

IN THE SUPREME COURT OF ZAMBIA APPEAL NO. 103 OF 1996
HOLDEN AT NDOLA
(CIVIL JURISDICTION)

COPPERFIELDS COLD STORAGE COMPANY

VS

SUNTRUST INVESTMENTS LIMITED

Coram: Bweupe DCJ., Chaila and Muzyamba JJS.
11th September, 1997.

For the Appellant : MR. N. NOYO, HAKI CHAMBERS.

For the Respondent: Mr. Micheal Masengu of Micheal Masengu
and Company.

JUDGMENT

BWEUPE DCJ., DELIVERED THE JUDGMENT OF THE COURT.

This is an appeal against the decision of the High Court at Kitwe granting the Respondent specific performance of a contract dated 27th March, 1992.

The undisputed facts were that the parties entered into a contract of sale for plots No 3 Matuka Avenue and 120 Accra Road for consideration of K34,000,000.00. The Respondent paid a total sum of K14,000,000.00. the Respondent further despatched to the appellant nine post

dated cheques all amounting to K20,000,000.00 payable between 12th December, 1992 and 25th May, 1993. The cheques were returned by the Appellant to the Respondent on 23rd January, 1995. The Appellant demanded that the price of the property be revised as the market value had gone up and rescinded the contract of sale. The special conditions provided, inter alia that a sum of K10,000,000.00 shall be paid by the Respondent to the Appellant on exchange of contract and this condition was met. Completion was to be two weeks after the issuance of the state consent.

In his judgment the learned trial judge found that a subsequent verbal agreement or any parol agreement such as the alleged pledge in this case, can never be added to the contents of a written contract. Further more according to section 4 of the statute of frauds every contract for the sale of land or business premisses must always be in writing. It follows, therefore, that the alleged verbal pledge made by Mr. Mulenga to pay the balance of the purchase price was null and void. He said time to pay the purchase price was not of essence and Mr. Mulenga was not wrong to pay the balance in instalments, particularly the fact that it was paid before the state consent was obtained.

The appellant argued four grounds of appeal. He said in ground one that the judge erred in both law and fact when he held that the contract of sale in issue was open ended and did not fix a time for the payment of the purchase price. He argued in ground two that the learned judge erred in law in failing to consider whether damages would have been an adequate remedy in the circumstances and on the evidence before him. In ground 3 that the judge erred in law when he held that the subsequent oral variation of the contract was null and void and consequently the appellants could not rely on the same. He further argued in ground 4 that the judge erred in awarding the discretionary and equitable remedy of specific performance having regard to the conduct of the Respondent in the performance of his obligation under the contract.

The Respondent on the other hand supported the findings of the trial court. He argued and argued with much force that the said contract of sale did not have time stipulation in which payment would be completed. He argued that time was not of essence.

We have seriously considered the evidence and judgment of the court below. We have also considered the submissions

by both counsel and cases cited. The question to answer is whether or not time was of the essence of this contract? The special condition provided that completion was to be two weeks after insurance of the state consent. We are of the view that time was not of the essence of this contract of sale. Moreover, regardless of what they said about state consent the Appellant should have given to the Respondent Notice to complete. This was not done and, therefore, the purported rescission was null and void. We confirm the holding of the trial judge that there should be specific performance of the contract of sale. This appeal is dismissed with costs to the Respondent, and to be taxed if not agreed.

B.K. BWEUPE
DEPUTY CHIEF JUSTICE

M.S. CHAILA
SUPREME COURT JUDGE

W. M. MUZYAMBA
SUPREME COURT JUDGE