

WORKERS DEVELOPMENT CORPORATION (ZCTU) LIMITED AND DAVY MKANDAWIRE

SUPREME COURT
NGULUBE, C.J., SAKALA AND MUZYAMBA, JJ.S.
ON 2ND MARCH AND 22ND JULY, 1999.
(S.C.Z. JUDGMENT NO. 19 OF 1999)
APPEAL NO. 5 OF 1999.

Flynote

Contract - Agreement to renovate
Company Law - Body Corporate - Representation of

Headnote

The respondent was renting two adjoining plots in Kitwe from the appellant. With the consent and agreement of the appellant's Managing Director of the day, the respondent constructed a block of offices and a machine shop. The building plans were processed with the City Council through the then Managing Director. The respondent sued to recover K19 Million the cost of the buildings, pursuant to the agreement and successfully applied for summary judgment. The appellants sought to resist the claim by alleging - through its new Managing Director - that there was no such agreement; that the buildings were illegal; and that the value was not as claimed. The appellants' claims were made despite documentary evidence which showed that the previous management had indeed agreed as alleged by the respondent and that a valuation had been done. At the time of hearing the appeal, the appellant was still collecting money from the tenants in those renovated offices. The issue of whether a body corporate could act "in person" also arose.

Held:

1. There were no triable issues to warrant the granting of leave to defend and no merit to the appeal.
2. A body corporate must be represented in civil litigation by an advocate unless leave has been previously obtained from the court in the exercise of its inherent power to regulate its own proceedings to be represented by a director or other senior person.

For the Appellant: Nil.

For the Respondent: Mr. M. Chungani, of Chungani & Company.

Judgment

NGULUBE, C.J.: delivered the judgment of the Court.

On 2nd March, 1999, when we heard this appeal, we dismissed it and said we would give our reasons later. This we now do.

The respondent was renting two adjoining plots in Kitwe from the appellant. With the consent and agreement of the appellant's Managing Director of the day, the respondent constructed a block of offices and a Machine Shop. The building plans were processed with the City Council through the then Managing Director. The respondent sued to recover K19 million, the cost of the buildings, pursuant to the agreement and successfully applied for summary judgment. The appellant sought to resist the claim by alleging - through its new Managing Director - that there was no such agreement; that buildings were illegal; and that the value was not as claimed. All this was in the teeth of the clearest documentary evidence which showed that the previous Management had indeed agreed as alleged by the respondent and that a valuation had been done. To crown it all, the appellant continues to collect rents from the tenants who are in those offices.

The learned district registrar and the learned judge on appeal at Chambers saw no triable issue whatsoever to warrant the granting of leave to defend. The same arguments which were rejected below have been urged upon this court in the written submissions filed. We see no

triable issues either and there is, in truth, no merit whatsoever in this appeal. It is dismissed with costs to the respondent, to be taxed if not agreed. It was for the foregoing reasons that we dismissed the appeal.

Before leaving this case, we wish to comment on one other matter which came to our attention. The appellant is a body corporate and purported to be appearing "in person" in the appeal. The submissions were lodged by the Company Secretary who did not come, whose name we could not decipher and who requested that we dispense with anyone's appearance on behalf of the company. We do not know if the Company Secretary is an advocate with a right of audience before us or not. If he/she is not, then we must point out that as a general rule a body Corporate must be represented in civil litigation by an advocate unless leave has been previously obtained from the court in the exercise of its inherent power to regulate its own proceedings to be represented by a director or other senior person. Leave will be granted in very exceptional cases and only for very good reasons. Otherwise, we must draw attention of the appellant to the provisions of Section 51 of the Legal Practitioners Act and Order 5 Rule 6 of the Rules of the Supreme Court (White Book 1995) which severely restrict the freedom and desire of a body corporate to act "person".
