

IN THE SUPREME COURT FOR ZAMBIA SCZ/8/16/2002
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)

B E T W E E N:

AARON MUNZELE APPLICANT

AND

ZIMCO PROPERTIES RESPONDENT

CORAM: NGULUBE, CJ., LEWANIKA, DCJ., MAMBILIMA JS.
On March 27, 2002 and July 17, 2002

For the Appellant: R. MAINZA of Mainza & Co.

For the Respondent: C. KAJIMANGA of Kajimanga & Co.

RULING

LEWANIKA, DCJ., delivered Ruling of the Court.

When we heard this motion we dismissed it with costs and said we would give our reasons later and we now do so.

The motion is for an Order that the High Court Order granting the Respondent leave to evict the Applicant from Plot 6073 Chitemene Road, Northmead, Lusaka be stayed pending the determination of the appeal by this court. The evidence on record is that the Applicant was offered to purchase the premises situate on Plot 6073 Chitemene Road, Northmead, Lusaka by letter dated 30th June, 2000 at a price of K40,000,000.00. The

terms of the offer were that a deposit of 10% was to be paid within 30 days of the receipt of the offer and the balance of the purchase price was to be paid within 12 months, in equal monthly instalments from the date that the 10% deposit is paid. The Applicant accepted the offer on 5th July, 2000 and paid K4,000,000.00 being the 10% deposit. On 26th March, 2001 the Applicant paid K3,000,000.00 and a further K3,000,000.00 on 4th October, 2001. In the meantime on 24th September, 2001 the Respondent's advocates wrote to the Applicant's advocates rescinding the contract for failure to complete and advising them that the Respondent were offering the property to another buyer. The Applicant then instituted proceedings in the High Court for an injunction to restrain the Respondent from selling the property to another person. The trial court refused to grant the injunction but gave the Applicant an extension of 60 days within which to complete. The Applicant did not complete within the stipulated time and on 16th January, 2002 the trial court made an order that the Applicant be evicted from the said premises. On 17th January, 2002 the Applicant was evicted from the premises and on the same date the premises were offered to another buyer. On 18th January, 2002 the Applicant's then advocates made application to the court below for an order to stay execution of the Order of possession and this application was refused. The Applicant then instructed his advocates to

appeal against the Ruling of the court and paid the sum of K20,000,000.00 into court, leaving a balance of K10,000,000.00 on the agreed purchase price.

There is no dispute on the evidence on record that the Applicant was in breach of the agreement the parties entered into on the sale of the house. There is also no dispute that following the Applicant's breach the Respondent through its advocates rescinded the contract on 24th September, 2001. It is also common cause that following an application by the Applicant, the court below granted the Applicant on 26th October, 2001 an Order granting him an extension of 60 days within which to complete. The Applicant failed to complete within the stipulated time and in consequence thereof the court below granted possession to the Respondent on 16th January, 2002 and on 17th January, 2002 the Applicant was evicted from the house in question. On 18th January, 2002 the Applicant applied to the court below for a stay of execution of the Order of possession which was refused. We are satisfied that the court below was on firm ground in refusing the application for a stay as at the time when the application was made, there was nothing to stay, the applicant having already been evicted from the house. It was for this reason that we dismissed the motion.

.....
M.M.S.W. NGULUBE
CHIEF JUSTICE

.....
D.M. LEWANIKA
DEPUTY CHIEF JUSTICE

.....
I.M.C. MAMBILIMA
SUPREME COURT JUDGE