SCZ/29/2006

IN THE SUPREME COURT OF ZAMBIA **APPEAL NO. 60/2005**
HOLDEN AT LUSAKA

(CIVIL JURISDICTION)

BETWEEN:

KALYOTO MUHALYO PALUKU (Male)	APPELLANT
AND	
GRANNY'S BAKERLY LIMITED	1ST RESPONDENT
ISHAQ MUSA	2ND RESPONDENT
ATTORNEY GENERAL	3RD RESPONDENT
LUSAKA CITY COUNCIL	4TH RESPONDENT

Coram: CHIBESAKUNDA, MAMBILIMA and SILOMBA, JJS
on 2nd August 2005 and 22nd November 2006

For the Appellants: Mr. W. A. Mubanga of Messrs Permanent Chambers, Ms. D. N'gambi of Messrs Nyakhata Chambers

For the 1st & 2nd Respondents: Mrs. N. B. K. Mutti of Messrs Lukona Chambers

For the 3rd Respondent: Mr. Mebelo Kalima of Messrs Kalima Chambers

For the 4th Respondent: N/A

JUDGMENT

Chibesakunda, JS, delivered the Judgment in Court

Cases referred to:

1. **Water Wells Limited Vs Wilson S Jackson [1934] ZR 98**

2. **The Attorney General, Ministry of Works and Supply and Rose Makano Vs Joseph Emmanuel Frazer and Peggy Sikumba Frazer [2001] ZR 87**
3. **Dadwell Vs Jacobs [1887] 34 Ch.D. 274 at 284**
4. **D. K. Kasote Vs The People [1977] ZR 75**
5. **Patson Vs Attorney General [1968] ZR 185**
6. **Ashmore Vs Cooperate of Lloyds No. [1992] 2 AER at P. 486**
7. **London Ngoma, Joseph Biyela, Richard Ng'ombe, Friday Simwanza and LCM Company Limited and United Bus of Zambia (In Liquidation) SCZ Judgment No. 22 of 1999**
8. **Gideon Mundanda Vs Timothy Mulwani and Agricultural Finance Company Limited and S.S.S. Mwiinga [1987] Z.R 29 at page 34**
9. **Everando Balducci, Margaret Phiri and Ruth Nakazwe Supreme Court Appeal No. 22/98**

Laws referred to:

10. **Sections 2 and 3 (3) of the Lands Act, Cap. 184**
11. **Orders 42 (a) and 45 of Rules of the Supreme Court 1999 Edition**
12. **Sections 2 and 14(1) of the Immigration and Deportation Act, Cap, 123**
13. **Section 18 (2) of the Town and Country Planning Act, Cap. 283**

This is an appeal against the High Court Ruling dated 24th February 2005 in which the High Court ruled on two preliminary objections. These are:

1) That the Appellant (Plaintiff at the High Court) being a Congolese national i.e. non-Zambian holding an entry permit was not entitled to own land in Zambia under the Lands Act Cap 184; and
2) That since the Appellant had not obtained the President's consent in writing he was not eligible to own land in Zambia.

The brief history of the matter is that the Appellant, a Congolese national, by a contract of sale dated 11th April, 2003 between himself and **Eyani Musonda** and **Anthony Lungu,** purchased Property No. 19218, Lusaka, at a purchase price of K60 Million. He obtained a certificate of title on 16th June, 2003. According to his affidavit in support of the originating summon for judicial review, the Commissioner of Lands, in a letter dated 28th April, 2004 informed him that his certificate of title to the property was cancelled. He was then told that the same

property had been re-demarcated and re-numbered as Stand No. 30751 and that the public road by way of frontage to the same property was re-numbered as 30752 and that the certificate of title had been reissued in favour of the 1st and 2nd Respondents.

The Appellant deposed further that after a number of representations and meetings of all interested parties, the Commissioner of Lands informed him that the re-designing and re-demarcation had been unlawfully done and that his title to land was to be reinstated. It was later communicated to him that the reinstatement of his title could not be done because the 1st and 2nd Respondents had taken the matter to court.

Just before this communication that the certificate of title would be reinstated to the Appellant, the 1st and 2nd Respondents obtained leave to take out an originating summon for judicial review of the decision of the Minister of Local Government and Housing cancelling the redesignation of Stand No 19218 and the Public Road frontage way to Stands Nos. 30751 and 30752, Lusaka, on 26th May, 2004. The parties to that application were: **Granny's Bakery Limited** (1st Respondent in this Judgment) – 1st Applicant; **Ishaq Musa** (2nd Respondent in this Judgment) – 2nd Applicant against **The Attorney General** (3rd Respondent in this Judgment) – 1st Respondent; **Lusaka City Council** (4th Respondent in this Judgment) – 2nd Respondent; **Commissioner of Lands** – 3rd Respondent.

On 7th July, 2004, the Appellant applied in Chambers to be joined to the proceedings as the 4th Respondent. This application was granted. The Appellant then became the 4th Respondent. The Commissioner of Lands, 3rd Respondent, being represented by the Attorney General, dropped out of the proceedings. The Appellant became the 3rd Respondent.

During the proceedings, unknown to the Appellant, on or about 30th August, 2004 the 1st and 2nd Respondents and the 3rd and 4th Respondents entered into

negotiations to settle the matter out of court. According to the affidavit of the Solicitor General filed on 8th September, 2004, the Appellant was not initially represented but he subsequently took part in the negotiations although when the consent order was drawn and signed and thereafter endorsed by the court, the Appellant was not present, neither was he represented. This consent order was couched in the following terms:-

> ***"BY CONSENT of the 1st and 2nd Applicants and the 1st and 2nd Respondents through their respective advocates***
>
> ***IT IS ORDERED as follows:***
>
> ***1. That cancellation of the Certificate of Title Nos. 25918 and 26607 issued in respect of Stand Nos. 30751 and 30752 be and is hereby prohibited.***
>
> ***2. That the 2nd Respondent be an is hereby compelled to process applications for planning permission in respect of the said two Stands as duly submitted by the Applicants to the 2nd Respondent within fourteen (14) days from the date hereof.***
>
> ***3. That the Applicants do hereby waive their right to claim damages and costs herein.***
>
> ***4. That each party shall bear its own costs.***
>
> ***Dated at Lusaka this ..... Day of 2004***
>
> ***Signed:.....***
> ***Hon. High Court judge"***

The Appellant then applied to stay this consent judgment pending his application to set it aside. The application was granted.

The Appellant then applied before the High Court to set aside this consent judgment grounding his application on the fact that the consent order was irregularly done as it contravened **Order 42 of the Rules of the Supreme**

Court (7) and that it was intended to bar him from being heard as an interested party.

The 1st and 2nd Respondents in opposition deposed inter alia that their application for judicial review was meant to obtain specific orders of certiorari against the 3rd Respondent and the mandamus against the 4th Respondent. The 1st and 2nd Respondents further deposed that because the 3rd and 4th Respondents accepted that there were no contentious issues between the 1st and 2nd Respondents on one side and the 3rd and 4th Respondents on the other side – (vide documents dated 28th October 2004 which was marked as "MMM 1""), this is why it was not possible for them to proceed with the action against the 3rd and 4th Respondents.

The 1st and 2nd Respondents went on to argue that since there were no contentious issues between them and the 3rd and 4th Respondents their only way to proceed was to obtain a consent judgment between them. According to them that would not have prejudiced the Appellant because the 3rd Respondent (the Attorney General) had undertaken to allocate the Appellant another piece of land.

The lower court, however, held that, " "***the consent judgment will be set aside because, (a) the first and second defendants, considering the merits of the application do consent that the judgment be set aside; (b) the consent judgment, an equally important fact, was intended or had the negative effect of purporting to bar the third defendant from being heard; (c) it was suggested, the court went on to say "I cannot see the practical value of it, that there ought to be judgment on admission as against the first and second defendants – such a judgment, no doubt, would be stayed until the third defendant is heard and finally", (d) it was argued that the third defendant is irregularly before court as these are proceedings under O 53 RSC 199: "he can***

commence his own action by writ in another court." The later suggestion, which would mean two trials, has always been frowned upon. This action will proceed as one commenced by writ and the parties will be as in the caption herein." (sic)

The Respondents, therefore, as a follow-up to this ruling, applied to the same court to rule on these two issues referred to in this judgment at J2. The lower court ruled on 24th February 2005 that. ***"The law is settled, loud and clear. The 3rd defendant is a non-Zambian i.e. a Congolese national. He is not an established resident and in the words of the authority just cited, (MAKANO case) there is no evidence on record that he has the President's consent in writing."*** This is the ruling the Appellant is appealing against.

Before this court, Mr. Mubanga arguing the appeal, filed 14 Grounds of Appeal, which during the hearing of the Appeal he compressed into seven (7) Grounds as according to him these grounds were interrelated. His first point is that, even though the court had ruled that the matter had been commenced by originating summons, it was going to proceed as if commenced by writ of summons, therefore, the court should have, as per well-established rules of procedure, given an order for direction. Given this background, the court below should have realized that since there were serious triable issues, which had been raised, these issues should have been given a full trial. According to Counsel, the court below, even at that stage, was expected to direct that the issues raised in the notice be allowed to be adjudicated upon completely and fully at a trial.

The issues raised at that stage were:

1) Whether the Appellant being non-Zambian could still own land in Zambia; and
2) Whether the Appellant had obtained the President's consent in writing.

Citing the case of **Water Wells Limited Vs Wilson S Jackson** (1), the Appellant's contention was that these issues should have been determined at a full trial. This would not have been prejudicial against the Respondents as there was no evidence of such prejudice.

In Ground 2, he submitted that the lower court had no basis on which it made its finding that the Appellant was not an established resident. He referred to various paragraphs in his affidavit in support establishing that the Appellant was an established resident. He referred to **Section 2 of the Lands Act** (10), which defines a permanent resident as an established person holding an entry permit in accordance with the Immigration and Deportation Act. He referred to **Section 2 of the Immigration and Deportation Act** (12) which provide that:

> ***"Established resident" means in relation to any person who is not a citizen or a prohibited immigrant and who has been ordinarily and lawfully resident in Zambia or the former protectorate of Northern Rhodesia or both of the period of four years immediately preceding that date."***

and submitted that according to this Section, the Appellant was a permanent and or an established resident in Zambia. He, therefore, argued that the finding of the learned trial Judge that the Appellant was not an established resident and or permanent resident was not supported by any evidence on record and is contrary to the affidavit evidence on record as he was a holder of a valid entry permit.

He argued on Grounds 3 and 4 that the lower court misinterpreted the **LANDS ACT, CAP 184** by failing to recognize and appreciate that the Appellant qualified under **Section 3 (3) of The Lands Act** (10) in that he was a permanent and an established resident. He argued that under **Section 3 (3) (a) – (k)** a non-Zambian could qualify to own land under any of the sub heads.

In his view, the Appellant fell in that Section. He argued that a non-Zambian could qualify under any of these sub titles namely:-

a) Where the non-Zambian is a permanent resident in the Republic of Zambia;

b) Where the non-Zambian is an Investor within the meaning of the Investment Act or any other Law relating to the promotion of investment in Zambia;

c) Where the non-Zambian has obtained the President's consent in writing under his land;

d) Where the non-Zambian is a Company registered under the Companies Act, and less than twenty-five per centum of the issued shares are made by non-Zambians;

e) Where the non-Zambian is a statutory corporate created by an Act of Parliament;

f) Where the non-Zambian is a co-operative under the Societies Act and less than twenty-five per centum of the members are non-Zambians;

g) Where the non-Zambian is a body corporate registered under the Land (perpetual succession) Act and is a non-profit making, charitable, religious educational or philanthropic organization or institution which is registered and is approved by the Minister for the purposes of this section;

h) Where the right in land is being inherited upon death or is being transferred under a right of survivorship or by operation on law;

i) Where the non-Zambian is a commercial Bank registered under the Companies act and the Banking and Financial Services act; or

j) Where the non-Zambian is granted a concession or right under the National Parks and Wildlife Act.

He argued that it is quite clear from this list of circumstances listed that a non-Zambian could own land in Zambia if he fell in one of these categories in **Section 3(3).** There was no legal requirement that for a non-Zambian to qualify to own land in Zambia, he must qualify under the two or more of the categories listed in **Section 3(3) of the Lands Act** (10). He again referred to the definition in **Section 2 of the Immigration and Deportation Act** (12) which defines an established resident as a non-Zambian who has lived in Zambia and who is not a prohibited immigrant and who has been ordinarily and lawfully resident in Zambia for a period of four years and above. He argued that this court has to revisit the case of **MAKANO** as according to him the decision in that case was per incuriam. He further submitted that the issue of whether or not the Appellant, a non-Zambian qualified to own land was a triable issue and ought to have been given a chance to be fully investigated during trial.

On Ground 5, he argued that the lower court failed to adjudicate and resolve all contentious issues raised in this matter. He told the court that according to the correspondence between the Director of Physical Planning and Housing at page 66 – 68 of Volume (a) of the Record of Appeal, the creation of Stand No. 30751 and Stand No. 30752 was illegal because they were created out of unauthenticated lay out plans. He referred to the letters written by the Director in which he declared the re-designating of these stands as illegal, whereas, he went on to submit, the Appellant legitimately bought this property from **Eyani Musonda** and **Anthony Lungu** in 2003. He further submitted that, although the Commissioner of Lands in a letter date stamped 28th April, 2004 purported to cancel Stand No. 19218, when this was challenged by the Appellant, the Commissioner of Lands responded that the creation of Stand Nos. 30751 and 30752 was illegal and that he was about to reinstate the title to the Appellant (see page 304 of Volume B of the Record of Appeal). He also submitted that the redesigning and renumbering of Stand No. 19218 to Stand Nos. 30751 and 30752 was in breach of **Section 18(2) of the Country Planning Act** (13).

According to him, all these were issues, which ought to have been resolved by the court below in a trial. He further submitted that, on the record, it was common cause that, although the Appellant was non-Zambian, he, nonetheless, qualified to own land under **Section 3(3) of the Lands Act** (10) in that he was a permanent/established resident as defined under **Section 2 of the Lands Act** (10) which defines a permanent resident/established resident as a person holding a valid entry permit in accordance with the **Immigration and Deportation Act, Section 2** (12).

On Ground 6, he pointed out to the fact that because of the procedure adopted by the court, the Appellant who had been joined as a party as way back as 7th July, 2004, was not heard. He submitted that the consent order on 8th November, 2004 was long after the Appellant was joined as a party. Therefore, he argued, the lower court erred in law and in fact by reinstating this consent order of 8th November 2004, which had already been impugned and set aside by the same court; and that this had been done on two grounds namely:

1) that the consent order of 8th November 2004 was irregularly arrived at and in breach of **Order 42 Rule 5 (A)(1) and (3) of 1999 RSC** ; and
2) that the consent order of 8th November 2004 had the negative effect of barring the Appellant from being heard by the court.

He explained that the consent order must be drawn up in terms agreed upon by all the parties. He cited the case of **London Ngoma, Joseph Biyela, Richard Ng'ombe, Friday Simwanza and LCM Company Limited and United Bus of Zambia (In Liquidation)** (7), where it was held that, ***"consent judgment or order to a party to do, it was competent for that party who was not party to drawing up of the consent order to apply to set aside that consent judgment."***

On Ground 7, his argument is that in the alternative should the court hold that the Appellant as a non-Zambian does not qualify to own property in Zambia in his own right, this is curable. He cited the case of **Gideon Mundanda Vs Timothy Mulwani and Agricultural Finance company Limited and S.S.S. Mwiinga** (8) where we held that, ***"In the application for permission to subdivide and Presidential consent are not matters which are usually expected to be the subject of litigation, uncertain or otherwise, and the need to obtain such consent is not in itself a ground for refusing to grant an order of specific performance....."*** He also cited the case of **Everando Balducci, Margaret Phiri and Ruth Nakazwe** (9), whose facts were that the Appellant, an Italian national serving as a Diplomat in one of the United Nations agencies in Zambia, bought property but owing to him having a diplomatic status in Zambia, he could not own property in Zambia in his own name and therefore conveyed the property to the Respondent. It was agreed with the Respondent that at some future date when the Appellant had retired from diplomatic service and formed a company with an investment License, the Respondent would convey the property to the Appellant's company. This court ruled in favour of the Appellant and directed the Registrar of Lands and Deeds to register the Appellant's company with an Investment License as the registered owner of the property.

In line with these authorities, he argued that, this court has powers to direct that the property in question be registered in the name of his company, Vukaka Investments Limited, which holds a valid Investment License under the Investments Act and as such qualifies for that company to hold property in Zambia under **Section 3(3) (b) of the Lands Act** (10).

Ms Ng'ambi argued, augmenting Mr. Mubanga's arguments on Ground 3, that, because of the summary nature in which the lower court dealt with the matter, the proper interpretation of **Section 3 (3) of the Lands Act** (10) was glossed over. According to her, Parliament never intended to make each of the category

listed in Section 3(3) from (a – k) to consist part of each other. She argued that this was because Parliament at the end of (i) used the word, "or". If Parliament had intended otherwise, Parliament would not have used the word "or". According to her, the Appellant qualified to own land under paragraph (a) of **Section 3 (3) of the Lands Act** (10).

Mrs. Mutti in response relied on her written heads of argument. Her response before the court in Ground 1, was that the ruling of 24th December 2004 on pages 20 – 21 of the record was very explicit on the approach taken by the court. She argued that the Appellant had not appealed against that order. The court had powers to determine any point of law as a preliminary point at any time during the proceedings. She argued that the Appellant was afforded a chance to be heard. He was even heard. His counsel sought an adjournment. She referred to the cases of **Dadwell v Jacobs** (3) and **Ashmore V Corporation of Llyods**, where it was held that, ***"If from the pleadings it were possible to identify one or more issues a decision on which would either finally determine the dispute or at least substantially reduce the length of any further trial, it is right that the Judge should order such issues to be tried first. A trial judge who has had control of the proceedings in its interlocutory stage is in a better position to deal with matters than any appellate court can be."***

She attacked the reasoning that the Appellant was not heard. She argued that his counsel was heard. But as the court remarked, Counsel for the Appellant took a casual approach to the preliminary point. Counsel sought an adjournment for 14 days. That is why the lower court said, Counsel was faced with ***"insurmountable task"***. Besides, Counsel went on to argue, the lower court was bound by this court's decisions in the cases of **The Attorney General, Ministry of Works and Supply and Rose Makano Vs Joseph Emmanuel Frazer and Makano** (2), **D. K Kasote v the People** (4) and **Paton v Attorney General** (5). According to her, the issues raised by Mr. Mubanga had

been well settled in these cases cited. She quoted the court's decision in the **Makano** (2) in which this court held that, the Lands Act required a non-Zambia who is a permanent resident in order to qualify to own land to obtain consent in writing under the President's hand.

She further urged us to dismiss this appeal and the application for stay.

On Grounds 2, 3 and 4 she argued that, although the Appellant had deposed that he was a permanent resident, he was not. He did not have that status as that status is not automatically given. It has to be conferred. According to her, the Appellant's entry permit at page 207 of the record clearly showed that the Appellant would continue to hold the entry permit until he becomes an established resident. According to her, the status of being a permanent resident or an established resident had to be conferred on a non-Zambian by a Government agency or by operation of law. She went on to argue that even if for argument's sake the Appellant had that status of permanent residence, he would not qualify to own land without obtaining the President's consent in writing. She cited the case of **Makano** (2).

On the application for stay she prayed that this application be dismissed as the stay would render the place vulnerable to destruction and vandalism which may be costly to the Respondents should the appeal be dismissed – **Goswami Vs Commissioner of Lands**. She went on to submit that the Attorney General was on record as saying they would allocate another piece of land to the Appellant. Mr. Kalima echoed Mrs. Mutti's sentiments.

We have seriously considered the record and the issues raised in this appeal. We have looked at the submission and the authorities cited by the parties. We hold that these authorities have been of great help to us in reaching some of the conclusions we have made.

Looking at the record submitted before the lower court and before us it is common cause that the 1st and 2nd Respondents applied for judicial review of the Minister of Local Government and Housing's decision of canceling the redesigning, re-demarcating and renumbering of Stand No. 19218 to being 30715; and the likelihood of reinstating the title to the Appellant. It is also common ground that this was on 26th May, 2004. It is equally common ground that on 16th June, 2003 the Appellant, who is a non-Zambian national, obtained title deed to Stand No. 19218. This is the same person who was joined as 4th Respondent (now the Appellant) to the originating summons for judicial review. What is equally common cause is that the parties, excluding the Appellant, negotiated and drew up what is referred to as a **'Consent Order'** in the absence of the Appellant. This was in breach of **Order 42 Rule 5A (1)(3)** (9) which says:

> ***"42 Rule 5A(1) where all the parties to a cause or matter are agreed upon the terms in which a Judgment should be given or an Order should be made, a Judgment or Order in such terms may be given effect as a Judgment or Order of the Court.***
>
> ***(3) Before any Judgment or Order to which this Rule applies may be entered, or sealed, it must be drawn up in the terms agreed and expressed as being "By Consent" and it must be endorsed by solicitors for each of the parties."***

The Appellant was therefore correct to have challenged the consent order and the lower court correctly set it aside on 24th December, 2004. The court below however reinstated the Consent Order when it upheld the preliminary issues and ruled that the Appellant, being a Congolese national had no capacity to own land.

We have perused through the proceedings of the lower court during the hearing of the preliminary issues. The main thrust of the Respondent's argument was that the Appellant was a Congolese national holding an entry permit. It was issued to him as an investor in a company called **Vukaka Investments Limited**. It was contented in the court below that while the company could hold land in Zambian under its name, the Appellant, as a Congolese national could not own land under the **Lands Act** (10) unless he had the consent of the President in writing. The record shows that Counsel for the Appellant sought an adjournment and at the next hearing, he did not reply to the issues raised but merely submitted that the issue raised should be dealt with at trial. In our view, the Appellant was therefore afforded a chance to be heard but neglected to reply to the issues in question.

It is well settled in law that a preliminary issue can be raised at any stage of the proceedings, even at the outset of the case. An action can be determined of either in part or in whole if the preliminary point is upheld and especially if it goes to the root of the matter, the subject of the proceedings. In our view, the question for the determination of the court was whether the Respondent successfully prosecuted its preliminary objection and if so, whether the preliminary issue went to the root of the case. During the hearing of the appeal, Counsel for the Appellant argued that his client was entitled to own land; that as holder of an immigration entry permit, the Appellant was an established resident under the **Immigration and Deportation Act** (12) and, therefore a permanent resident under the **Lands Act** (10).

In the various affidavits filed by the Appellant in the court below, one such affidavit is on page 139 of the record of appeal, the Appellant did describe himself as a ***"Congolese national permanently resident in Zambia holding a valid entry permit"***. It is clear to us that his quest to own land was not in the name of Vukaka Investments Limited but as a natural person.

Under Section 3(3) of the Lands Act (10), a non-Zambian individual can own land in Zambia if he (1) is a permanent resident (see paragraph (a) of sub-section 3), (ii) is an investor (see paragraph (b) of sub-section 3 or (iii) has obtained the President's consent in writing under his hand (see paragraph (c) of sub-section 3). There are also paragraphs (i) and (j) that may apply to an individual non-Zambian but for purposes of this case the paragraphs we have quoted above are adequate.

As stated above, the Appellant described himself as a permanent resident holding a valid entry permit. Section 2 of the Lands Act defines a 'permanent resident' as **an established resident or a person holding an entry permit in accordance with the Immigration and Deportation Act.** Under **Section 2 of the Immigration and Deportation Act** (12), 'established resident' means, **in relation to any date, a person who is not a citizen or a prohibited immigrant and who has been ordinarily and lawfully resident in Zambia or the former protectorate of Northern Rhodesia or both for the period of 4 years immediately preceding that date.**

In matters of land alienation to a non-Zambian individual, we hasten to say that it is important to read the two definitions together in order to establish whether the applicant for land or purchaser of land, such as the Appellant, qualifies to own land in Zambia as a permanent resident under the Lands Act.

We have examined the record of appeal and we have not come across a document issued by the Immigration Department, which qualified the Appellant to be an established resident at the time he acquired the land in question. On page 207 of the **RECORD OF APPELLANT (B)**, the entry permit exhibited there permits the Appellant, "until he becomes an established resident" to enter and re-enter into and remain within Zambian and for gain to engage in the occupation of Director (underlining ours). The said entry permit was issued on 2nd July 1999. Page 286 of the Record of Appeal (B) shows that on the 10th of

July, 2000, the Appellant registered an assignment to purchase Stand No. 19218, Lusaka, from Eyani Musonda and Anthony Lungu in the Lands and Deeds Registry. This was barely one year or so of his stay in Zambia. In terms of the Immigration and Deportation Act, and in particular the entry permit issued under the Act, the Appellant had not yet become an established resident because he had not completed four years before he acquired the stand. Consequently, he was not a permanent resident in terms of the Lands Act to entitle him to own land on title. That being the case, he should have applied and obtained the consent of the President in writing under his hand. As observed above, the Appellant's quest to own the land was not in the name of Vukaka Investments Limited but as a natural person.

We find that the preliminary issue went to the root of the whole case. Since the Appellant had no capacity to own land in person, it is futile for the case to continue. We uphold the Judgment of the Court below and find that there is no merit in this appeal. It is dismissed with costs to be taxed in default of agreement.

L P Chibesakunda
SUPREME COURT JUDGE

I C Mambilima
SUPREME COURT JUDGE

S S Silomba
SUPREME COURT JUDGE