

**IN THE SUPREME COURT OF ZAMBIA  
HOLDEN AT LUSAKA**

**APPEAL NO. 129/2010  
SCZ/8/140/2010**

(Civil Jurisdiction)

*BETWEEN:*

**EVARISTO MWABA CHITWAKA**  
(As Administrator of the Estate of  
Pascal David Chitwaka [deceased])



**APPELLANT**

**AND**

**DUNLOP ZAMBIA LIMITED**

**RESPONDENT**

**Coram: Mwanamwambwa, DCJ, Malila and Musonda, JJS,  
on the 3<sup>rd</sup> October, 2017, 10<sup>th</sup> October, 2017 and 31<sup>st</sup>  
January, 2018**

*For the Appellant:* In Person

*For the Respondent:* No appearance

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**JUDGMENT**

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**MALILA, JS, delivered the Judgment of the Court.**

**Cases referred to:**

1. *Steadman and Steadman* (1974) 2 LL ER 977.
2. *Hillington Co. v. Stonefield* (1952) 1 ALL ER 853.
3. *Stickney v. Keeble* (1951) AC 386.
4. *Zambia Building and Civil Engineering and Contractors Limited v. Janina Georgopoullos* (1972) ZR 295.
5. *Mukumbuta Mukumbuta and Others v. Mongu Meat Corporation*, SCZ Judgment No. 8 of 2003.
6. *Kelvin Hang'andu and Co. (A firm) v. Mulubisha*, SCZ Judgment No. 30 of 2008.

**Legislations referred to:**

1. *Order XVI rule 1 of the High Court Rules chapter 27 of the laws of Zambia.*
2. *Order 15 rule 7 of the Rules of the Supreme Court (White Book, 1999 edition).*

**Other works referred to:**

1. *Cheshire and Fifoot's Law of Contract 10<sup>th</sup> ed. p. 499.*

Pascal David Chitwaka (now deceased) was an employee of the respondent company from 1972. By reason of redundancy, he ceased to be an employee on 29<sup>th</sup> July, 1997. He had occupied the appellant's house at No. 30 Twalilubula Avenue, Parklands, Kitwe, as an incident of his employment. Upon ceasing to be an employee, he was given up to 31<sup>st</sup> September, 1997 to vacate the house. Meanwhile, on 24<sup>th</sup> September, 1997 the respondent offered the house to him on a first right of refusal arrangement. The price was K14,000,000 (unrebased). The principal condition of the offer was that he was to pay the full purchase price to the respondent by 30<sup>th</sup> October, 1997. No formal contract of sale was settled between the parties. Pascal David Chitwaka only accepted to purchase the house by letter dated 11<sup>th</sup> November, 1997. His narrative of the events was that he made payments for the house

to the respondent as follows: K6 million on 7<sup>th</sup> November, 1997; K3 million on 12<sup>th</sup> February, 1998 and surrendered to the respondent a further sum of K3 million due as his repatriation payment. He further claimed that a total of K12 million had been paid to the respondent with an additional K2 million having been paid directly into the respondent's Barclays account held at Ndola, and therefore that the agreed purchase price had been settled in full.

Notwithstanding the foregoing, the respondent actively sought to evict Pascal David Chitwaka from the subject property, claiming that he had breached the terms of the offer of the property to him.

The respondent, on the other hand, states that by 31<sup>st</sup> January 1998, Pascal David Chitwaka had not paid the full purchase price but had paid only K9 million, prompting the respondent to write to him in February 1998, registering its displeasure. After some further correspondence between them, the respondent decided to refund the moneys paid by Pascal David Chitwaka back to him by way of a cheque drawn in his favour. An attempt to evict Pascal David Chitwaka from the

subject property was unsuccessful as he secured the protection of the courts.

The respondent later discovered that the money which it had refunded Pascal David Chitwaka was still sitting in its account, meaning that the cheque issued to Pascal David Chitwaka had not been presented for payment. The respondent then arranged to refund Pascal David Chitwaka by way of cheques sent through the respondent's Advocates, then Messrs DH Kemp & Co. In defying the respondent's intention, Pascal David Chitwaka, caused the Kitwe High Court to deposit K11,952,673.87 into the respondent's Bank account, as payment of the purchase amount.

A proliferation of court actions then ensued. Pascal David Chitwaka sued the respondent in the Ndola High Court under cause No. 1997/HN/212 for specific performance of the contract of sale and for an order restraining the respondent from evicting him from, and repossessing the subject property. The respondent, for its part, commenced separate proceedings in the Kitwe High Court under cause No. 1998/HK/119 claiming possession of the subject house under Order 113 of the Rules of



the Supreme Court. The two actions were subsequently consolidated.

It would appear from the record that cause No. 1998/HK/119 was subsequently discontinued through a notice of discontinuance filed on 12<sup>th</sup> July, 2001 before the respondent commenced fresh proceedings under cause No. 2001/HP/0463 which proceedings have now culminated in the present appeal.

In this new action, the respondent (as plaintiff) sought damages for breach of contract; an order of possession of the subject house; rent arrears from 1<sup>st</sup> February, 1998 to date of the order; interest and costs.

Pascal David Chitwaka opposed the claim arguing that after working for the respondent for a period of twenty-five years, he was paid only K9.6 million as redundancy pay. He thus failed to pay the full purchase price within 30 days. He, however, managed, with considerable difficulty, to marshal a total of K14 million which he paid to the respondent. His view was, therefore, that he did not owe the respondent any money on the purchase price of the house.

After hearing the parties and examining the documents tendered in evidence before him, the learned trial judge entered judgment against Pascal David Chitwaka. He found that the offer to purchase the house was for a specific period of 30 days after which it 'was extended again and yet again at the mercy of the plaintiff company.' He also found that on 23<sup>rd</sup> October, 2003, Pascal David Chitwaka had deposited a sum of K11,952,673.87 into the respondent's Bank account which the respondent rejected and returned to him. According to the learned judge:

**[t]he position therefore, is that, in spite of being given ample time and opportunity to pay the full purchase price, the defendant [appellant] failed to do so and instead resorted to manipulating the court process at Kitwe and Ndola District Registries of the High Court in order to prevent an eviction. No wonder he ensured that the record of this case continues to indicate that he was calling more witnesses so that the case file easily escapes attention.**

The learned judge concluded that Pascal David Chitwaka had no colour of right whatsoever to continue to occupy the subject house. He granted an order for possession as prayed for by the respondent and *mesne* profits to be assessed by the Deputy Registrar.

Unhappy with that judgment, Pascal David Chitwaka appealed, fronting four grounds structured as follows:

1. That the learned trial judge misdirected himself in both fact and law when he failed to find that the documents on the record, namely:

- (i) *Stanbic Bank deposit slip dated 23 September, 2003 in respect of the sum of K11,952,673.87 and*

- (ii) *Stanbic Bank deposit slip dated 27 August 2004 for a further K2,000,000.00 tendered by a Notice to Produce dated 30<sup>th</sup> August 2004 in respect of which evidence was adduced by DW1 in cross examination,*

*showed that the entire consideration was in the hands of the respondent.*

2. That the learned trial judge misapprehended the facts when he found that the appellant had resorted to manipulating the court process at Kitwe and Ndola District Registries of the High Court when in fact the respondent had commenced the matter before the trial judge while its other action on the same set of facts was pending at the Kitwe High Court.

3. Following (2) above, the learned trial judge failed to consider that this action was a clear case of forum shopping intended to disadvantage the appellant in the following aspects:

- (i) *There were already two actions pending at the Ndola and Kitwe High Courts in respect of the same subject matter in:*

**(a) An action commenced by the appellant at the Ndola High Court under Cause Number 1997/HN/770;**

**(b) An action commenced by the respondent at the Kitwe High Court under Cause Number 1988/HK/119.**

**According to an application on record before the Deputy Registrar, the above two cases had been consolidated and referred to the High Court at Ndola for trial.**

***(ii) The appellant had already paid a sum of K11,952,673.87 in the High Court at Kitwe under Cause Number 1998/HK/119.***

***(iii) That the appellant who was a resident of Kitwe would be inconvenienced in travelling to Lusaka for the proceedings, especially that he was not in gainful employment.***

**4. That the learned trial judge erred in both law and fact when he failed to consider that the sale of the house was part of a separation package between the parties.**

Before considering the arguments of the parties, we note that this matter has taken unduly long to conclude owing largely to the conduct of the appellant. The record of appeal was filed on 3<sup>rd</sup> August, 2010. It is important for us to give the procedural



history of the matter if only to show that the delay in disposing of this appeal is of the parties' own making.

The appeal had been scheduled for hearing as way back as 2<sup>nd</sup> September, 2014. It was adjourned at the instance of the appellant to 9<sup>th</sup> October, 2014. On the 9<sup>th</sup> October, 2014, the appeal was yet again adjourned at the instance of the appellant. When it next came up in Ndola on the 2<sup>nd</sup> December, 2014, there was no appearance for the appellant. We again adjourned the matter, this time to January, 2017. When the appeal was called on 23<sup>rd</sup> January, 2017 it was Mr. Oscar Chitwaka, brother to Evaristo Chitwaka, who appeared and sought an adjournment. We adjourned the appeal *sine die* with liberty to restore. The appellant subsequently applied and was granted an order of restoration.

When the matter came up for hearing on the 3<sup>rd</sup> October, 2017 there was no appearance from either the appellant or the respondent. We were informed that Messrs Sam Chisulo and Co., who had previously represented the appellant, no longer acted for him. Subsequently, on 1<sup>st</sup> November, 2017, long after the hearing of the appeal, the Legal Aid Board filed a notice of appointment as advocates for the appellant. Messrs DH Kemp &

Co. are on record as representing the respondent but were not present at the hearing. The Clerk of Court informed us that Messrs DH Kemp & Co. had been served with the notice of hearing on the 24<sup>th</sup> August, 2017. Mr. Justine Sipho Chitengi, Legal Counsel for Times Printpak Zambia Limited, rose to address us as a friend of the court. He informed us that there was sitting in the court room someone who had intimated to him that she was the sister to Mr. Evaristo Mwaba Chitwaka. She had requested him to bring to our attention the fact that Mr. Chitwaka was indisposed, and that the court, therefore, be please to adjourn the matter to another date. We thus adjourned the appeal to the 10<sup>th</sup> October, 2017.

On the 10<sup>th</sup> October, 2017, Mr. Chitwaka appeared in person. There was again no appearance for the respondent. Having satisfied ourselves that the respondent's advocates were served with the notice of hearing, we proceeded to hear the appeal in their absence.

Mr. Chitwaka then sought leave to file the heads of argument out of time as he seemed to have run into difficulties with his original lawyers and all the subsequent ones he had

engaged. He informed us that he had engaged new advocates to represent him. We reluctantly granted Mr. Chitwaka's application and directed that he files his heads of argument within 14 days. Those heads of argument were in fact filed by the Legal Aid Board on the 23<sup>rd</sup> October, 2017. The respondent had filed their heads of argument long before the appellant filed theirs. We shall revert to the respondent's heads of argument later on in this judgment.

In support of the first ground of appeal, it was submitted on behalf of the appellant that the appellant had paid the entire consideration, namely K14 million to the respondent and that the money remained in the hands of the respondent. It was argued that a purchaser who pays a deposit towards the purchase consideration of a property acquires an equitable interest in the property. In this case the appellant, as the record reveals, paid a deposit of K6 million on 7<sup>th</sup> November, 1997. It was further submitted that in the case of **Steadman and Steadman**<sup>1</sup> it was established that mere payment of money or a deposit in a land transaction qualifies as a sufficient act of part performance. Counsel for the appellant then referred to the case of **Hillington**



**Co. v. Stonefield**<sup>2</sup> and quoted therefrom the following passage by Vaisy J:

**Thus, I have always understood that if there is a contract by A to sell land to B at a certain price, B becomes the owner in equity of the land subject to his obligation to perform his part of the contract by paying the purchase money. What is the position of A, the vendor? He had, it is true, the legal estate in the land, but for many purposes the moment the contract is entered into, he holds it as a trustee for B, the purchaser. He has certain rights in the land remaining but all those rights are conditional and limited by circumstances that refer to his right to recover and receive the purchase money.**

It was contended on behalf of the appellant that the alleged cancellation of the sale offer by the respondent was null and void as it came after a valid contract had been concluded between the parties, which contract was partly performed by the purchaser. The appellant also contended that the respondent's receipt of payments from Pascal David Chitwaka of the purchase consideration after the due date of 30<sup>th</sup> October, 1997 meant that time was not of the essence of the contract. In supporting that argument, counsel for the appellant referred us to a passage in **Cheshire and Fifoot's Law of Contract** 10<sup>th</sup> ed. p. 499 where it is stated that:



By way of summary, it may be said that time is essential firstly, if the parties expressly stipulate in the contract that it shall be so; secondly, it in a case where one party has been guilty by undue delay, he is notified by the other that unless performance is complete within a reasonable time the contract will be regarded as at an end; and lastly if the nature of the surrounding circumstances or of the subject makes it imperative that the agreed date should be precisely observed.

The learned counsel for the appellant also cited the cases of **Stickney v. Keeble**<sup>3</sup> and **Zambia Building and Civil Engineering and Contractors Limited v. Janina Georgopoulos**<sup>4</sup> in both of which the courts expressed the view that a court of equity will be reluctant to excuse a party from performing a contractual obligation merely because performance is delayed if such delay does not result in injustice to the other party.

The appellant also complained that the respondent held on to the appellant's funds for a considerable period, namely three years, while purporting to have withdrawn the offer, when the respondent was fully aware of the appellant's residential address.

In regard to grounds 2 and 3, the appellant's counsel submitted that it was a misdirection for the learned trial judge to have stated in his judgment that Pascal David Chitwaka had resorted to manipulating the court process at Kitwe and Ndola

District Registries in order to prevent eviction. According to the appellant's learned counsel, it was the respondent who was in fact abusive of the process of court when it commenced a fresh action in Kitwe, while fully aware that there was an active action in the Ndola High Court. The respondent furthermore commenced yet another action in Lusaka.

It was also submitted on behalf of the appellant that the trial court fell into error when a case of forum shopping was brought to its attention but it nonetheless proceeded to hear and determine the case. Counsel for the appellant referred to the cases of **Mukumbuta Mukumbuta and Others v. Mongu Meat Corporation**<sup>5</sup> and **Kelvin Hang'andu and Co. (A firm) v. Mulubisha**<sup>6</sup>, where we spoke unequivocally against forum shopping.

Under ground four, it was contended that the lower court was wrong in not considering the sale of the house as part of the separation package for Pascal David Chitwaka. Counsel submitted that the court should have paid regard to the status of Pascal David Chitwaka as a former employee; that to give a former employee in his position one month within which to pay

for a house as a sitting tenant, was an act of bad faith on the part of the respondent.

The remainder of the appellant's grievance under this ground gyrated around the factual circumstances that David Chitwaka found himself in; for example that he gave, selflessly and diligently, twenty-five years unbroken services to the respondent and yet ended up with a paltry K9 million as his terminal benefits. In these circumstances, contended counsel for the appellant, Pascal David Chitwaka should have been given a reasonable period within which to complete payment by instalments. Instalment payment is, according to counsel for the appellant, a practice recognized by the courts in terms of Order 36 rule 9 of the High Court Act, chapter 27 of the laws of Zambia.

We are implored to uphold the appeal.

Early on, on 20<sup>th</sup> October, 2010, Messrs A. Imonda & Co., then acting on behalf of the respondent, had filed heads of argument. In those heads of argument, counsel began by making a preliminary observation that from the commencement of the action up until after the delivery of the judgment by the lower court, Pascal David Chitwaka was the sole defendant. He is said



to have died after the judgment was delivered by the lower court. There is, according to counsel for the respondent, no evidence on record to indicate that any interested person in the deceased's estate has obtained a court order for alteration of parties in terms of Order XVI rule 1 and (7) of the High Court Rules, chapter 27 of the laws of Zambia. According to counsel for the respondent, the notice of appeal was filed by Evaristo Mwaba Chitwaka (the appellant) without obtaining the requisite order from the court. The appeal is, accordingly, incompetent.

Notwithstanding the foregoing submission, the respondent's learned counsel made substantive arguments in respect of each of the grounds of appeal as raised by the appellant.

Regarding ground one, counsel submitted that the lower court properly and correctly directed itself when considering the evidence relating to Stanbic Bank deposit slip dated 23<sup>rd</sup> September, 2003 in respect of the sum of K11,952,673.87 and Stanbic Bank deposit slip dated 27<sup>th</sup> August, 2004 in respect of the sum of K2,000,000 because the agreement or intention to sell the house was rescinded in February/March, 1998, long



before the deposits were made. The learned counsel then pointed to various parts of the record of appeal to substantiate this submission.

In regard to grounds two and three, counsel contended that the respondent did not engage in any forum shopping intended to disadvantage the appellant. According to counsel, the issues raised under ground three were dealt with at interlocutory stage. In this sense, the appellant was afforded an opportunity to challenge the respondent's action commenced in Lusaka but the challenge failed as the appellant did not prosecute it. Secondly, the appellant consented and submitted to the proceedings in the High Court at Lusaka.

In relation to ground four it was submitted on behalf of the respondent simply that the lower court properly directed itself as there was no evidence showing that the sale of the house to Pascal David Chitwaka was part of the separation package.

We were urged to dismiss the appeal.

We have carefully considered the appellant's complaints in this appeal, his arguments as well as the respondent's reaction.

Counsel for the respondent raised a very serious preliminary observation, namely one of substitution of parties following the demise of Pascal David Chitwaka. As the record clearly shows, this is an issue upon which we constantly reminded the appellant to act. The record of proceedings at the various appeal hearing dates shows consistently that, like the respondent, our concern was that the substitution of parties from Pascal David Chitwaka, (deceased) to Evaristo Mwaba Chitwaka, the Administrator of the estate of Pascal David Chitwaka, should have been regularized and documents made available to the court. For instance, when the appeal came up on the 2<sup>nd</sup> September, 2014 the following exchange between the court and the appellant was recorded:

**Mr. Chitwaka : I am applying for an adjournment to the earliest opportunity.**

**Court : We have no problem with that but what we have noted is, so that next time when you come you should not be surprised, that there is no order from the court for you to be substituted as the appellant in this case. He was your father and when he died, you being the administrator, there should have been an application to substitute you as the appellant. If you**

look at your record on 4<sup>th</sup> of June, 2010, you filed a notice of appeal but we have not seen the document where the court substituted you as the appellant. Just because you are the administrator, it does not automatically mean that you can be added to the proceedings. It doesn't work like that. We haven't seen the necessary document. Perhaps it is there. If it is there that's fine but we just wanted you to know so that you keep that in mind so that your lawyers can sort that out.

**Mr. Chitwaka** : The document is there actually but I don't know why it is not reflecting. But it is there.

As reassuring as Mr. Chitwaka's statement regarding the existence of an order of substitution of parties was, the issue does not appear to have been resolved by the time the appeal was next called on 9<sup>th</sup> October, 2014. On that occasion, the appellant was represented by Mrs. Rosemary Mbewe of JC Mulunga and Co. In seeking an adjournment, she stated as follows:

**My Lords, we have perused the record of appeal ..... We noticed that the intended appellant, Evaristo Mwaba Chitwaka, who is the administrator of the estate of Pascal David Chitwaka, the deceased, is not on record ... We seek the indulgence of this honourable court ... to apply for an adjournment to enable us to**

**rectify the anomaly and to proceed to file our heads of argument thereafter.**

We granted an adjournment. It would seem, however, that, the undertaking by the appellant's counsel was equally never observed. Thus, when the appeal came up on the 23<sup>rd</sup> January, 2017 the issue of substitution of Pascal David Chitwaka with Evaristo Mwaba Chitwaka, as appellant, had still not been addressed. At that time Mr. Evaristo Mwaba Chitwaka was absent and so was his counsel. We had in attendance instead a Mr. Oscar Chitwaka who introduced himself as the brother to Evaristo Mwaba Chitwaka. He came to seek another adjournment on behalf of Evaristo Mwaba Chitwaka who was reported to be unwell. Again we quite legitimately raised the issue of substitution of the appellant. The transcript of proceedings records what transpired in court as follows:

**Court** : **Was there any application to have Evaristo Mwaba Chitwaka joined to these proceedings at any time?**

**Mr. Oscar Chitwaka** : **Yes, I have got a folder containing documents that pertain to this case.**



**Court** : **Why then is he calling himself as the intended appellant? Did he make an application to join these proceedings at any point? Do you have any idea if he was ever joined?**

**Mr. Oscar Chitwaka** : **I might assume. I don't know if it will be in order, but for it to appear as much, he might have made an application which was successful to be joined.**

When the appeal was called on the 3<sup>rd</sup> October and 10<sup>th</sup> October, 2017, the appellant had still not attended to the issue of his status as a party to the proceedings in place of the late Pascal David Chitwaka. And so it is that as we examine the record of appeal today, there is no application for substitution of party, nor is there any order of court allowing the appellant to step in the shoes of the late Pascal David Chitwaka as appellant.

The law in this respect is very instructive. Order XVI rule 1 of the High Court Rules chapter 27 of the laws of Zambia, to which counsel for the respondent referred in their heads of argument, provides, so far as is material to the present situation, as follows:

1. Where, after the institution of a suit, any change or transmission of interest or liability occurs in relation to any party to the suit, or any party to the suit dies or becomes incapable of carrying on the suit, or the suit in any other way becomes defective or incapable of being carried on, any person interested may obtain from the court or a judge any order requisite for curing the defect, or enabling or compelling proper parties to carry on the proceedings.

A similar provision exists in Order 15 rule 7 of the Rules of the Supreme Court (White Book, 1999 edition) which states as follows:

- (1) Where a party to an action dies or becomes bankrupt but the cause of action survives, the action shall not abate by reason of the death or bankrupt.
- (2) Where at any stage of the proceedings in any cause or matter the interest or liability of a party is assigned or transmitted to or devolves upon some other person, the court may, if it thinks it necessary in order to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, order that other person to be made a party to the cause or matter and the proceedings shall be carried on as if he had been substituted for the first mentioned party. An application for an order under this paragraph may be made *ex parte*.

In the explanatory notes to the rule, it is stressed that where a plaintiff dies after an action is brought in a case where the

cause of action could survive the plaintiff, his executor or administrator may obtain an order to carry on the proceedings under Order 15 rule 7(2).

The purpose of this requirement, in our view, is to ensure that there is procedural order following the death of a plaintiff where an action survives. The court has a role to play in determining whether or not the person that seeks to continue with proceedings has demonstrated sufficient reason or interest to be granted the order.

In the present case, the appellant has not shown that he obtained the necessary order after the death of Pascal David Chitwaka, to carry on the proceedings. In the circumstances, the appeal is bound to fail on that technical point alone. We can, however, also say something about the merits of the appeal globally.

An offer was given to Pascal David Chitwaka to purchase the house. That offer had a time limit for the performance by Mr. Chitwaka of his part of the contract. Mr. Chitwaka did not meet that timeline in as far as payment for the house was concerned. He was given sufficient latitude and indulgence by his former

employer to pay for the house in question. He encountered considerable difficulties – perhaps understandably so - to raise the necessary purchase price. At some point, the respondent as vendor of the house, decided to withdraw the offer. The buyer, who was in default, could not in those circumstances force the sale to proceed. A refund was made of whatever moneys had been paid towards the purchase of the property with a clear indication that the sale had been called off. Pascal David Chitwaka, however, maintained that the contract was properly consummated.

In regard to ground one of the appeal, we agree with the learned trial judge and with counsel for the respondent that the Stanbic Bank deposit slips confirmed that Pascal David Chitwaka deposited what purported to be the purchase price long after the contract for the sale of the house was rescinded. The buyer having failed to perform his side of the bargain entitled the seller to repudiate the contract. This was done in February, 1998. When the deposits were made in September, 2003 and August, 2004, there was no longer any contract to talk about.




As regards the argument that the respondent had engaged in forum shopping and general abuse of the court process, we wish to stress that although we abhor multiplicity of actions and forum shopping, as the authorities cited by the appellant eloquently speak to, a party aggrieved by such activity by an adverse party should complain at the earliest opportunity. As far as forum shopping is concerned, the protest should effectively be that the party complaining should not submit or be seen to acquiesce to proceedings resulting from the alleged abuse. It is those very proceedings that constitute the correct forum to protest by way of an application. Such a party has the right to appeal against any ruling or judgment resulting from his or her application. The respondent's learned counsel submitted that the issues of forum shopping were dealt with at interlocutory stage and there was no appeal. We agree with those submissions. The appellant did not have to wait until the whole matter was determined on the merits to appeal against any unfavourable determination by the lower court on the appellant's misgivings concerning forum shopping.


Regarding the lower court judge's statement that the appellant had manipulated the court process at Kitwe and Ndola Registries of the High Court, we cannot but recall what transpired after Pascal David Chitwaka was refunded his money through his advocates. He decided to force mattersc , and using the High Court Registry, he wrongfully paid the money back to the respondent. We agree with the learned trial judge that the return to the respondent of the refunded part purchase money through the administrative process of the High Court Registry was done irregularly. Grounds two and three have no merit and are accordingly dismissed.

Ground four of the appeal in effect raises a moral question. It was nowhere pleaded nor proved that the sale of the respondent's house to Pascal David Chitwaka upon his separation from employment, was part of his conditions of service. Although there is a highly persuasive moral and humanitarian case that the appellant's arguments bring forth, such case is not sufficient to overturn the lower court's judgment which we find well rationalized and properly anchored in the law of contract. Ground four is equally devoid of merit.


The net result is that this appeal cannot succeed. All grounds are dismissed. Costs to the respondent.



**M. S. MWANAMWAMBWA**  
**DEPUTY CHIEF JUSTICE**



**Dr. MUMBA MALILA, SC**  
**SUPREME COURT JUDGE**



**M. C. MUSONDA, SC**  
**SUPREME COURT JUDGE**