delivered the judgment of the Court.

Cases referred to:

1. **The Attorney-General –v- Steven Luguru SCZ Judgment No. 20 of 2001**
2. **The Attorney-General and Two Others –v- Joseph Emmanuel Frazer and Another SCZ Judgment No. 14 of 2001**

The judgment of the court was to have been written by the late Justice Chaila but following upon his unseasonable demise, this judgment may now be treated as one by the majority. Delay in rendering the same is much

regretted. This was another case of a non-Zambian Civil Servant who was denied the opportunity to buy the house he was occupying which was instead sold to a Zambian third party Civil Servant who was not the “sitting tenant”. It was not in dispute that the appellant a British national was an established resident who was eligible to own land under Section 3 of the Lands Act, subject to Presidential consent. It was also not in dispute that he was a confirmed Civil Servant from 1959 to 1998 when he retired. At the time of the rejection by the Housing Committee of his application to purchase the house he occupied at No. 14 Mushakashela Road, Woodlands, Lusaka, he had not received his retirement benefits. In short, under the terms of the relevant Government Circular and guidelines on the purchase of pool houses, the appellant who was otherwise qualified lost out solely because he was a non-Zambian. That was the sole reason given by the Housing Committee for denying this loyal and dedicated Civil Servant who had stayed on in Zambia since colonial days the chance to buy his house.

The appellant launched proceedings in the High Court; but the learned trial Judge upheld the rejection by the Committee. The Court examined the terms of the relevant circular which sets out who was eligible and which included a civil servant qualified to own land under Section 3 of the Lands Act. This is a Section which enables non-Zambians to own land with the

previous consent of the President. The court further looked at the preamble to the guidelines which said:-

**“In the spirit of empowering Zambians to acquire their own houses, the Government had decided to sell some of its pool houses to sitting tenants who are civil servants.”**

The learned trial Judge considered that the preamble governed the whole document and the whole exercise so that a civil servant who was not a Zambia could not claim to be entitled to buy a house. In the appeal before us, it was argued that the reference to Section 3 of the Lands Act in the circular had to have and to be given a meaning, otherwise what was the point of citing a section of the law dealing with non-citizens owning land? The court below did not offer an answer to the question which was raised.

This court has infact had occasion on a number of occasions in the past to deal with this very problem. Some of the cases are on all fours with this one. Thus in *THE ATTORNEY GENERAL –v- STEVEN LUGURU* (1) we followed the cases where we had held that the reference to Section 3 of the Lands Act in the circular was intended to cover those non-Zambian civil servants who were established residents and who had complied with that section. Again in the case of *THE ATTORNEY GENERAL AND TWO*

OTHERS –v- JOSEPH EMMANUEL FRAZER AND ANOTHER (2) whose judgment was delivered earlier and whose facts were so close to those here we pointed out that the relevant Committee had a duty to advise persons in the appellant's position to obtain presidential consent instead of raising a general objection to all non-Zambian Civil Servants. In the event, as in that case, the house here was hurriedly offered to someone working for the National Assembly who was not a sitting tenant. Certain remarks in the FRAZER Judgment are worth repeating in this case, especially where we said (from page J.9):-

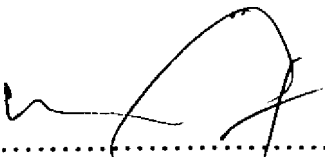
**“Before leaving this appeal, we wish , in passing to make certain pertinent observations in relation to the unsatisfactory aspect relating to sale of Government Pool Houses as revealed by this appeal. The facts not in dispute in the present have clearly established that the first appellant is a Civil Servant in the Service who is a legal sitting tenant in accordance with Clause 2 1(a) of the Handbook on Sale of Government Pool Houses. The first appellant is also a Civil Servant who qualifies to own land in Zambia under the provisions of Section 3(3)(a) of the Lands Act Chapter 184 of the Laws of Zambia and in accordance with clause 2.1(e) of the Handbook, he is entitled to purchase a Government Pool House in question. The further undisputed facts are that the third**

respondent Mrs. Rose Makano, who was not a legal sitting tenant, was hurriedly sold the house despite the fact that the relevant authorities had in their possession the first appellant's application to purchase the house in issue. Instead of advising the first appellant to obtain Presidential consent as required by the law and by the guidelines, the authorities took up the wrong position in law that he did not qualify to buy that house when in law he qualified. Instead the authorities decided to allocate the house in issue and made an offer to purchase the same house to the person who had never been a sitting tenant. This case, among many more others that have come before us in relation to sale of Government Pool Houses as well as sale of parastatal houses, is a clear example of unfairness and injustice in the sale of Government Pool Houses as well as parastatal houses which the authorities concerned must rectify. The guidelines and the law are very clear. Non Zambians are entitled to buy land in Zambia and to purchase Government Pool Houses on certain conditions, among them the obtaining of Presidential Consent. The first appellant in this case met all the conditions. All that remained was to obtain Presidential Consent which on the facts, he would have obtained but the authorities decided to overlook this.


**Despite the outcome of this appeal, the authorities are urged to re-examine the issue.”**

The foregoing observations apply with equal force in this case. However, we too must express the hope that the authorities will revisit the case. If the house has not already been sold to another Zambian civil servant, the appellant should be given the opportunity to apply for presidential consent and if he gets it to buy this house. In the event that this is not the case, the appeal stands dismissed.

In either case, we make no order as to costs.



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M.M.S.W. Ngulube  
CHIEF JUSTICE



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L.P. Chibesakunda  
SUPREME COURT JUDGE