

**IN THE COURT OF APPEAL OF ZAMBIA Appeal No. 205/2022
HOLDEN AT LUSAKA
(Civil Jurisdiction)**

BETWEEN:

SANAT LIMITED

AND

SHAILESKUMAR SURYAKANT AMIN

APPELLANT

RESPONDENT

CORAM : Siavwapa JP, Chishimba, and Patel, SC JJA

On 18th June, 2024 and 26th July, 2024

For the Appellant: Mr. M. Chanda of Messrs Musa Dudhia & Co

For the Respondent: Mr. A. Tembo of Messrs Tembo Ngulube &
Associates

JUDGMENT

Chishimba, JA, delivered the judgment of the Court.

CASES REFERRED TO:

- 1) Musakanya v The Attorney General (1981) ZR 221
- 2) Mpongwe Farms Limited v Dar Farms Limited SCZ Judgment No. 38 of 2016
- 3) Abdul Ebrahim Dudhia, Arshad Abdulla Dudhia & Gulam Farid Patel (T/A Musa Dudhia & Co, a Law Firm) v Sanmukh Ramanlal Patel CAZ Appeal No. 183 of 2021
- 4) Kaumba Lesa (Alias Chief Kasaka) v Senior Chief Ishindi (Suing as Lunda Royal Establishment) SCZ Appeal No. 169 of 2010
- 5) Sanat Limited v Shaileskumar Suryakant Amin CAZ Appeal No. 137 of 2019
- 6) James Chungu v Gerald Makungu (Suing in his capacity as Attorney for Roy Kirchner) CAZ Appeal No. 15 of 2016
- 7) William Harrington v Dora Siliya (2011) 2 ZR
- 8) Kambindima Wotela v Standard Chartered Bank Zambia Plc 2012/HP/138
- 9) Lyus v Prowsa Developments (1982) 2 All ER 963
- 10) Burdick v Garrick 1 Law Rep 5 Ch 243
- 11) Crabb v Arun District Council (1975) 3 All ER 865
- 12) Charles Kajimanga v Marmetus Chileya SCZ No. 50 of 2014



- 13) Wilson Masauso Zulu v Avondale Housing Project Limited (1982) Z.R
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LEGISLATION CITED:

- 1) The Lands and Deeds Registry Act Chapter 185 of the Laws of Zambia
- 2) The Rules of the Supreme Court of England, 1965 (Whitebook) 1999 Edition
- 3) The Evidence Act Chapter 43 of the Laws of Zambia
- 4) The High Court Act Chapter 27 of the Laws of Zambia

OTHER WORKS CITED:

1. Palmer's Company Law 22nd Edition (1976)
2. Professor Keaton Law of Trusts 8th Edition (1963)
3. Halsbury's Laws of England, 4th Edition, Volume 1

1.0 INTRODUCTION

- 1.1 This appeal is against the Judgment, of Mr. Justice Edward Musona, delivered on 10th June, 2022, in which he found that the Trust Deeds executed between the appellant and respondent were irregular. He further found that there was no fraud, on the part of the respondent in obtaining the certificates of title to the properties in issue and dismissed all of the appellant's claims.

2.0 BACKGROUND

- 2.1 The appellant commenced an action against the respondent, by way of writ of summons and statement of claim. The appellant, averred that between 1985 and 1986, it conveyed Plot Nos. 194, 720 and 804 of Lusaka, (the properties) to the respondent via trust deed. This was because the major shareholders and managing directors of the appellant, were

relocating from Zambia to Zimbabwe. The properties were to be held in trust, on behalf of the appellant. The respondent was to manage the properties on behalf of the appellant. The respondent proceeded to register the properties in his names. In September, 1985 and March, 1986 the parties executed Trust Deeds, in which it was agreed that the respondent would not pay the consideration in respect of the properties. The trust deeds required the respondent to transfer the properties to such person or persons as the appellant would later request or direct.

- 2.2 Since the transfer of the properties, the respondent has not provided an account, in respect of the rent and profits made, and collected relating to the properties.
- 2.3 In his defence, the respondent denied having held the properties in trust, stating that he actually purchased them after paying full and valuable consideration. The said properties were conveyed to him via assignment deeds. Further, that Sumanbhai Patel and his wife, Kokilaben Patel who were directors of the appellant, never made any claims to the properties.
- 2.4 In reply, the appellant stated that the trust deeds between the appellant and respondent were supplementary to the

assignments by which the properties were conveyed to the respondent.

3.0 CLAIMS BY THE APPELLANT

3.1 In the Court below, the appellant sought the following claims:

- 1) *A declaration that the appellant is the legal and rightful owner of Plot Nos. 194, 720 and 804, all of Lusaka;*
- 2) *An order that the respondent render a detailed account of all the money received in respect of rent paid in relation to the properties since 1983;*
- 3) *An order for payment to the appellant of all the rent and profits made and collected in respect of the properties since 1983;*
- 4) *Interest on the payment in (3) above from date when the cause of action arose to the date judgment pursuant to section 4 of the Law Reform (Miscellaneous Provisions) Act Chapter 74 of the Laws of Zambia, and thereafter in accordance with section 2 of the Judgment Act, Chapter 81 of the Laws of Zambia; and*
- 5) *Costs.*

4.0 DECISION OF THE COURT BELOW

4.1 The learned judge considered the evidence on record and submissions by the parties. The Learned Judge, in determining the declaratory relief sought, that appellant is the legal and rightful owner of Plot numbers 194,720 and 804 of Lusaka, considered the trust deeds. He however, found no evidence that PW1 had obtained probate in respect of the estate of his deceased father or, evidence that he was

the personal representative of his parents, as at 31st March, 2015, when the matter commenced.

4.2 Consequently, PW1 lacked capacity to sue on behalf of the estate of his parents. The Court below stated that PW1 had no capacity to sue on behalf of the estate of his parents because he had not obtained probate. The Court held on page number 23 of the record of appeal that **“The result is that the action commenced by him must be a nullity”**.

4.3 The Court below found that the two trust deeds were not dated and that because only the plot numbers and not their location appear, there is doubt on the identification of the properties. The Court found the second trust deed irregular because it has alterations which were not countersigned; the respondent denied signing them and the witness, Agnes Kaluba, was not called to testify in court; and that the common seal of the appellant was not affixed thereto.

4.4 The Court considered **section 54 of the Lands and Deeds Registry Act Chapter 185 of the Laws of Zambia** and found that in the absence of fraud on the part of the respondent, the certificates of title in relation to Plot Nos. 174, 720 and 804 were duly issued and were conclusive evidence of ownership by the respondent.

4.5 The Learned Judge, concluded by holding that the appellant had failed to prove its claims and dismissed the case with costs in favour of the respondent.

5.0 GROUNDS OF APPEAL

5.1 Dissatisfied with the decision of the Court below, the appellant filed a Notice and Memorandum of Appeal advancing six grounds of appeal as follows;

- 1) *The court below erred in law and in fact when it reconsidered the question of the appellant's capacity to sue, and decided differently from its own ruling of 30th October, 2015 that confirmed that the action was properly before court;*
- 2) *The court below erred in law and in fact by making a perverse finding that the respondent purchased Stand Nos. 194, 720 and 804 from a Mr. Patel, yet the lands register showed that the appellant owned the properties;*
- 3) *The lower court misdirected itself when it held that the two trust deeds in this action were irregular despite the evidence on record coupled with the Court of Appeal's pronouncement in Sanat Limited v Shaileskumar Suryakant Amin Appeal No. 137 of 2019 that said the trust deeds were valid;*
- 4) *The court below erred in law and in fact by not determining all the matters in controversy between the parties;*
- 5) *The lower court misdirected itself in law and in fact by considering the respondent's certificate of title as conclusive and thereby rendering irrelevant the essence of the trust relationship in question; and*
- 6) *The court below erred in law and in fact by not administering law and equity concurrently.*

6.0 APPELLANT'S HEADS OF ARGUMENTS

- 6.1 The appellant filed heads of argument dated 6th September, 2022. In ground one, the appellant contends that the Court below reconsidered the question of the appellant's capacity to sue and decided differently from its ruling of 30th October, 2015. In that ruling, the Learned Deputy Registrar found that Sanjay Sumanrav Patel, having been appointed executor of the estate of Kokilaben Patel, his mother, had assumed all the shares of his deceased parents by operation of law and had the capacity to represent the company and to depose to the affidavits.
- 6.2 It was submitted that at pages 294 to 295 of the record of appeal, the learned Judge had taken note that there was a ruling by the Deputy Registrar on capacity, which should not be circumvented. Therefore, the Court below fell into error when having earlier sustained the appellant's objection, it still proceeded in its judgment to find that there was no evidence to show that PW1 was a personal representative for his late parents as at 31st March, 2015 when the action was commenced, and to conclude that the action commenced by PW1 was a nullity. Reliance was placed on the cases of **Musakanya v The Attorney General**

⁽¹⁾ and **Mpongwe Farms Limited v Dar Farms Limited**, ⁽²⁾ on *res judicata* being a strict rule of law and the conditions to be satisfied for a party to rely on the defence of *res judicata*.

6.3 It was submitted that, in any event, the trial Court spoke of capacity as if the action was brought in PW1's own name, ignoring the fact that the appellant is a company and transmission of shares occurs automatically. We were referred to the learned authors of **Palmer's Company Law, 22nd Edition at page 386** where they state that:

"... transmission of shares is the passing of a share by operation of law from a shareholder to another person or body. Transmission occurs ... on the death ... of a shareholder."

7.4 The appellant further placed reliance on **section 70(1) of the Companies Act, Chapter 388 of the Laws of Zambia**, the applicable Act at the time the matter was commenced. It provides that in the event of death of a shareholder of a company, the legal representatives, of the deceased shall be the only persons recognised by the company as shareholders.

7.5 It was argued that the question of capacity, having already been determined, the Court below did not have the jurisdiction to revisit it, even if it was a decision on a

preliminary issue. Reliance was placed on the case of **Mpongwe Farms Limited v Dar Farms Limited** ⁽²⁾ on the conditions to be satisfied for a party relying on the defence of *res judicata*. The case of **Abdul Ebrahim Dudhia, Arshad Abdulla Dudhia & Gulam Farid Patel (T/A Musa Dudhia & Co, a Law Firm) v Sanmukh Ramanlal Patel**, ⁽³⁾ was also cited to show that *res judicata* applies even to interlocutory rulings. Therefore, the learned trial judge erred by revisiting the issue.

- 7.6 In ground two, the appellant challenges the finding of the trial Court that the respondent purchased Stand Nos. 194, 720 and 804 from a Mr. Patel when the Lands Register shows that the appellant owned the properties. We were referred to entry No. 21 at page 72 of the record of appeal; entry No. 24 at page 74 of the record of appeal; and entry No. 32 at page 79 of the record of appeal, which all show that the three properties were conveyed from Sanat Limited. Similarly, the assignments at pages 49 to 59 of the record of appeal all show that the property moved from the appellant to the respondent, and not from Mr. Patel.
- 7.7 As the evidence on record does not support the finding of fact by the trial Court, we were urged to hold the said finding

perverse and to interfere with it as guided in the case of **Kaumba Lesa (Alias Chief Kasaka) v Senior Chief Ishindi (Suing as Lunda Royal Establishment)** ⁽⁴⁾.

7.8 The appellant maintained that no purchase of the property took place as the assignments executed between the appellant and respondent were necessary to enable the respondent hold the properties in trust for the appellant. This is because an interest in land cannot be conveyed through a trust deed in view of **section 74(1) of the Lands and Deeds Registry Act**. Therefore, the appellant could not have conveyed the properties to the respondent through the trust deeds, as no notice of any trust may be entered in the Lands Register.

7.9 The trust deeds were executed to explain the reason why the deeds of assignment were executed and registered, that is, to enable the respondent to hold them in trust for the benefit of the appellant. That this fact was asserted by the respondent, in paragraph 7 of the respondent's affidavit in support of summons, to set aside the irregular judgment at page 68 of the record of appeal.

7.10 In ground three, the appellant argues that the two trust deeds executed by the appellant and respondent are not

irregular, it was submitted that the question of the validity of the trust deeds was raised by the respondent prior to the commencement of trial in the Court below. The said question escalated to this Court on appeal, which set aside the ruling of the Court below, that the trust deeds were not valid.

7.11 We were referred to our decision in the case of **Sanat Limited v Shaileskumar Suryakant Amin** ⁽⁵⁾ in which we held at page J25, that “... *the trust deeds in casu are therefore valid even if they were not registered and that the lower court erred when it dismissed them as being void ab initio.*”

7.12 It was further submitted that contrary to the finding of the Court below, the two trust deeds in issue are dated September 1985 and March 1986 respectively. That these documents being older than twenty years, carry with them a presumption of due execution in terms of **section 7 of the Evidence Act Chapter 43 of the Laws of Zambia** and according to the learned authors of **Halsbury’s Laws of England, 4th Edition, Volume 17, paragraph 129.**

7.13 The appellant assails the holding by the Court below, that PW1 was the maker of the trust deeds, and that the persons that executed the trust deeds not having been called as

witnesses, therefore, the trust deeds themselves are irregular. Counsel submitted that **section 3 of the Evidence Act** provides *“that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, ..”* Our decision in **James Chungu v Gerald Makungu (Suing in his capacity as Attorney for Roy Kirchner)** ⁽⁶⁾ was cited in support of this position.

7.14 The gist of the appellant’s argument is that the finding by the Court below, that the trust deeds are irregular was perverse in view of the admission by the respondent that he swore and signed the affidavit, where he deposed that he held the aforementioned property in trust for the appellant. We were urged to find that the respondent is a mere trustee for the benefit of the appellant.

7.15 In ground four, the appellant argues that the Court below did not determine all the matters in controversy. That inconsistencies in the respondent’s testimony were ignored such as the following;

- i) the respondent’s evidence that he acquired the properties from Mr. Patel when the evidence on record

shows that they belonged to Sanat Limited, the appellant;

- ii) the respondent denying having known the appellant and yet he is a shareholder and director in the appellant company;
- iii) the respondent denying signing the trust deeds but stating that the other two signatures against 'Director' and 'Secretary' belonged to the late Mr. and Mrs. Patel; and
- iv) the respondent denying having signed the trust deeds and yet confirming that he deposed the affidavit at page 68 of the record of appeal in which he admitted holding Plot No. 720, Lusaka in trust on behalf of the appellant.

7.16 The argument was that the Court below did not consider all these inconsistencies, but focused on the certificates of title to hold that the respondent is the rightful owner of the properties. That the trial Court failed to give due consideration to all the evidence placed before court, and failed to adjudicate on all the issues that were relevant and properly placed before it, so as to achieve finality. Reliance was placed on the case of **William Harrington v Dora Siliya** ⁽⁷⁾ as authority.

- 7.17 Grounds five and six were argued together. The appellant submits that the trial Court should not have considered the respondent's certificates of title as conclusive in view of the trust relationship in issue and that the court below, ought to have administered law and equity concurrently.
- 7.18 The appellant submits that the reason the certificates of title to the properties are in the names of the respondent is because they were conveyed to the respondent to hold in trust for the appellant. However, the respondent ignored that trust relationship. Therefore, the **Lands and Deeds Registry Act**, should not be used to allow the respondent to negate his obligations as a trustee.
- 7.19 We were referred to the unreported case of **Kambindima Wotela v Standard Chartered Bank Zambia Plc** ⁽⁸⁾, where Judge Chisanga, as she then was, referred to **Professor Keaton's** definition of a trust in the **Law of Trusts (1963), 8th Edition**, that:

“A trust ... is the relationship which arises whenever a person called a trustee is compelled in equity to hold property, whether real or personal, and whether by legal or equitable title, for the benefit of some persons (of whom he may be one and who are termed cestui que trust) or for some object permitted by law, in such a way that the real benefit of the property accrues not to the trustee, but to the beneficiaries or other objects of the trust.”

The foregoing definition gives rise to the conclusion that a trustee is the nominal owner of the property, while the cestui que trust is the beneficial owner of the property.”

7.20 The appellant argued that the conduct of the respondent to deny the trust and rely on the terms of statute to claim the land for himself is fraud, as held by the English Chancery Division, in the case of **Lys v Prowsa Developments** ⁽⁹⁾. Citing the case of **Burdick v Garrick** ⁽¹⁰⁾, it was submitted that the respondent can only discharge himself of the duty to hold the property in trust until it is called for, by handing over that property to somebody entitled to it.

7.21 Further, that the trial Court ought to have had regard to **section 13 of the High Court Act Chapter 27 of the Laws of Zambia** which requires law and equity to be administered concurrently. Reference was made to the case of **Crabb v Arun District Council** ⁽¹¹⁾, in which it was held that:

“Equity comes in, true to form, to mitigate the rigours of strict law. ... ‘it is the first principle upon which all Courts of Equity proceed ...’ that it will prevent a person from insisting on his strict legal rights – whether arising under a contract, or on his title deeds, or by statute – when it would be inevitable for him to do so having regard to the dealings which have taken place between the parties.”

7.22 We were urged to reverse the judgment of the Court below, allow the appeal and find that the properties are held by the respondent in trust for the benefit of the appellant.

7.0 ARGUMENTS BY THE RESPONDENT

- 7.1 The respondent did not file heads of argument into Court, instead he relied on the arguments made in the Court below appearing at pages 126 – 149 of the record of appeal. We will not recite in detail the said arguments which we have taken note of, save as follows; that the appellant had no *locus standi* or authority to sue, because no resolution was made allowing him to sue in the name of the company. Reference was made to **sections 70 (1) (4) of old Companies Act Cap 388** and the affidavit in opposition sworn by the appellant as personal representative of his parents as well as the evidence adduced in the Court below.
- 7.2 The respondent in the Court below submitted that the appellant had no capacity to authenticate the purported trust deeds of 1985. Further, that the trust deed of March 1986 cannot be admitted in evidence because of alterations. The respondent denied having signed the trust deed at all.
- 7.3 The respondent in reference to **section 54 of Lands and Deeds Registry Act Chapter 185 of the laws of Zambia**

and the case of **Kajimanga v Chileya** ⁽¹²⁾ submits that the respondent is the legal lessee of the properties in issue. They were not held in trust as per the assignment deeds.

7.4 As regards the trust deeds adduced in evidence, the respondent's position is that they were irregular or fabricated because the signature attributed to him was superimposed on the first document. The second document had alterations and properties owned are different from those appearing in the trust deeds.

7.5 In respect of the claim for rentals, or an account, the respondent submits that it was not proved that the same were due. Though the purported trust relationship started in 1985/86, the appellant sought an account starting in 1983. Further, PW1's mother surprisingly made no attempt to collect the rentals. We were urged to dismiss the appeal with costs.

8.0 DECISION OF THE COURT

We have considered the appeal, the authorities cited and the arguments advanced by Learned Counsel. In ground one, the appellant contends that the question of the capacity of the appellant to sue was decided in a ruling following an interlocutory application by the respondent.

- 8.1 The record shows that the respondent had raised a preliminary issue pursuant to **Order 33 of the Rules of the Supreme Court, 1999 Edition** as to whether the appellant company had capacity to sue, its shareholders having died, and whether the deponent (PW1) of the affidavit in opposition to summons to dismiss the action for being statute barred had the authority to act on behalf of the company.
- 8.2 In a ruling delivered on 30th October, 2015 appearing at pages 243 to 245 of the record of appeal, the Hon. Mr. Kelvin Limbani, Deputy Registrar, as he then was, found that Sumanrav Patel was appointed executor of the estate of his deceased mother on 29th April, 2015 (see exhibit "SSP1" at page 70 of the record of appeal). There was also unchallenged evidence by PW1 that his mother, Kokilaben Patel was the administrator of the estate of her husband, the late Mr. Sumanbhai Patel. Both Sumanbhai Patel and his wife, Kokilabem Patel were directors and shareholders in the appellant.
- 8.3 The Learned Deputy Registrar reasoned that **section 70(2) of the repealed Companies Act Chapter 88 of the Laws of Zambia**, provides for transmission of shares in a company

to the personal representative of a deceased shareholder. That by virtue of **section 71(4) of the said Act**, the personal representative is entitled to all the advantages that come with shareholding such as representing the company. The Court found that there was sufficient evidence for Sanjay Samanrav Patel to depose to the affidavits in the matter and that he is the personal representative of his deceased parents and is presumed to hold the shares of his deceased parents in the appellant company by operation of law.

- 8.4 In addition, at pages 294 to 295 of the record of appeal, the Learned Judge had taken note that there was a ruling by the Deputy Registrar on capacity which should not be circumvented. Therefore, we find that the question of the capacity of both the appellant and PW1 to sue, was settled by the Court below and could not be reviewed.
- 8.5 The lower Court misdirected itself in law and fact when it held that the action commenced by PW1 is a nullity. PW1, being the personal representative of Kokilaben Patel who was the administrator of the estate of Sumanbjai Patel, assumed the shares of his deceased parents and was therefore a director/ shareholder with capacity to commence this action. We find merit in ground one.

8.6 In ground two, the appellant challenges the finding of the Court below that the respondent purchased the three properties in issue from Mr. Patel. A perusal of entry No. 21 of the lands register at page 72 of the record of appeal; entry No. 24 at page 74 of the record of appeal; and entry No. 32 at page 79 of the record of appeal all show that the three properties were conveyed from Sanat Limited to Amin Shaileskumar Suryakant by means of an assignment. Similarly, the assignments at pages 49 to 59 of the record of appeal all show that the property moved from the appellant to the respondent, and not from Mr. Patel.

8.7 In the case of **Wilson Masauso Zulu v Avondale Housing Project Limited (1982) Z.R. 172** ⁽¹³⁾ it was held that:

“The appellate court will only reverse findings of fact made by a trial court if it is satisfied that the findings in question were either perverse or made in the absence of any relevant evidence or upon misapprehension of the facts.”

8.8 In light of the evidence on record, we are satisfied that the findings in question are perverse and were made in the absence of any relevant evidence. We accordingly reverse the finding of fact of the Judge. We accordingly find that the three properties, namely, Plot Nos. LUS/194, LUS/720 and LUS/803 were conveyed from Sanat Limited, the appellant

herein to Amin Shaileskumar Suryakant, the respondent herein. Ground two has merit.

8.9 In ground three, the appellant challenges the finding of the trial Court that the two trust deeds executed between the appellant and the respondent are invalid. The appellant placed reliance on our earlier decision in the case of **Sanat Limited v Shaileskumar Suryakant Amin** ⁽⁵⁾ in which we held at page J25, that “... *the trust deeds in casu are therefore valid even if they were not registered and that the lower court erred when it dismissed them as being void ab initio.*”

8.10 We have read our earlier decision and we are satisfied that it is founded on sound law and fact. We have not found any reason to depart from our findings therein that the two trust deeds herein are valid.

8.11 As regards the date, we note that both deeds are dated. The first deed at pages 43 to 45 is dated September 1985 while the second at pages 60 to 61 is dated March 1986. Therefore, we find that the two trust deeds are dated.

8.12 The first trust deed at pages 43 shows that it was in respect of “Plot Nos. 194 and 720”. However, the figure “804” was inserted above in pen with what appears to be signatures

against the alteration. Similarly, in paragraph 2, there are alterations on the amounts which were signed for.

8.13 The second trust deed at page 60 was initially for "Plot Number 804" but was altered by the inclusion of the words "Plot No. 194 and Plot No. 720 and" which insertions are not signed for. Similarly, in paragraph two of the deed, are alterations on the amounts and are unsigned for.

8.14 Going by the date, the deed at pages 60 to 61 of the record of appeal, dated March 1986, was the first to be drafted and executed. We are satisfied that it was meant for Plot No. LUS/804 as this was clearly typed thereon and the insertions was not signed for.

8.15 The trust deed at pages 43 to 45 of the record of appeal dated September 1985, is the second deed and was in respect of Plot Nos. LUS/194 and LUS/720. However, as the figure "804" was inserted and signed for, we are of the view that this trust deed was in respect of all the three properties, and being the more recent, supersedes the one executed in March 1985. We also note that the September 1985 trust deed also bears the company seal.

8.16 The respondent denied ever executing the two trust deeds stating that the signature thereon is not his. The respondent

did not, in our view, adduce forensic evidence to prove that the signature appended to the trust deeds are a forgery. We are inclined to find that he actually executed the trust deeds. In any event, our earlier judgment holding the trust deed valid has not been appealed against. We reiterate that the trust deeds in question are valid and not irregular.

8.17 The respondent could not even furnish evidence of the contracts of sale as alleged because he was holding the property in trust. We are further fortified in so holding in light of the affidavit at page 68 of the record of appeal which shows that the respondent admitted holding Plot No. 720, Lusaka in trust on behalf of the appellant.

8.18 Therefore, we find that the three properties in issue are held in trust by the respondent via trust deed on behalf of the appellant. We further find that as per the terms of the trust deeds, the respondent never paid any valuable consideration for the property.

8.19 In the Court below, the appellant claimed ownership of Plot Nos. LUS/194, LUS/720 and LUS/804, an order that the respondent renders an account of all monies received in respect of rent paid for the three properties since 1983 and payment thereof with interest. The learned authors of

Halsbury's Laws of England 4th Edition, Volume 9,
paragraph 631 state that:

“Equity has employed two methods to compel restitution of that which is regarded as “rightfully” belonging to another. First there is a broad general principle of equity that neither a trustee nor any other person in a fiduciary position may retain a profit made in the course of, or by means of, his office; and where there has been a breach of this principle, which extends to constructive trusts, the remedies provided by the law of trusts are available to enable a beneficiary to recover what was due to him. Secondly equity has employed the mechanism of the tracing order wherever a fiduciary relationship exists to enable property to be recovered from third parties into whose hands it has passed. Like all equitable remedies for the recovery of property, these remedies may be defeated where the legal interest to that property passes into the hands of a purchaser in good faith without notice of the equities.”

8.20 We find that the three properties herein belong to the appellant pursuant to the trust deeds. We refer the issue of the rendering of a statement of account of all monies received in respect of rent paid for the three properties since 1985, to the Registrar of the High Court for Assessment. The sums found due shall be paid by the respondent with interest from the date of writ of summons to the date of judgment at the average short term deposit rate and thereafter in accordance with **section 2 of the Judgment**

Act, Chapter 81 of the Laws of Zambia. In light of our earlier findings above, grounds four, five and six have merit.

9.0 CONCLUSION

9.1 In conclusion, we find merit and set aside the judgment of the Court below. We substitute it with the holding that the appellant is the legal and rightful owner of Plot Nos. 194,720 and 804 Lusaka. We refer the issue of statement of account to the Registrar of the High Court as earlier stated in paragraph 8.20. Costs follow the event to be taxed in default of agreement.

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M. J. Siavwapa
JUDGE PRESIDENT

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F. M. Chishimba
COURT OF APPEAL JUDGE

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A. N. Patel S.C
COURT OF APPEAL JUDGE