

IN THE HIGH COURT FOR ZAMBIA  
AT THE COMMERCIAL REGISTRY  
HOLDEN AT LUSAKA  
(Civil Jurisdiction)

2014/HPC/0361



**BETWEEN:**

IAN TEEBA

1<sup>ST</sup> PLAINTIFF

TUBESEBO MWIYA TEEBA

2<sup>ND</sup> PLAINTIFF

AND

FRONTIER FINANCE LIMITED

1<sup>ST</sup> DEFENDANT

HAMMER AND TONGUE (ZAMBIA) LIMITED

2<sup>ND</sup> DEFENDANT

**BEFORE HON. MADAM JUSTICE PRISCA MATIMBA NYAMBE, SC AT  
LUSAKA IN CHAMBERS**

For the Plaintiffs: Mr. M Mushemi  
*Nhari Mushemi & Associates*

For the Defendant: Mrs. M M Muyambango  
*Dove Chambers*

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## JUDGMENT

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**List of authorities referred to:**

1. Order XV Rule 6 (2) of the White Book

**Cases referred to:**

1. Cavemont Merchant Bank Limited Vs Amaka Agricultural Company Limited SCZ Judgment No. 12 of 2001
2. Franklyn V Lamond (1847)4 C.B. 637
3. Parker Vs P and N Recovery of NY, 182 Misc, 2<sup>nd</sup> 342,346 (N.Y. Civ.ct.1999)
4. Cyril Anarade Ltd Vs Southerby & Co. (1931) 47 T.L.R. 23
5. O'Herlihy Vs Hedges (1803) 1 Sch & Lef. 123



The Plaintiffs herein are husband and wife. They commenced this action by way of Writ of Summons against the Defendants claiming the following reliefs:-

- i. refund of K141,508.22 being the amount paid to purchase Plot Number 33563/1080, Kamwala South, LUSAKA plus related bank interest charges up to the month of August 2014;
- ii. reimbursement of K2,000.00 being costs of renovations carried out on the flats;
- iii. reimbursement of K700,00 being the outstanding electricity bill incurred before procurement of the property, paid by Plaintiff;
- iv. damages for breach of contract;
- v. interest on (i), (ii) and (iii) above;
- vi. any other relief deemed fit by the Court;
- vii. costs.

The 1<sup>st</sup> Defendant was at the material time a Limited Company, carrying on the business of micro finance and asset finance related services. The second Defendant was at the material time a Limited Company involved *inter alia* in conducting auctions. On or about 2<sup>nd</sup> October 2013, the Plaintiffs, procured Plot No. 33563/1080 Kamwala South at a public auction conducted by the 2<sup>nd</sup> Defendant, and paid the bid price of K110,000.00, determined at the fall of hammer. The total amount paid was K116,380.00 inclusive of related charges.

After procuring the said property the 1<sup>st</sup> Plaintiff carried out renovations to the tune of K2,000.00, and also cleared an existing electricity bill on the property in the sum of K700.00.



On or about December 2013 the Plaintiffs obtained loans from financial institutions amounting to K141,508.22 towards the purchase of the property. The property comprised of flats which the Plaintiffs put on rent after renovations.

On or about 27<sup>th</sup> January 2014, the Plaintiffs received a telephone call from a third party who demanded to know why they were collecting rentals from his tenants. The third party claimed to be the *bona fide* owner of the property, and as such the said rentals were due to him. On or about February 2014, the said third party evicted all the tenants from the property and locked the said property.

On making inquiries at the Council, the Plaintiffs were informed in writing that the *bona fide* owner of the property was the said third party. The Plaintiffs had received rentals from the said property for the months of December 2013 and January 2014 when the property was locked up by the Third Party.

It is the Plaintiffs' contention that it was a necessary implied condition of the purchase agreement that the Plaintiffs would have quiet enjoyment of the subject property, and that the said transaction would be completed, and conveyance to title of the purchased property to the Plaintiffs finalized within a reasonable time. As at the time of the lock up of the property, the Plaintiffs still had not been given the Certificate of Title despite having paid the full purchase price. The Plaintiffs sought to rescind the transaction with the 2<sup>nd</sup> Defendant due to the disturbances, confusion or tension, and claims by the Third Party, and accordingly requested a refund of the monies paid for the purchase of the subject property.



However the Defendant has failed, refused or neglected to refund the money paid for the purchase of the property and other charges incurred by the Plaintiff. Hence the claims before Court.

In its defence the 1<sup>st</sup> Defendant did not deny paragraphs 1 – 6 of the Statement of claim.

The 1<sup>st</sup> Defendant denied paragraphs 7 – 10 of the Statement of claim relating to the borrowings the Plaintiffs undertook to raise money for the purchase and renovations of the subject property.

With regard to paragraphs 11 – 13 of the Statement of claim the 1<sup>st</sup> Defendant denied the contents thereof to the extent that the 1<sup>st</sup> Defendant got possession of the house legally and proceeded to process the record at Lusaka City Council, and as such, there is no way that the Council could have declared the third Party to be the *bona fide* owner.

In response to paragraphs 15, 16, 17 and 18 of the Statement of claim the 1<sup>st</sup> Defendant repeats paragraph 4 of its defence which is that the 1<sup>st</sup> Defendant got possession of the house legally, processed the record at Lusaka City Council and as such there is no way that the Council could have declared the Third Party to a *bona fide* owner.

The first line of defence by the 2<sup>nd</sup> Defendant was to strike out Party from the action, for misjoinder pursuant to **Order XV Rule 6 (2) of the White Book**. This was declined in a Ruling dated 21<sup>st</sup> May 2015.

Thereafter the 2<sup>nd</sup> Defendant filed its defence on 12<sup>th</sup> June 2015 denying the claim as endorsed stating that it was not a party to the Contract and therefore





did not have the capacity to rescind the contract as the same was executed between the Plaintiffs and the 1<sup>st</sup> Defendant and that it was not in any position to refund the purchase price as the same was paid to the 1<sup>st</sup> Defendant.

In reply to the 2<sup>nd</sup> Defendant's Defence the Plaintiffs replied in an affidavit filed on 10<sup>th</sup> July 2015 stating that the 2<sup>nd</sup> Defendant was supposed to carry out due diligence to ensure that the 1<sup>st</sup> Defendant had title to dispose of the property to any unsuspecting Third Party, in this case the Plaintiffs. Further that the 2<sup>nd</sup> Defendant is the one to whom the Plaintiff's paid the purchase price for the subject property. Further that due to the evictions that occurred no rent was being realized by the Plaintiffs, but their repayment obligations towards the loans obtained still subsists and accruing interest putting the Plaintiffs under immense pressure and financial distress.

At trial the Plaintiffs called one witness, one, **Ian Teeba**. In his testimony, he *inter alia* requested the Court to order a refund of the money which they had paid for the subject property together with interest, legal fees as endorsed on the Writ of Summons.

Under cross examination, by **Mr. Dzekedzeke** for the 1<sup>st</sup> Defendant he clarified that he and his wife, the 2<sup>nd</sup> Plaintiff herein obtained the money to pay for the subject property from two Financial Institutions.

The second Plaintiff obtained a loan from NATSAVE, and he obtained a loan from FINCA, Financial Services. They both disclosed to their lenders that they wanted to pay Hammer and Tongues, the Second Defendant, herein. What he knew was that the property they were interested in and hoped to purchase belonged to Hammer and Tongues, the 2<sup>nd</sup> Defendant herein.



Under further cross-examination by **Mrs. Muyambango**, for the 2<sup>nd</sup> Defendant, he clarified that the property had been advertised by Hammer and Tongues, and that from a brochure which they obtained from Hammer and Tongues they chose the subject property. The property was advertised in the Post Newspaper. Hammer and Tongues were selling several houses, and he would not know if they owned the property or were selling on behalf of someone. After full payment they were told who the owners were. He referred to a letter on page 2 of the Plaintiffs documents wherein Hammer and Tongues wrote to him and his wife. The letter is dated 5<sup>th</sup> November 2013 on Hammer and Tongues Letter Head, the contents of which are as follows:-

*"Bokono Zambia*

*Plot 7403, Mungwi Road, Krimamui Park*

*Box 390030, Lumumba Road*

*Lusaka*

*05 November 2013*

*Attention: Mrs. Tubesebo M. Teeba*

*We would like to let you know that your offer for property described as Stand No. 3363/1080, Kamwala South of K110,000.00 (One Hundred And Ten Thousand Kwacha) has been accepted by Frontier Finance.*

*The total amount to be paid to Hammer and Tongues (Z) Ltd;*

<i>Offer:</i>	<i>K110,000.00</i>
<i>5% Purchase Levy:</i>	<i>K 5,500.00</i>
<i>VAT:</i>	<i>K 880.00</i>



**TOTAL: K116,380.00**

*We will be waiting to hear from you on the modalities of payment as per our conditions.*

*Cash Deposit:*

*A cash deposit in the sum of the bid price to be paid to HAMMER AND TONGUE (Z) LTD Standard Chartered Bank Account Number 0100123631405 – Sort Code SCBLMLX North End Branch*

*For and on behalf of Hammer & Tongues (Z) Ltd.*

*Yours sincerely”*

The witness was also referred to pages 3, 4 and 5 of the Plaintiffs' Bundle of Documents which contains the Conditions of Sale for vehicles and All Types of Goods, signed by Hammer and Tongues Ltd whereby **Tubesebo Mwiya Teeba** paid K4,000.00 Cash to Bokono, on 5<sup>th</sup> December 2013 and on 6<sup>th</sup> December 2013 **Ian Mwiya** paid to I.T., Cavemont Farms New Kasama a further K7,380,000 as further deposit. Another payment of K5,000.00 cash and K5,000.00 cheque was again paid to I.T. Cavemont Farms on 2<sup>nd</sup> October 2013. Further payments in the sum of **K110,000** in respect of Plot/Stand No. 33563/1080 Kamwala South in the sum of K116,380 inclusive of purchase levy was paid to Hammer and Tongues (Z) Ltd by **Ian Teeba** on 11<sup>th</sup> December 2013. Subsequently on 10<sup>th</sup> December 2013 Hammer and Tongues (Z) Ltd wrote to **Mrs. Tubesebo M. Teeba** as follows:-



*“This is to confirm that **Mrs. Tebesebo M. Teeba** has collected the original Land Record for Plot/ Stand No. 33563/ 1080 Kamwala South*

*Date: 10.12.2013*

*Name: Tebesebo M. Teeba,*

*Signature: .....*

*Witness: Masuba Mulenga*

*Name: Masuba Mulenga*

*Signature:.....*

*For and on behalf of Hammer and Tongues Zambia Limited.*

*Richard Chefu*

*General Manager”*

All the above documents including confirmation was signed for and on behalf of Hammer and Tongues Zambia Limited by a **Mr. Richard Chefu**, General Manager.

He conceded that the parties as per contract of sale were between Frontier Finance, himself and his wife and Hammer and Tongues does not appear. However he reiterated the fact that the contract was signed in January 2014 after the sell of the property at the fall of the Hammer after all monies had been paid to Hammer and Tongues. They took it that Hammer and Tongues had done due diligence on the subject property.





Under re-examination, in reference to the Letter at page 2 of the Plaintiffs' Bundle of Documents he stated that the letter says the deposit was to be paid to Hammer and Tongues and the money was paid to Hammer and Tongues by cash and cheque payments, and that at the time of payment they had not met 1<sup>st</sup> Defendant.

The 1<sup>st</sup> Defendant called one witness, one **Patricia Kasongo** who was employed as Head of Human Resources by the 1<sup>st</sup> Defendant. In her witness statement filed on 2<sup>nd</sup> September 2015, she stated that the credit facility in question holds that the borrower will sell their property with the intention to buy it back from Frontier Finance Limited provided that all terms and conditions are met. She stated that **Mr. Kebby Sikangila** defaulted on the terms of repayment on the Credit Facility and Frontier Finance Limited moved to recover the property as per agreed terms, as indicated at pages 1 – 11 in Defendant's Bundle of Documents.

In or about 2013 Frontier Financial approached Hammer and Tongues to sell the subject property for them. The subject property being Stand No. 33563/1080. Hammer and Tongues found a buyer for them i.e. the Plaintiffs herein, **Ian Teeba** and **Tubesebo Mwiya Teeba** who offered to purchase the property at K110,000.00 which was accepted by Frontier Finance. Payment in respect of the said property was made on 10<sup>th</sup> December 2013 and Frontier Finance Limited and the Plaintiffs proceeded to execute the Contract of the subject property on 13<sup>th</sup> January 2013.



Under cross-examination by **Mr. Nhari** for the Plaintiffs she stated that she instructed Hammer and Tongue to sell property in question, and the Plaintiffs paid K110,000.00 to Hammer and Tongues.

The second Defendant called one witness, one **Leonard Mabvuto**, who at the material time was employed as Sales Manager at Hammer and Tongues.

In his witness statement filed into Court on 10<sup>th</sup> July 2015, he stated that as Sales Manager his responsibilities included processing of sales transactions. In 2013 they were approached by Frontier Finance Limited to sell the subject property on their behalf and the Land Record showing their ownership of the property was given to them together with other documents as indicated at pages 1 – 11 of the 2<sup>nd</sup> Defendant's Bundle of documents. They were agreeable and proceeded to advertise the property in the *Zambian Daily Mail* on 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> October 2013, as well as the 2<sup>nd</sup> Defendant's Catalogue, as indicated at page 12 of the 2<sup>nd</sup> Defendant's Bundle of Documents.

The Plaintiffs expressed interest in the properties which they were selling.

After viewing various properties in the catalogue they expressed interest in the subject property. After viewing the property they offered to purchase the property. He communicated the offer to Frontier Finance who were agreeable to the price offered by the Plaintiffs. On 5<sup>th</sup> November 2013 he wrote to the Plaintiffs advising of the Sellers acceptance of their offer, and disclosed the Seller's identity. He signed the acceptance on behalf of **Mr. Chefu**, the General Manager of the 2<sup>nd</sup> Defendant Company. The Letter was addressed to the 2<sup>nd</sup> Plaintiff and stated that their offer of K110,000.00 had been accepted by



Frontier Finance Limited, the 1<sup>st</sup> Defendant herein. The letter appearing at page 14 of the 2<sup>nd</sup> Defendant's Bundle of Documents also indicated the account details in which the purchase price was to be paid by the Plaintiffs. He stated that all this information was communicated to the Plaintiffs before they paid the purchase price and the 2<sup>nd</sup> Defendant as Auctioneers merely acted as Agents for the owners of the property, that is, the 1<sup>st</sup> Defendant, and provided all requisite information to the Plaintiffs, as would be purchasers to enable them conduct due diligence on the property and make an informed decision as to whether the property was worth buying. He contended that the information contained in the catalogue availed to the Plaintiffs as to the property number as well as the letter to the 2<sup>nd</sup> Plaintiff indicating the owner of the property was sufficient. He stated further that payment for the subject property was made on 10<sup>th</sup> December 2013 and the Plaintiffs and the 1<sup>st</sup> Defendant executed the Contract of Sale of the subject property on 12<sup>th</sup> January 2014. He stated that the 2<sup>nd</sup> Defendant was not a party to the Contract of Sale.

Under cross-examination by **Mr. Nhari** for the Plaintiffs, as well as **Mr. Dzekedzeke**, for the 1<sup>st</sup> Defendant and **Mrs. Muyambango** for the 2<sup>nd</sup> Defendant the sum total of the witness's testimony is to the effect that the document at page 17 of the 2<sup>nd</sup> Defendant's bundle of documents is the Seller's Tax Invoice which is on Hammer and Tongues headed paper; and that the Plaintiffs paid the purchase price directly to Hammer and Tongues.

Under re-examination from **Mrs. Muyambango** he clarified that they became aware that the property did not belong to Frontier Finance after the property was sold; and that they did not refund the money because they were not asked to make a refund.



On being shown the Land Record he noted that it shows the owner is **Kebby Sikangila**. He clarified that there was no change of ownership from **Kebby Sikangila** to Frontier, and that the purchasers became aware of the Land Record after they had paid the purchase price.

Under further question from **Mr. Dzikedzeke** he stated that they became aware that the property did not belong to Frontier Finance after the buyer told them that the property which they were sold did not belong to Frontier Finance.

Parties submitted written submission, skeleton arguments and list of authorities which I duly acknowledge.

The brief facts which are not disputed are that on or about September 2012 the 1<sup>st</sup> Defendant entered into an agreement with the 2<sup>nd</sup> Defendant wherein the 1<sup>st</sup> Defendant as Principal instructed the 2<sup>nd</sup> Defendant to sell property being Plot Number 33563/1080, Kamwala South, Lusaka, by way of auction sale. Pursuant to the said instructions the 2<sup>nd</sup> Defendant proceeded to advertise for sale, the said property, whose price was to be determined by the fall of the hammer.

The Plaintiffs herein are husband and wife and were desirous to purchase a dwelling house. They finally settled to purchase the property the subject of these proceedings after seeing an advertisement in the Post Newspaper. They submitted their bid to the 2<sup>nd</sup> Defendant. Later they were informed that their bid had been successful and were asked to pay the purchase price, which they





did after obtaining loans from two financial institutions. After said payment, they started receiving rentals from the said property. After some months the Plaintiffs were surprised to receive a telephone call from one **Reeves Malambo** who informed them that he was the owner of the property, they had purported to have purchased **Mr. Reeves Malambo** proceeded to evict the tenants on the property. A letter from the Legal Service Manager, Lusaka City Council indicated that **Mr. Reeves Malambo** was the owner of the subject property. Following this development, the Plaintiffs demanded a refund of the purchase price. After protracted correspondence between the Plaintiffs and the 1<sup>st</sup> Defendant it became clear that the Defendants had no desire to refund the money. Hence the claim before Court as endorsed on the Writ of Summons.

The truth of the matter as it emerges from the evidence on record is that the Land Record at the Lusaka City Council indicated that the owner was a **Mr. Reeves Malambo**. Clearly the subject property did belong to a third party contrary to the averment by the 1<sup>st</sup> Defendant in paragraph 4 of its defence filed on 23<sup>rd</sup> September 2014 that there was no way that the Council could have declared a third party to be a *bona fide* owner.

The 2<sup>nd</sup> Defendant's evidence is that it received instructions from the 1<sup>st</sup> Defendant, the Principal herein to sell the subject property on its behalf, as such it accepted to act as agent for the 1<sup>st</sup> Respondent for the sell of the subject property. Thereafter, the 2<sup>nd</sup> Defendant wrote to the 2<sup>nd</sup> Plaintiff informing her that Frontier Finance, the 1<sup>st</sup> Defendant herein had accepted their offer to purchase the subject property at K110.000.00. Therefore the relationship of agent and principal is clearly established.



The 2<sup>nd</sup> Defendant's argument is that it disclosed the identity of the owners of the subject property and that the Plaintiffs had sufficient information to enable them to conduct a due diligence on the property before parting away with the purchase price. It is the 2<sup>nd</sup> Defendant's contention that the Plaintiffs acted negligently as they ought to have conducted due diligence on the property as they had sufficient information prior to the purchase.

The first question to be determined by the Court is whether or not the 2<sup>nd</sup> Defendant, the agent of the 1<sup>st</sup> Defendant herein disclosed the identity of the owner of the subject property to the Plaintiff in sufficient time to enable them conduct a due diligence investigation, prior to the fall of the Hammer. During trial it was apparent going by the questions by advocates of the Defendants directed at **PW1**, much effort was made to show that the 2<sup>nd</sup> Defendant as auctioneer was a mere agent and the 1<sup>st</sup> Defendant as principal is supposed to bear the responsibility of this claim and that the 2<sup>nd</sup> Defendant ought to have fallen out of the picture of this transaction and should not have joined to the proceedings and bear no responsibility.

The dictum in the case of **Cavemont Merchant Bank Limited Vs Amaka Agricultural Company Limited SCZ Judgment No. 12 of 2001** is very instructive where Sakala J S, stated that:-

*“Where an agent is a contracting party he will be held personally liable even if he names his principal”.*

On examination of the relevant documents it is noted that the 2<sup>nd</sup> Respondent herein; signed all the contractual documents concerning the sell of this



property i.e. the Letter of offer dated 5<sup>th</sup> November 2013, was on its Letter Head signed for by its general Manager, a **Mr. Richard Chefu**, appearing at page 2 of the 2<sup>nd</sup> Plaintiff's Bundle of documents, marked for the attention of **Mrs. Tubesebo M. Teeba**. Confirmation of the release of the Original Land Record in respect of Stand No. 33563/1080, Kamwala South, was on Hammers and Tongues Letter Head, signed by **Mr. Richard Chefu**. The Buyer Tax Invoice dated 12<sup>th</sup> December 2013 indicating the sell price of K116,380.00 appearing at page 6 of the 2<sup>nd</sup> Plaintiff's Bundle of Documents was also on the 2<sup>nd</sup> Defendant's Letter Head as well as other deposits made by the Plaintiffs. The above shows that the 2<sup>nd</sup> Defendant was no ordinary agent who ought to have fallen out as argued by Counsel. Rather he assumed the position of a contracting party as such should be held personally liable and bear equal responsibility as stated in the Cavemont Case above. It is to be noted that in the Cavemont Case, the agent was to be held liable even if the names of the Principal had been disclosed.

In the case in *casu* during cross-examination it was clear that the 2<sup>nd</sup> Defendant had declined to divulge the name of owner of the land that was being auctioned, as such the Plaintiffs were incapacitated from conducting the requisite due diligence investigations before participating in the auction sale, and effecting payment for the subject property. The evidence is also clear that at the time of the auction sale neither Respondent had legal right to the property as title belonged to a third party; and both Respondents were aware of this fact. It is trite that where the existence of the principal is disclosed but not his identity, there is a presumption that the auctioneer is personally liable on the contract. This was espoused in the case of **Franklyn V Lamond (1847)**<sup>4</sup>



**CB 637** where it was held that an auctioneer will be liable if he/she conducts an auction without knowledge of the principal's lack of title or authority to sell, although he/she acts in good faith. Moreover as espoused in the case of **Parker Vs P & N Recovery of NY, 182 Misc, 2<sup>nd</sup> 342,342 (N.Y. CIV.ft.1999)** an auctioneer will be held liable for selling property with defective title, even though he/she was conducting the auction in compliance with the principal's specific instructions. Additionally as further espoused in the **Parker case** above, an Auctioneer may be liable if he/she conducts an auction without knowledge of the principal's lack of title or authority to sell although he/she acts in good faith, and an auctioneer's good faith and his/her lack of knowledge is no defence.

Thus auctioneers face substantial liability and must take appropriate steps to assure themselves of title to the assets being sold, especially with regard to sell of land.

In the case of **Cyril Anarade Ltd Vs Southerby & Co. (1931) 47 T.L.R. 244** it was stated that:

*"It is settled law that an Auctioneer has a duty to ensure that the proper formalities are complied with in sales of land....and must account strictly as a fiduciary for money received by him on the vendors behalf".*





Further in the case of **O'Herlihy Vs Hedges (1803) 1 Sch & Lef. 123** it was stated that a third party cannot be deprived of his right to sue the Agent.

In the case in *casu* the auctioneer declined to divulge the owner of the property, and only did so after full payment of the purchase price. As the transaction involved an interest in land, full disclosure of the name of the registered owner of the land in question ought to have been disclosed in sufficient time to enable the Plaintiffs to do due diligent investigations. In any event before the fall of the Hammer. Due diligence is not a cosmetic exercise. It is an exercise which enables the purchaser to find out if the seller has legal rights to sale. It should not be given in circumstances where it is useless to be used to do due diligence, prior to the sell, in this case the fall of the Hammer; while the seller demands full purchase price. The disclosure of the identity of the owner of the property came too late for the Plaintiffs to be able to use the information to do due diligence investigations. I do not therefore agree with the 2<sup>nd</sup> Defendant's submission that the Plaintiffs had sufficient information prior to the sell and payment of the purchase price to enable them conduct due diligence investigations on the property. The Auctioneer ought to have disclosed the identity of the owner of the property before full payment of the purchase price, and not after the fall of the hammer. The failure to disclose the name of the owner of the property before the auction and payment of the full purchase price was negligence amounting to concealment for which the 2<sup>nd</sup> Defendant is liable.



It is pertinent to highlight the central role the 2<sup>nd</sup> Defendant played in this transaction. It is the 2<sup>nd</sup> Defendant who advertised the property for sale. It is to the 2<sup>nd</sup> Defendant that the purchase price was paid. The 1<sup>st</sup> Defendant only appeared on the contract of sale, which was signed subsequently. This deep involvement in the transaction by the 2<sup>nd</sup> Defendant places it above the ordinary role of an agent. It elevates the 2<sup>nd</sup> Defendant to the position of a contracting party, as such the 2<sup>nd</sup> Defendant has substantial liability and should have taken appropriate steps to assure itself of the title of the property being sold. As stated in the **O'Herlihy Case** above, a third party who suffers thereby cannot be deprived of his right to use the agent. The Plaintiffs were on firm legal ground in joining the 2<sup>nd</sup> Defendant as a party to these proceedings.

In view of the above and authorities cited herein both Defendants are liable for selling property with defective title. It follows that the Plaintiffs claim as endorsed succeeds.

**Order:-**

The Plaintiffs are entitled to:-

- i. Refund of K141,508.22 being the amount paid for the purchase of Plot Number 33563/1080, Kamwala South, Lusaka with interest up to August 2014;
- ii. Re-imburement of K2,000.00 being costs of renovations carried out on the flats; with interest in accordance with Judgment Act, till final settlement;

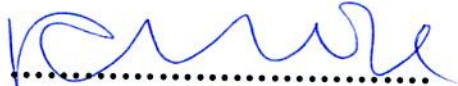


- iii. Re-imburement of K700.00 being the outstanding electricity bill incurred by the Plaintiff;
- iv. Damages for breach of Contract;
- v. Interest on (i), (ii) and (iii) shall accrue in accordance with the Judgment Act, No. 16 of 1997 until final settlement.

Costs shall follow the cause, to be taxed in default of agreement.

Right to Appeal granted.

Dated this.....<sup>8<sup>th</sup></sup> day of September.....2016

  
.....  
Prisca M. Nyambe, SC  
JUDGE

