

Selected Judgment No. 4 of**2014****IN THE SUPREME COURT OF ZAMBIA APPEAL NO.****35/2012****HOLDEN AT LUSAKA****(Civil Jurisdiction)****BETWEEN:****JOSEPHINE KABWE****APPELLANT****AND****DOMINIC KAPASA****RESPONDENT****Coram: Chibesakunda, Ag. CJ, Mwanamwambwa and Muyovwe, JJS
On the 5th June, 2012 and 20th January, 2014.**

For the Appellant: Mr. R. Mwanza, Messrs Robert and Partners

For the Respondent: Mr. L. Moono, Messrs Nkana Chambers

J U D G M E N T

MUYOVWE, JS, delivered the Judgment of the Court**Cases referred to:**

- 1. Edith Nawakwi vs. Lusaka City Council Appeal No. 26/2001**
- 2. Mpongwe Development Corporation Limited vs. Francis Kamanda and 51 Others Appeal No. 137 of 2007**
- 3. Elizabeth T. Mulenga vs. Frederick Solomon Mwelwa Appeal No. 57/2008**
- 4. ZCCM vs. Richard Kangwa (2000) Z.R. 109**
- 5. ZCCM vs. Dr. Francis Khama Appeal No. 50/2000**
- 6. Beatrice Muimui vs. Sylvia Chunda Appeal No. 50/2003**
- 7. ZCCM vs. Eddie Katalayi and Max Chilongo (2001) Z.R. 28**

8. Frank Malichupa & Others vs. Tanzania-Zambia Railway Authority (2008) Vol.2 Z.R. 112

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9. Anti Corruption Commission vs. Barnnet Development Corporation Limited (2008) Vol.1 Z.R 69

This is an appeal against the judgment of the Kitwe High Court which found in favour of the respondent and ordered the cancellation of the appellant's Certificate of Title No. 40097 in respect of House No. L232 Chamboli Township, Kitwe. With regard to the issue of the refund of the purchase price, the learned Judge stated that this was an issue to be resolved between the appellant and ZCCM which was not a party to the proceedings. Costs were awarded to the respondent.

In the Court below, the appellant's claim was, inter alia, that the respondent yields vacant possession of the premises known as L232 Chamboli Township, Kitwe; mesne profits K200,000 from 20th September 1999 until the respondent yielded vacant possession and costs.

The learned Judge aptly summarized the evidence before her on Pages J2 to J4 as follows:

“The plaintiff’s evidence is that she started working for ZCCM in 1986 as a nurse. In 1996 ZCCM decided to sell houses to its employees. As a worker she also wanted to buy a house. She applied and was given the offer at pages 1 to 3 of her Bundle of Documents. She signed at page 3 to accept the offer. Thereafter ZCCM prepared the contract of sale at pages 4-6 of the same Bundle which she signed. Subsequently the purchase price of the house was deducted from her terminal benefits and ZCCM prepared the title deed at pages 8-14 of the same Bundle.

After she paid for the house, she went to the house with the papers she was given so that she could take possession. She found the defendant living in the house. The defendant refused to vacate the house. In 2007 she came to court and was advised to involve bailiffs if she wanted the defendant to be removed from the house. She paid K720,000.00 to the bailiffs and was issued with a receipt. She wants this Court to be sure that the house is hers because she has all the documents and she bought the house. She also wants to be given rent at K300,000 per month and costs. In cross-examination, she said she was not accommodated by ZCCM and was staying at house No. 59 Central Street, Nkana East, Kitwe.

She admitted that she was not a sitting tenant of the house in issue, but insisted that she had the right to purchase the house as an employee of ZCCM. She said she applied generally to purchase a house and not

specifically house No. L232 and that ZCCM chose which house they wanted her to buy. She said at the time she bought the house, she did not know the person in the house and

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discovered afterwards that it was the defendant. She said she did not know where the defendant was working at the time. This in brief is the plaintiff's case.

The defendant testified that he started work with ZCCM in January, 1987. He was given the house after he got married according to his grade. He said when there was sale of houses priority was given to sitting tenants. He was offered the house in which he was staying. He started waiting for a contract of sale, but for three years it did not come until the Housing Unit was moved from Chamboli to Central Offices and later to Wusakile offices. He said that they got his offer and promised to give him another house. He wrote to the Ministry of Mines and to the House Sale Committee that he did not want to be removed from his house and given a differed house. He said the Committee told him that they had given him a house which he should occupy, so that the other person could move into his house. He wants the Court to help him get an offer for his house because he has been a sitting tenant and his church group congregates at the house.

In cross-examination he said that he should be offered the house because he is the sitting tenant, and because the other house he was offered was sold to the sitting tenant. He admitted that the house in question was owned by ZCCM which was offering houses to its employees. He said the Court should make an order to

offer him the house, and that he was offered the other house by the House Sale Committee, but he does not know if it was different from ZCCM. He said that his offer letter and certificate for occupancy of the house were taken away by the same committee.

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He admitted that he is laying claim to house No. E242 Wusakile because it is the other house he was offered. He said the sitting tenant of that house won the case and has been given papers. He admitted that there is a matter in court in which he sued ZCCM and the other person in July 2011 over that house. He said that the Court should call the gentleman and ZCCM, so that they sit down together.

He said that previously they were just discussing the matter and that there is no judgment. He denied that he is fighting for two houses at the same time. He wants the house in which he lives and that all papers he had for his house were withdrawn. This in brief is the defendant's case."

As already stated herein, on the above evidence the learned trial Judge found in favour of the respondent and ordered cancellation of the appellants' certificate of title.

Being dissatisfied with the Judgment of the lower Court, the Appellant appealed to the Supreme Court on the following grounds:

1. After finding a lack of fraud in the Appellant's purchase of House No. L232, Chamboli otherwise known as Subdivision No. G936 Farm 842, the learned trial Judge fell into error by cancelling the sale and certificate of title No. 40097 ostensibly on the authority of Edith Nawakwi Vs. Lusaka City Council - Appeal No. 26/2001 and contrary to Section 33 of the Lands and Deeds Registry Act, Cap. 185 of the Laws of Zambia.

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2. In light of the fact that both the Appellant and the Respondent were entitled to purchase the subject house as ZCCM employees, the learned Judge fell into error in deciphering the main issue to be decided in this matter as the question of eligibility and over-emphasizing the sitting tenancy thus relying on inapplicable authorities and on the facts of this case erroneously distinguishing the case of Elizabeth T. Mulenga Vs Frederick Solomon Mwewa Appeal No. 57 of 2008.

3. The learned trial Judge erred in law and fact in not giving credence to the incontrovertible fact as found by the trial Judge that the Respondent at the time of trial of this action had an offer from ZCCM for another house.

4. The learned trial Judge misdirected herself in ordering that the Appellant should pursue ZCCM for refund, inter alia, ostensibly on the strength of ZCCM Vs Eddie Katalayi & Max Chilongo & Another - 2001 ZR.p.28.

5. The learned trial Judge erred in law and fact by making the following findings:

- (i) That the offer to the Appellant was made in bad faith contrary to the trial Judge's own conclusion that the matter being between two ZCCM employees, the question was one of availability
- (ii) That the Respondent under ZCCM rules had priority right of first refusal
- (iii) That the subject house was unavailable to be offered to the Appellant and that the Respondent had been offered the house in the absence of evidence of an offer letter, contract or anything constituting sufficient memoranda in the wake of a finding that the Respondent did not have

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documents for any house contrary to Section 4 of the Statute of Frauds.

6. The learned trial Judge erred by not examining the record under Cause No. 2011/HK/126 in which the trial Judge should have understood that the Plaintiff was actually offered House No. E.241, Wusakile, Kitwe on the same date (19th July, 1999) that the Appellant was offered House No. L232, Wusakile, Kitwe.

Mr. Mwanza Counsel for the Appellant filed Heads of argument which he relied on. In arguing ground 1, learned Counsel submitted that the fact that fraud was not pleaded or even remotely raised in evidence, the learned trial Judge should not have relied on the **Edith Nawakwi vs. Lusaka City Council**¹

case and totally ignore Section 33 of the Lands and Deeds Registry Act Cap 185 of the Laws of Zambia. That Section 33 was brought to her attention yet she ordered the cancellation of the sale and certificate in issue. It was submitted that the **Edith Nawakwi**¹ case is distinguishable from this case as it involved a Council house which was subject to different rules from the sale of ZCCM houses. According to Counsel the Supreme Court in that case rightly concluded that the Minister of Local Government

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and Housing was found to have abused his position when he offered the house in dispute to the appellant. That the issue of abuse does not arise in this case. Counsel reiterated that it is not in dispute that the appellant duly purchased the house in issue. It was argued that Section 33 is clear that a Certificate of Title shall be conclusive evidence of ownership from the date of issue notwithstanding existence in any other person of any estate or interest except in the case of fraud. That Section 34 of the same Act is equally instructive. Counsel also referred us to the case of **Mpongwe Development Corporation Limited vs. Francis Kamanda**². It was submitted that as in the

present case there was no evidence of fraud in that case. That in the **Mpongwe Development Corporation Case²** the Supreme Court found that there was no evidence that the land acquired by the Respondent was acquired through fraud. Further that the respondent did not plead fraud and that there was no evidence on which the trial Judge could have ordered cancellation of title. It was submitted that in the case in casu, the learned trial Judge, in the absence of fraud or any other exceptions and on the basis of the facts in this

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case, was not entitled and did not have power to cancel the Certificate of Title for the disputed house.

In support of ground 2, it was submitted that the learned Judge fell into error in arriving at the issue to be determined with regard to eligibility. Counsel argued that the case of **Elizabeth T. Mulenga vs. Frederick Solomon Mwelwa³** is still good law and that it is applicable to the present case. It was submitted that the respondent, on the facts of this case, never demonstrated to have, and could not have been found to have, had a superior right or accrued right to purchase House

No. L232 Chamboli, Kitwe. Further, that the only issue the learned Judge should have decided is: who was the owner of the house in issue? Counsel submitted that to try to distinguish the **Elizabeth T. Mulenga**³ case without due regard to the clear principles enunciated therein, which apply to the present case, is to fall into error entitling this Court to interfere.

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Counsel took time to distinguish the present cases from the cases of **ZCCM vs. Richard Kangwa**⁴; **ZCCM vs. Dr. Francis Khama**⁵ and **Beatrice Muimui vs. Sylvia Chunda**⁶.

Therefore, it was submitted that ZCCM in this case, or any party for that matter, cannot be compelled to sell a house to a sitting tenant nor can a sitting tenant use Government policy to usurp the rights of a Title holder as in the present case.

Turning to grounds 3, 4, 5 and 6 it was submitted, inter alia, that a scrutiny of the respondent's pleadings and evidence,

including the trial Judge's findings, reveals glaring issues which cannot be glossed over. Counsel pointed out that:

“The respondent was not a tenant but occupied the disputed house by virtue of his employment;

The respondent failed to disclose to the Court when he was allegedly offered the disputed house and whether he accepted the offer;

That the alleged offer and acceptance was not produced in Court as the respondent claimed that “the House Sale Committee” told him that “they had given him a house which he should occupy so that the other person could move into his house”;

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That the Court aptly summarized the respondent's evidence that **“he wants the Court to help him get an offer for his house because he has been a sitting tenant and his Church group congregates at the house.”** It was submitted in relation to ground 3 that the trial Judge at page 13 of the Record said:

“Admittedly the Defendant was offered an alternative house, but to which the sitting tenant also laid claim. As submitted by Mr. Mwanza, it may appear that the Defendant is trying to fight for both houses at the same time.”

Counsel submitted that the trial Judge should not have found that the respondent's claim to the disputed house had legal basis for the following reasons:

- (1) The respondent had been offered House No. E242 Wusakile;**
- (2) The respondent after filing a counter-claim in Court for House No. L232 Chamboli proceeded to drag the occupants of House No. E242 Wusakile to Court under Cause No. 2011/HK/126 claiming ownership of the said house.**

It was submitted that the trial Judge erred when she failed to find the respondent's claim for a house, if any, lay on House No. E242 Wusakile, the house which the respondent was offered.

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In arguing ground 4, it was submitted that the case of **ZCCM vs. Eddie Katalayi and Max Chilongo**,⁷ relied upon by the trial Judge, can be distinguished from the present case. That the **Eddie Katalayi and Max Chilongo case**⁷ did not deal with a dwelling house but involved an individual and a club. That the purchase in that case by the third party was upheld, inter alia, because the respondents (the club) had

claimed for an alternative prayer for compensation which was found to be realistic. Counsel submitted that the appellant in the present case did not pray for compensation as a registered owner and purchaser of House No. L232 Chamboli.

Turning to ground 5, it was argued that there was no bad faith demonstrated in the purchase of House No. L232 Chamboli and that the trial Judge contradicted herself by finding existence of bad faith, despite finding that all formalities were followed by the appellant. It was submitted that House No. L232 Chamboli was not encumbered and had been available for purchase by the appellant. Counsel contended that there was already an executed contract by the appellants by the time the respondent was

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executing the contract for House No. E242 Wusakile though both parties were offered the respective houses on 19th July, 1999. It was submitted that ZCCM houses were sold to employees from the ZCCM housing stock and there was nothing to stop the appellant from purchasing House No. L232 Chamboli. Counsel pointed out that ZCCM rules of sale were

not produced in Court but that the learned trial Judge referred to the rules when on page 12 of the Record she said the following:

“I think that under the rules the plaintiff was entitled to buy the house even if she was not a sitting tenant.”

Counsel relied on the case of **Frank Malichupa and Others vs. Tanzania-Zambia Railway Authority⁸** and the **Dr. Khama⁵** case which he stated are instructive on matters of this nature. He further referred us to **Section 4 of the Statute of Frauds**. It was submitted that, therefore, taking into account the authorities cited and the fact that the respondent did not produce any documents linking him even remotely to House No. L232 Chamboli, the trial Judge had no basis to find that an offer

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existed or let alone order ZCCM to “offer” the respondent as per his prayer.

In support of ground 6, it was contended that had the trial Judge referred to the record under Cause No. 2011/HK/126, she would not have decided as she did.

Counsel urged this Court to interfere with the lower Court's decision and uphold the appellant's ownership of House No. L232 Chamboli.

At the hearing of this appeal, Mr. Moono, Counsel for the respondent, relied on his written Head of Arguments.

In response to the appellant's arguments, the respondent argued grounds 1, 2 and 5 together. It was submitted that the learned trial Judge was on firm ground when she cancelled the sale and certificate of title No. 40097. Further, that she was on firm ground when she decided that the question of eligibility was the main issue in this case. Counsel submitted that the sale of ZCCM houses was governed by "Zambia Consolidated Copper

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Mines Limited Rules governing the sale of ZCCM Houses to Zambian employees." That under the said rules all confirmed

ZCCM employees were entitled to purchase company houses but subject to clause 2 of the rules which governed the eligibility of the employees to purchase the houses. It was submitted that under clause 2, priority was given to sitting tenants and that, however, employees occupying institutional houses or substandard houses or who were under-housed were also entitled to be offered any available house across the industry.

Counsel submitted that, as correctly pointed out by the learned trial Judge, the appellant was entitled to buy the house in issue even if she was not a sitting tenant but only if the house was available. That unfortunately for the appellant the house in question was not available, since the respondent was in the house and was also an employee of ZCCM and that being the sitting tenant had priority right to buy the house. Counsel submitted that by virtue of being a sitting tenant and an employee of ZCCM, the respondent had an accrued right to have the first option of purchasing the house. Counsel relied on the

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case of **Edith Nawakwi vs. Lusaka City Council**¹, where according to Counsel, this Court held that the respondent was a sitting tenant and had accrued rights to have the first option of purchasing the house; that she should have been offered the house first before the appellant and that if she failed to meet the conditions set for purchasing the house then the offer could have been given to the appellant. That this Court was satisfied that the Minister of Local Government and Housing abused his discretion when he offered the house to the appellant and completely ignored the rights of the respondent and cancelled the offer of the house to the appellant and accorded the sitting tenant the right to buy the house.

Counsel submitted that in the present case the trial Judge was on firm ground when she cancelled the sale and certificate of title. It was submitted that the issues relating to **Section 33 of the Act** were not applicable in the circumstances of this case.

Turning to grounds 3 and 4, it was submitted that from the evidence on record, it was clear that the respondent was offered

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the house in issue but that the said offer was retrieved from him and the respondent was then offered House No. E242 Wusakile Township which was occupied by a Mr. Patson Nkhoma who equally had an offer from ZCCM and was an employee of Techpro Limited, a subsidiary of ZCCM. It was submitted that according to the ZCCM rules the respondent could not lay claim to this house as it was not available and priority had to be given to the sitting tenant. According to Counsel the defence by ZCCM in the discontinued matter between the respondent herein and Patson Khoma, the person who was in occupation of House No. E242 Wusakile Township and ZCCM 2011/HK/126 goes to show that the respondent's second offer was inconsequential as the occupant in the said house was entitled to buy the house. We were referred to the said defence which was contained in the further Supplementary Record of Appeal. That, therefore the learned trial Judge was

on firm ground by not offering credence to the respondent's subsequent offer as the said offer was of no effect.

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We have considered the evidence in the Court below, the judgment of the lower court and the submissions of Counsel for the parties.

It is not in dispute that both parties were employees of ZCCM and that whereas the respondent was a sitting tenant, the appellant was not. It is not in dispute that the appellant was given an offer and that later on, as per facts above, was issued with a certificate of title for the disputed house. We note that the learned trial Judge accepted as a fact that the respondent had been offered the disputed house but that this was later withdrawn. Although we will not disturb the finding of fact on this point, we take the view that it would have been proper for the learned Judge to call for evidence from ZCCM in order to understand, for example, why the offer was allegedly withdrawn from the respondent who was the sitting tenant. This would have assisted her in determining if truly the respondent had a

superior right over that of the appellant especially that we have said in our earlier decisions that being a sitting tenant is not the sole criteria. See **Beatrice Muimui vs. Sylvia Chunda**⁶.

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Counsel for the Appellant raised a pertinent issue to the effect that fraud was not pleaded in this case and yet the learned Judge proceeded to cancel the certificate of title. We agree with Counsel's argument that this case can be distinguished from the case of **Edith Nawakwi vs. Lusaka City Council**¹ on that score. As argued by Counsel for the appellant, the respondent was fighting for an offer and the court had no power to order ZCCM to offer a house to the respondent. This is in line with case of **Frank Walichupa & Others case**□ where we said that there was no law which compels an unwilling person to sell his property to a sitting tenant. The behavior of ZCCM somewhat indicated that it was not willing to sell the house to the respondent despite him being in occupation of the house in issue.

The learned trial Judge said at Page J7 of the judgment:

“It is trite law that a party who buys a house in which a tenant is in occupation ought to make inquiries on the same to make sure that there are no encumbrances. In the circumstances at the time the plaintiff paid for the house she was not a bona fide purchaser for value without notice of any encumbrances. The plaintiff ought to have known that the house she intended to buy was occupied by a tenant with an accrued right to first offer.”

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Going by the principle that one could buy the house even if he was not a sitting tenant, the argument that the appellant was not a bona fide purchaser for value cannot be sustained. In this case, the appellant was offered the house by ZCCM and she was not privy to the relationship between the respondent and ZCCM. The appellant paid for the house through her terminal benefits leading us to conclude that the same was part of her terminal benefits. The learned Judge had this to say at Page 13 of the record that:

“Admittedly the defendant was offered an alternative house, but to which the sitting tenant also laid claim. As submitted by Mr. Mwanza, it may appear that the plaintiff is trying to fight for both houses at the same time.”

In this case, the respondent refused to vacate the house yet he had no offer and as we have already stated a court is not

empowered to order anyone to make an offer. Indeed, evidence from the respondent showed that he wanted the court to order ZCCM to give him an offer. In fact as per the respondent's evidence, ZCCM had withdrawn the offer, and as we have intimated above, the court had no power to order ZCCM to offer

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the house to the respondent, especially that they were not even a party to the proceedings. In our view, by ordering the cancellation of the appellant's certificate of title, the court below basically forced ZCCM to offer the house to the respondent. Of significance in this case, is the fact that the respondent was offered an alternative house which he accepted and in fact he commenced an action over the said house. In our view, it is inconceivable that anyone can 'fight for two houses'. On discovering that there was another person in the house whose offer he had accepted, the respondent should have taken up the matter with ZCCM who offered him the said house instead of opting to fight for both houses. In his evidence in the court below the respondent said at Page 66 of the record of appeal:

“I am laying claims to House No. E242 Wusakile because that is the house I was offered.....there is a matter in court over that matter...there is no judgment in that matter.”

We take the view, that the learned trial Judge having found that fraud was not an issue in this case, should have reached the inescapable conclusion that the property was properly sold to the

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appellant. This is in view of the fact that the case of **Edith Nawakwi**¹ can be distinguished from the case in casu. In her judgment the learned trial Judge said:

“In Edith Nawakwi vs. Lusaka City Council (6), although it related to a council house, the Supreme Court observed that the 2nd respondent was the sitting tenant and had accrued rights to have the first option of purchasing the house, that she should have been offered the house first before the appellant and if she failed to meet the conditions set for purchasing the house, then the offer would have gone to the appellant. The Supreme Court was satisfied that the Minister of Local Government and Housing abused his discretion when he offered the house to the appellant and completely ignored the right of the 2nd respondent and cancelled the offer of the house to the appellant and accorded the sitting tenant the right to buy the house. In my view this is the principle on which this case must be decided.”

The learned trial Judge concluded that the offer to the appellant was not made in good faith. We find that this was a misdirection as there was no evidence to this effect. The learned Judge did acknowledge in her judgment that being a sitting tenant was not the only criteria to being offered a house to purchase. And so in this case, there was also no evidence to show that ZCCM had abused its discretion when it offered the

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house to the appellant. And this is the more reason why ZCCM who were responsible for the dispute between the parties should either have been joined or subpoenaed by the court to shed light on the matter.

We note that the learned trial Judge also relied on the case of **ZCCM vs. Eddie Katalayi and Max Chilongo**. We have perused the case and we take the view that it can also be distinguished from the present case although certain principles from there could be applied herein. The issue involved ex-employees who were trying to enforce an undertaking that the Bowling Club would be sold to them as sitting tenants. There was an alternative prayer for compensation for the

unexhausted improvements effected by the members from 1991-1996. Indeed, ZCCM conceded that it needed to compensate the respondents who were sitting tenants of the Bowling Club and this court agreed that this was the right thing to do. But the issue of the respondents being sitting tenants was not the decisive factor.

The argument by the respondents was, inter alia, that the learned trial Judge in that case, was on firm ground as he had

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taken into account the public interest in the recreational activities which were of benefit to the community. That the respondents should have been given the first option to buy the premises and that the Court ought to consider that the appellants were duty bound to facilitate the purchase of the Club by the respondents. This Court said “these were very strong moral arguments” but went on to say at Page 30 that:

“However, the legal position, as we see it, was that it was not possible without proper basis to ignore the rights of Kangali who was an innocent purchaser for value and who had no reason to suspect there was an adverse claim. “There would be no justification to inflict injustice on the 3rd party

in the name of justice for the appellant” (that is ZCCM).”

In our view, the appellant was an innocent purchaser for value - she was offered by the employer the same way the respondent was offered by the same employer house No. E242 Wusakile Kitwe. The respondent’s statement of claim filed on 10th March, 2011 states as follows:

3. On 19th July, 1999 Zambia Consolidated Copper Mines offered for sale House No. E241 Wusakile Kitwe which offer the plaintiff duly accepted at a purchase price of K1,063,000.00 and a contract of sale was duly executed.

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We must hasten to say that we have noted the disparity in the numbering of the House in Wusakile in the Statement of claim, however, whether it is House No. E241 or House No. E242 is neither here nor there as it is clear that the respondent was offered another house by ZCCM. And so as the learned Judge found, the respondent was fighting for two houses. This conduct cannot be accepted or condoned. In our view, once the respondent accepted the offer for House No. E241 Wusakile, he could not again fight for an offer for House No. L232 Chamboli

which had been offered to the appellant by the time he was accepting the offer for the Wusakile house. We agree with Counsel for the appellant that the learned trial Judge having found no evidence of fraud in the case, there was no basis to order cancellation of the certificate of title on the basis of the **Edith Nawakwi case**¹ or even the **Eddie Katalayi case**□ which are clearly distinguishable from the present case.

In conclusion, the effect of the order of cancellation by the Court below was in disregard of Section 33 and 34 of the Lands

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and Deeds Registry Act and as we have stated herein also had the effect of literally ordering ZCCM to offer the house to the respondent. In the case of **Anti-Corruption Commission vs. Barnnet Development Corporation Limited**⁹ we said that:

“Under section 33 of the Lands and Deeds Registry Act, a certificate of title is conclusive evidence of ownership of land by a holder of a certificate of title. However, under section 34 of the same Act, a certificate of title can be challenged and cancelled for fraud or reasons for impropriety in its acquisition.”

In this case, our finding is that the court below misdirected itself when it held that the offer to the appellant was in bad faith as there was no evidence to this effect. As pointed out by Counsel for the appellant, there is uncontroverted evidence that the respondent had an offer for house No. E242 Wusakile and it was only proper that he pursued ZCCM over that house instead of 'claiming two houses'.

In sum, we set aside the learned trial Judge's Order of cancellation of Certificate of Title No. 40097 issued to the appellant. The issue of refund of the purchase price to the

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appellant, does not, therefore, arise. We find merit in this appeal and it is hereby allowed.

Costs to the appellant to be taxed in default of agreement.

.....
L. P. CHIBESAKUNDA
ACTING CHIEF JUSTICE

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M. S. MWANAMWAMBWA
SUPREME COURT JUDGE

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E.N.C. MUYOVWE
SUPREME COURT JUDGE