

KAWANA MWANGELA AND RONALD BWALE NSOKOSHI AND NDOLA CITY COUNCIL

SUPREME COURT

LEWANIKA, J.S.

8TH MARCH, 2000 AND 7TH SEPTEMBER, 2000
(S.C.Z . 29 OF 2000)

Appeal No. 184/1999

Flynote

Lands Tribunal - Lawfulness of Assignment of house - Appellant non - sitting tenant - Government circular - question of fraud.

Lands Tribunal - Jurisdiction to decide on matter.

Headnote

The second respondent assigned House No. 9, Mwenda Road, Itawa, Ndola to the first respondent. The Appellant claimed that he was entitled to it as an occupier by virtue of the Ministry of Local Government and Housing circular dated 2nd May, 1996 on revised procedures for the sale of council houses. The matter was taken to the Lands Tribunal found that there was no unpropriety or fraud in the transaction. The appellant filed two grounds of appeal.

Held:

- (i) The tenancy of the house was never transferred to the appellant who was not a sitting tenant. There was also no evidence of fraud.
- (ii) The Lands Tribunal had no jurisdiction to entertain these proceedings under the Lands and Deeds Registry Act, Cap. 185 of the Laws of Zambia as it was limited to 'land disputes'.

Statutes referred to:

- (i) Lands and Deeds Registry Act, Cap.185.

For the Appellant

In Person.

For the 1st Respondent

G.L.Chilandu, Chilandu & Co.

For the 2nd Appellant

No Appearance.

Judgment

LEWANIKA, J.S., delivered the judgment of the court.

This is an appeal against the decision of the Lands Tribunal on a question referred to it by the Appellant. The Lands Tribunal was asked to determine whether it was fair and just for the 2nd Respondent to assign house No.9, Mwenda Road, Itawa, Ndola to the 1st Respondent when the Appellant was entitled to it as an occupier by virtue of the Ministry of Local Government and Housing circular dated 2nd May, 1996 on revised procedures for the sale of Council houses.

The appellant had also sought the following reliefs:-

1. An order to quash the decision of the 2nd respondent to assign the house in issue to the 1st respondent.
2. An order of mandamus for the 2nd respondent to assign the house to the appellant.
3. Any other order or relief the Tribunal may deem fit.

The evidence on record is that House No. 9, Mwenda Road was owned by the 2nd Respondent and rented by Bitumen Products Manufacturing Company Limited and occupied by one J. Chimalanga who was an employee of the said company. Upon retrenchment from his employment Bitumen Products with the consent of the 2nd respondent transferred the tenancy of the said house to Mr. Chimalanga with a view to enable him buy it from the 2nd respondent under the scheme to sell houses to sitting tenants by local authorities. Sometime in December, 1995, Mr. Chimalanga decided to settle at a farm and made an arrangement with the appellant for the appellant to put his employees in the house as a caretaker on condition that the caretaker would look after the household property belonging to Mr. Chimalanga, pay the rent, water and electricity bills and also allow Chimalanga to stay in the house whenever he was in Ndola. There was no change in the tenancy of the house. The appellant paid the rent for two months and thereafter fell into substantial arrears.

The second respondent then offered the house to Mr. Chimalanga to buy and Mr. Chimalanga accepted the offer although he did not have the resources to do so. He mentioned this fact to the appellant who expressed interest in purchasing the house but no concrete arrangements were made and the appellant was still in arrears on the rental payments. He was subsequently approached by the 1st respondent who also expressed interest to purchase the house. As the appellant was having difficulties in settling the rental arrears and fearing that the 2nd respondent would withdraw the offer to sell the house to him, Mr. Chimalanga entered an agreement with the 1st respondent whereby the 1st respondent gave him the money clear the outstanding arrears and pay the purchase price of the house. By a written agreement made on 21st April, 1998, which appears on page 52 of the record, Mr. Chimalanga subrogated his rights to purchase the house to the 1st respondent and the house was assigned directly from the 2nd respondent to the 1st respondent and a certificate of title issued to the 1st respondent. This is the transaction that prompted the appellant to appeal to the Lands Tribunal. The Lands Tribunal found that there was no unpropriety or fraud in the matter that the house was assigned by the 2nd respondent to the 1st respondent, hence the appeal now before us.

The Appellant in his amended memorandum of appeal has filed two ground of appeal namely:-

1. That the Lands Tribunal misdirected itself in Law in finding that the appellant had not established any interest in the house in issue and that the 1st and 2nd respondents had not been guilty of any impropriety in the matter.
2. That the Lands Tribunal misdirected itself in deciding the matter on the basis of affidavits only as pertinent issues in the matter were not put to test.

With regard to the first ground of appeal the evidence on record is that at no time was the tenancy of the house transferred to the appellant and that the appellant was not a sitting tenant. There was also no evidence of fraud or any impropriety in the manner in which the house was assigned by the 2nd respondent to the 1st respondent, on the contrary the assignment was done with the full consent of Mr. Chimalanga who was the sitting tenant of the house in issue. There is thus no merit in this ground of appeal and the Lands Tribunal was on firm ground in arriving at the decision that it did.

With regard to the second ground of appeal, the appellant was represented by Counsel in the proceedings before the lands Tribunal. The parties had filed a consent order dated 16th April, 1999, which appears on Page 81 of the record where they agreed to rely on the affidavits filed in those proceedings. The appellant cannot be heard to complain now of that procedure and there is no merit as well in this ground of appeal. There is thus no merit in the appeal which we dismiss with costs, the costs are to be taxed in default of agreement.

However there is one issue on which we wish to comment which did not arise in the appeal before us but was raised in the proceedings before the Lands Tribunal and this relates to the jurisdiction of the Lands Tribunal. The Lands Tribunal is a creature of statute having been established by Section 20 (1) of the Lands Act, Cap. 184 of the Laws of Zambia. Part II of the Act which contains Section 3 to 15 deals with the administration of land in Zambia. Section 15 of the Act provides as follows:

15. (1) Any person aggrieved with a direction or decision of a person in authority may apply to the Lands Tribunal for determination.
(2) In this section "person in authority" means the President , the Minister or the Registrar.

The Jurisdiction of the Lands Tribunal is contained in Section 22 of the Act which provides as follows:-

22. The tribunal shall have jurisdiction to-
- (a) Inquire into make awards and decisions in any dispute relating to land under this Act;
 - (b) to inquire into and make awards and decisions relating to any dispute of compensation to be paid under this Act;
 - © 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 carry out such duties as may be prescribed under this Act or any other written law.

In our considered opinion a reading of Sections 15 of 22 of the Lands Act shows quite clearly that the jurisdiction of the Lands Tribunal is limited to the settlement of "land disputes" under the Act and is not an alternative forum to the High Court where parties can go to even for the issuance of prerogative writs such as mandamus. In these proceedings the appellant was seeking to impugn a Certificate of Title issued to the 1st respondent and under the Lands and Deeds Registry Act, Cap 185 of the Laws only the High Court has jurisdiction to entertain such proceedings. As we have stated earlier on, although the point was not taken up before us, the Lands Tribunal had no jurisdiction to entertain these proceedings.