

## THE ATTORNEY GENERAL AND STEVEN LUGURU

SUPREME COURT  
NGULUBE, CJ. CHAILA, CHIBESAKUNDA, JJS  
1<sup>ST</sup> FEBRUARY, 2001 AND 18<sup>TH</sup> DECEMBER, 2001  
(SCZ No. 20/2001)

### Flynote

Land law - Sale of govt. pool houses

### Headnote

The Respondent raised a complaint against the Attorney-General and Committee on the sale of govt. pool houses. The Respondent worked in a civil service of the govt. of the republic of Zambia from January, 1979 to February, 1998. During that time, the respondent acquired an entry permit. During the period 1979 to 1998, the respondent occupied the house situated at Plot No. 1222-1, Katopola Road, Rhodes Park, Lusaka. In 1996, the Govt. of the Republic of Zambia issued a govt. circular on the implementation of the civil service ownership scheme. The circular set out some guidelines on the scheme. The respondent who was a Tanzanian applied to purchase the house where he was residing. The respondent was told that the sale was restricted to civil servants. Later when the respondent proved to the Housing Committee that he was a civil servant, he was advised that he could not buy the house because he was not a Zambian. He then, after further advice from the Permanent Human Rights Commission, took the matter to the Lands Tribunal which gave the decision in his favour. The Attorney-General appealed.

### Held:

- (i) Specific performance cannot be ordered against the state. (State Proceedings Act s.16 followed).
- (ii) The injunction of the Lands Tribunal is restricted to Lands disputes.
- (iii) The govt. circular was meant to empower Zambians.

Appal allowed.

For the Appellant: Mr. J. Jalasi, State Advocate

For the Respondent: Mr. R.H. Nkhetani of Messers. R.H. Khetani &  
Company

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### Judgment

**Chibesakunda, JS, delivered the judgment of the court.**

**This judgment was written by our late brother Chaila who died before it could be delivered. The remaining members of the panel agreed with it and have now adopted it as their own majority decision.**

The Attorney-General, hereinafter referred to as the Appellant, has appealed against the

decision of the Lands Tribunal given in favour of Steven Luguru, hereinafter referred to as the Respondent. The Lands Tribunal entertained an application by the respondent. The application was by way of a complaint by the respondent, a Tanzanian national, against the rejection by the committee of the appellant on the sale of government houses. The Lands Tribunal heard the complaint and gave an order that the housing committee of the appellants should sell the house, which the respondent had occupied while working in the Civil Service.

Briefly, the facts of the case were that the respondent raised a complaint against the Attorney-General and Committee on the sale of government pool houses. The respondent worked in the Civil Service of the Government of the Republic of Zambia from January 1979 to February 1998. During that time the respondent acquired an entry permit. During the period from 1979 to 1998, the respondent occupied the house situated at plot No. 1222-1 Katopola Road, Rhodes Park, Lusaka. In 1996, the Government of the Republic of Zambia issued a Cabinet Circular dated 13<sup>th</sup> September, 1996 on the implementation of the Civil Service Home Ownership Scheme. The circular set out some guidelines on the scheme. The respondent applied to purchase the house where he was residing. The Respondent was told that the sale was restricted to Civil Servants. Later when the Respondent proved to the Housing Committee that he was a Civil Servant, he was advised that he could not buy the house because he was not a Zambian. He then, after further advice from the Permanent Human Rights Commission, took the matter to the Lands Tribunal, which gave the decision in his favour.

The appellant has filed and relied upon a number of grounds. The first ground is that the tribunal misdirected itself in principle when it failed to recognize and address its attention to the declaration made by the Government in the preamble of the handbook on the Civil Service Home Ownership Scheme, which provides that the intention of the Government is to empower Zambian to own real property through the Scheme.

The appellant has abandoned ground two in the heads. The next ground provides that the tribunal erred in both law and fact when it made an order with the effect of specific performance against the appellants and issued an ultimatum of fourteen days in respect thereof.

The third ground which is ground four in the heads of argument provides that this honourable court should determine for the guidance of the members of tribunal litigants and legal practitioners generally whether or not the tribunal has jurisdiction to determine matters or disputes that are essentially master and servant, employment or labour dispute albeit that the same may involve issues relating to land.

Mr Jalasi for the appellant in arguing the three grounds has informed the Court that he would rely heavily on his written heads submitted on 25<sup>th</sup> January, 2001. He drew our attention to the preamble of the handbook prepared by the Cabinet Office in September, 1996. The preamble reads:

### **“Introduction**

**In the spirit of empowering Zambians to acquire their own houses, Government has decided to sell some of its pool houses to sitting tenants who are civil servants. This section contains guidelines for the sale of government pool houses. These guidelines include information on the categories of houses, eligibility/ineligibility criteria of the sitting tenants, administrative procedures, modes of payment and supervision of the sale. The guidelines are subject to review as and when the need arises.**

**Further information regarding the sale of government pool houses may be obtained from the Permanent Secretary(Administration), Cabinet Office, who is chairman of the Ad Hoc Supervisory and Monitoring Committee.”**

Mr Jalasi argued that the tribunal did not consider this preamble despite having availed them the handbook. The learned counsel submitted that the preamble was cardinal in interpreting the conditions and he relied on the cases, which have been discussed in his written heads of argument. In his written heads of argument, on the first ground, Mr. Jalasi has strongly argued that it would be seen from the preamble that the intention of the government at all times was to empower Zambian to own real property and not to include foreigners. He has relied, to support his argument, on the case of **The Attorney-General Vs H.R.H. Prince Ernest Augustus of Honover (1975) A.C. 436** where Lord Mormand said:

**“When there is a preamble it is generally in its recitals that the mischief to be remedied and the scope of the Act are described. It is therefore permissible to have recourse to it as an aid to constructing the enacting provision.”**

Mr. Jalasi argued that from that authority, the preamble was key when it came to interpretation of any grey areas that may be contained in the main body of document. He drew attention again to the case of **R.V. Batemom (1858) 27 L.J.M.C 95** which is reported in the **MAXWELL ON INTERPRETATION OF STATUES, 12 edition**. He drew our attention again to the case of Pratt Vs Cook, Son and Co. (St. Paul's) Ltd. (1940) 437 at page 448, where Lord Russel of Killowen said:

**“ For myself I feel at the outset by the fact that the Act, by its title and preamble, declares that its object is to effect something which it says is necessary, namely, to prohibit the payment in certain trades of wages in goods or otherwise than in current coin of the realm; and it being the avowed object of the Act to effect the necessary reform, it would in my opinion require words plain, and incapable of any other construction, to justify the view that by Section 23 the very evil which the Act says it is necessary to prohibit is permitted to continue even to a comparatively limited extent.”**

Mr. Jalasi maintained that the tribunal below should have paid attention to these authorities when it was constructing the provisions of Home Ownership circular and that the tribunal should have paid more attention to the preamble, which made it clear that the intent of the sale of government pool houses was meant for the spirit of empowering Zambians. The learned counsel further drew our attention to Council guidelines on the sale of council houses and the University of Zambia guidelines. The counsel that these guidelines excluded non-Zambians from eligibility to purchase.

In reply to Mr. Jalasi's argument on the first ground, Mr. Nkhetani for the respondent urged the court not to resort to the preamble unless there was an ambiguity. The counsel argued that there were two circulars issued. There was one filed by the appellant and there was also another circular No. 12 of 1996. The circulars qualified as to who should buy the houses. The two circulars, he argued, had no ambiguity at all. He drew our attention to the case of Attorney-General and the Movement for Multiparty Democracy Vs Lewanika and 4 others, 1993/1994 ZLR at page 164. We would like to observe that Mr. Khetani had not filed written heads of argument. We however allowed him to argue the case without them.

As regards the second ground, the learned counsel for the appellant Mr. Jalasi argued that the provisions of the State Proceeding Act Cap. 71 Section 16(1) deals with reliefs available against the State. Mr. Jalasi drew our attention to the provisions of sub-section (1) which reads:

**“(1) Where in any proceedings against the State such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance the court shall not..... make an order for specific performance, but may in lieu therefore make an order declaratory of the rights of the parties.”**

Mr. Jalasi has maintained that the orders contained in the judgment of the Lands Tribunal ordering the State to issue an offer to the respondent and complete the transaction amounted to an order of specific performance against the State, which is contrary to the provisions of the State Proceedings Act.

In reply to Mr. Jalasi's argument on this ground, Mr. Nkhetani conceded that the tribunal may have gone to far in setting the period in which to complete the transactions, but according to him the spirit was that the government, should offer the houses within the stated period.

On the final ground, the counsel for the appellant requested the court for guidance on the jurisdiction of the Lands Tribunal. The counsel submitted that the case before the Supreme Court was principally between the Government as an employer of the respondent and the respondent as an employee. The dispute arose out of the conditions of service. The appellant's counsel argued that the Lands Tribunal jurisdiction to determine employer-employee matters. He drew our attention to Section 22 of the Lands Act Cap. 184 of the Laws of Zambia, which reads:

**(a) Inquire into and make awards and decisions in any dispute relating to land under this Act.**

**(b) To inquire into and make awards and decisions to any dispute of compensation to be paid under this Act**

**(c) Generally to inquire and adjudicate upon any matter affecting the land rights and obligations under this Act, of any person or the Government; and**

**(d) To perform such acts and carry out such duties as may be prescribed under this Act or any other written law.**

In the counsel's submission, the tribunal did not have jurisdiction to deal with matters that are related to land which constitute of service and is therefore in the realm of the employment law.

We are grateful to the for the parties for their learned submissions and the authorities. We have read some and we have taken them into consideration in our judgment. The second ground, talks about the specific performance, which the tribunal granted to the respondent. Section 16 of the State Proceedings Act, which has been drawn to our attention, is very clear on the subject. The Section talks of declaratory orders. The tribunal, however, went beyond what is provided for in the State Proceedings Act. The tribunal granted specific performance and ordered the Housing Committee to offer the house in question within 14 days from the date of the judgment. The law does not support that order. The learned counsel for the appellant was on firm ground when he maintained that the order was contrary to the State Proceedings Act. The respondent advocate on this ground offered very weak argument and he in fact conceded that the order was not properly worded. The specific performance ordered by the tribunal is set-aside on the ground that it wad granted contrary to the provisions of the State Proceedings Act.

Ground four deals with the jurisdiction of the Lands Tribunal. We have already set out relevant section of the Act. The State had argued that the dispute of the matter was out of conditions of service and that the Lands Tribunal did not have jurisdiction to entertain such a complaint. The Supreme Court in the case of **Kawana Mwangela and Ronald Bwale Nsokoshi and Ndola City Council, Appeal No. 184 of 1999** took the opportunity of discussing the jurisdiction of the Lands Tribunal. The court made a comment on the jurisdiction. The Supreme Court quoted and considered Section 22. The court said:

**"In our considered opinion, a reading of Sections 15 and 22 of the Lands Act shows quite clearly that the jurisdiction of the Lands is limited to the settlement of 'land disputes' under the Act is not an alternative forum to the High Court where parties can go to even for issuance of prerogative writs such as mandamus. In these proceedings, the appellant was seeking to impugn a Certificate of Title issued to the 1<sup>st</sup> respondent and under the Lands and Deeds Registry Act, Cap. 185 of the Laws, only the High Court has jurisdiction to entertain such proceedings."**

In the recent case of Adetayo Odayeni, the Attorney-General, the Commissioner of Lands and Atlantic Investments Limited vs the Commissioner of Lands vs SCZ Appeal No. 130 of 2000 the question of jurisdiction of the Lands Tribunal cropped up again. We considered SCZ Judgment No. 29 of 2000. We sadi:

**"Our short answer to the submissions is that the Lands Tribunal has no jurisdiction to order cancellation of Certificate of Title in land matters. In terms of the Lands and Deeds Registry Act Cap 185, the jurisdiction to order cancellation of Certificate of Title Deeds lies with the High Court and not the Lands Tribunal. The Lands Tribunal can only Recommend cancellation. This is what in effect we said in Mwangela V Nsokoshi and Ndola City Council (1). Although the Lands Tribunal was**

**Correct in doing substantial justice, their power is limited to recommending to the Commissioner of Lands as to what to do with a Certificate of Title Deeds in issue and not to order cancellation of the same.”**

In the present case, the evidence shows that the Government created a condition of service of offering for sale some government pool houses to the civil servants who are citizens of Zambia. The evidence shows that the dispute between the Government or the employer and the employee was not about the land, but whether or not the respondent was qualified to be offered to buy the house, which he was occupying as a civil servant.

In the present case, the point has taken up. The evidence shows that the dispute between the Government or the employer and the employee was not about the land, but whether or not the respondent was qualified to be offered to buy the house, which he was occupying as a civil servant.

In the present case, the point has been taken up. The evidence shows that the Government created a condition of service to sell some government pool houses to the civil servants. The evidence shows that the dispute between the Government or the employer and the employee was not about the land, but whether or not the respondent was qualified to be offered to buy the house, which he was occupying as a civil servant.

We have seriously considered this issue and we are in firm agreement with the learned counsel for the appellant that the tribunal did not have jurisdiction in this matter.

We now turn to the first ground. Mr Jalasi has drawn our attention and quoted in extensio the provisions of the Handbook of September 1996. He has heavily relied on the authorities which we have already referred to. The preamble begins with the words **“In the spirit of empowering Zambians to acquire their own houses, the Government has decided to sell some of its pool houses to sitting tenants who are civil servants.”** In its judgment, the tribunal after considering provisions of the handbook concluded that the respondent was eligible to purchase the house for the following reasons:

1. The appellant was a civil servant who had retired in 1997 but has not been paid his terminal benefits and was a legal sitting tenant in accordance with Clause 2.1(b) of the Handbook of the Scheme;
2. The appellant was a civil servant who was qualified to own land in Zambia under the provisions of Section 3(3) of the Lands Act, Cap. 29 of 1995 in accordance with clause 2.1(e) of the Handbook on the Civil Service Home Ownership Scheme.

The State argued that the Lands Tribunal fell in error when it failed or ignored to consider the preamble, which was cardinal to the Home Ownership Scheme. The learned counsel for the State drew our attention to the Government circular by the Ministry of Local Government and Housing and the University of Zambia guidelines on the sale of houses. We had the occasion of considering the circular of sale of Council houses in the case of **Lusaka City Council, National Airports Corporation Limited and Grace Mwamba and others, SC Appeal No. 63 of 1998.** The Ministry has been kind to provide to us a copy of the circular No. 2 of 1996 issued by the Ministry of Local Government and Housing. In paragraph (e) of the circular, the Government provided the following guidelines:

**“Under this policy, only individual Zambian tenants/occupiers are eligible to purchase the houses they occupy:**

**(i) Houses on block allocation to institutions such as Government/Private firms, parastatals etc. shall be offered to actual individual occupiers to purchase within the prescribed 18 months. Provided that such occupiers shall be expected to declare their intentions to purchase the houses within 30 days from the date of offer.**

**(ii) Any Zambian occupier who fails to declare his/her intention to purchase the house within the prescribed period of 30 days from the date of offer shall continue paying rent. However, non-Zambian with existing tenancy agreements will continue occupying the houses provided they pay commercial rent."**

We have also been accorded with a copy of the University of Zambia Home Ownership Scheme. The Introduction Clause provides:

**"In line with Government policy of empowering Zambians to acquire their own houses, University of Zambia has decided to sell some of its pool houses to sitting tenants. This section contains guidelines include information on the categories of house, eligibility/ineligibility criteria of sitting tenants, administrative procedures, modes of payment and supervision of sale. The guidelines are subject to review as and when the need arises.**

**Further information regarding the sale of University of Zambia Pool Houses may be obtained from the Registrar, University of Zambia.**

#### **Clause 2 deals with ELIGIBILITY/INELIGIBILITY**

##### **Clause 2.1 ELIGIBILITY**

**In the process of identifying University of Zambia workers who are bona fide sitting tenants, the following criteria shall be used:**

- (c) a confirmed Zambian national who is in service and is a legal tenant;**
- (d) staff on permanent and pensionable terms of service;**
- (e) a worker who retired or was retrenched but was not paid terminal benefits and was a legal tenant;**
- (f) a spouse or children of a worker who died but was not paid terminal benefits and was a legal tenant;**
- (g) a worker means any University of Zambia employee regardless of marital status; and**
- (h) the staff member shall only benefit from the scheme once;**
- (i) after accepting the offer to buy a university house, a serving worker shall be bonded to the institution for a minimum of;**
- (j) five years except those retiring within the above stated period.**

##### **2.2 INELIGIBILITY**

**The following categories of University of Zambia workers shall not be eligible to purchase University of Zambia pool houses:**

- (a) a University of Zambia worker who retired, was retrenched or died and was paid terminal/death benefits;**
- (b) all staff on contract;**
- (c) all non Zambians and**

- (d) (i) a worker who is a sitting tenant and benefits through the University of Zambia from the sale of council houses.**
- (ii) a worker who has previously benefited from a University house (building) loan. Provided that in cases where the loan obtained at the earlier time does not amount to the sum stated in regulation 3 (three) of Section C, a worker may apply for the difference to enable him/her complete the house."**

We have carefully considered these circulars, i.e. the Local Government and the University of Zambia. These circulars leave no doubt what the Government's intentions were. The two circulars clearly spelt out the Government policy and its intention. The intention was clearly spelt out. It was a Government condition of service to sell some of the houses mainly to the Zambians only. It is interesting to note that the Cabinet circular disqualified a civil servant who was a sitting tenant and had benefited from the sale of Council houses to buy a Council house, a civil servant had to be a Zambian. The tribunal did not consider the meaning of the preamble. The tribunal ignored the question of spirit of empowering Zambians to acquire their houses. The tribunal thought that so long as you are a civil servant and a sitting tenant and so long as you qualify under Section 3 of the Lands Act, you are home and dry. On strict interpretation of the Cabinet circular and interpretation of the Local Government and Housing and the University of Zambia circulars on the sale of houses, the intention of the Cabinet becomes very clear. The intention was to empower Zambians who were sitting tenants to purchase pool houses. The tribunal misdirected itself and erred in ignoring the preamble. It was the Government's intention to make it a condition of service to offer pool hoses to the Zambian civil servants who were sitting tenants. In this case the respondent was a Tanzanian national who had been in the service for a long time. He did not qualify to purchase the Government house, which he was occupying under the scheme. The appeal must succeed on this ground.

For the reasons we have given in our judgment, this appeal is allowed. The orders given by the tribunal are set aside. This case involves the sale of pool houses to the employee by the employer. The tribunal spent a great deal of time in consideration of Section 3 of the Lands Act. From our interpretation of the Cabinet circular the Government introduced a condition of service to sell some of the pool houses to the Civil Servants who were Zambians. The policy was not to sell the houses to any Civil Servant who qualified under Section 3 of the Lands Act. Section 3 of the Lands Act is a general provision which empowers any civil servant to purchase land under certain conditions. The Government Circular empowered Zambian Civil Servants to purchase Government Pool houses. We consider 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. There was no evidence here that the respondent had obtained the relevant Presidential consent under Section 3. For avoidance of any doubt the circular was to empower the Zambian Civil Servants to purchase some government pool houses. Each party shall meet its own costs.