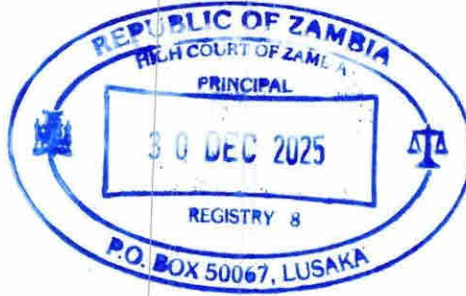


IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY

2020/HP/0766

HOLDEN AT LUSAKA
(Civil Jurisdiction)



BETWEEN:

PENIUS KANGACHEPE

PLAINTIFF

AND

KINGSLAND CITY INVESTMENT LIMITED
JOY MUNTHALI

1ST DEFENDANT2ND DEFENDANT

Before the Honourable Mrs. Justice R. H Chibbabbuka on the 30th day of
December, 2025.

For the Plaintiff: Ms. N. Mbuyi & Mr. C. Nkata, Messrs. Paul Norah
Advocates

For the 1st Defendant: Messrs. NCO Advocates

For the 2nd Defendant: N/A

JUDGMENT

Cases referred to:

1. *Zambia Railways Limited v Pauline S Mundia, Brian Sialumba*
2. *In the Mohamed v The Attorney General (1982) ZR 49*

Other Works referred to:

Chitty on Contracts, Volume 2, Specific Contracts, 13th Edition by H.G Beale, Sweet and Maxwell, 2008

1.0 INTRODUCTION

The plaintiff took out a writ of summons and statement of claim, on 16th July, 2020, for the following reliefs;

- i. A declaration that the sale of House No. C3, 14#, D4 - B of Stand No. Lusaka/ LN _ 24982/3, Lusaka from the 1st defendant to the plaintiff has been completed and cannot be cancelled by virtue of the purchase price in the sum of K 1,600,000.00 having been paid in full and received by the 2nd defendant in her capacity as manager for and on behalf of the 1st defendant.
- ii. An Order for specific performance of the said sale between the plaintiff and the 1st defendant.
- iii. Possession of House No. C3, 14#, D4 - B of Stand No. Lusaka/Ln_24982/3, Lusaka that the 1st defendant contracted to sell to the plaintiff.
- iv. In the alternative, the 1st defendant and 2nd defendant should be ordered to refund the plaintiff the purchase price in the sum of K 1,600,000.00 paid by the plaintiff plus interest;
- v. Damages from the defendants for breach of contract and consequential loss to the plaintiff;
- vi. Such further or other relief as the court deems just.

2.0 The Statement of Claim

The plaintiff's case, according to his statement of claim, is that on or about 17th March, 2018, he and the 1st defendant executed a contract of sale for the purchase of a house known as No. C3, 14#, D4 - B of Stand No. Lusaka/Ln_24982/3, Lusaka at the purchase price of US\$146,222.00. He paid the purchase price in the sum of Zambian Kwacha One Million Six Hundred Thousand (K1,600,000.00) to the 2nd defendant who received it on behalf of the 1st defendant in the presence of one person named Steve, the defendant's Marketing Manager, and one lady called Lucy the 1st defendant's Accountant.

Upon paying the full purchase price, the 1st defendant called the plaintiff to execute the contract of sale. However, despite several reminders, the 1st defendant has refused to hand over the property to the plaintiff under the reason that they have not received the purchase price as the 2nd defendant stole company money including payment made by the plaintiff. The 1st defendant informed him that it is still trying to pursue the 2nd defendant for money stolen from the company hence it cannot hand over the property to him. Despite his requests, the 1st defendant has not acted to comply and perform his part of his obligations for completion of the sale in accordance with the terms and conditions of the Contract of Sale.

3.0 The defendant's Defence

3.1 The 1st Defendant's Defence

The 1st defendant filed a defence on 24th November, 2020 wherein it alleges that the contents of paragraph 3 of the statement of claim which state that the 2nd defendant was at the material time a Manager in the 1st defendant company are misleading as the 2nd defendant has never been employed by the 1st defendant. The 2nd defendant was merely a consultant who connected the 1st defendant to the prospective buyers. The contents of paragraph 4 of the statement of claim that the plaintiff and 2nd defendant executed a contract of sale are disputed.

That the 2nd defendant was neither an accountant nor a person authorized to receive payment on behalf of the 1st defendant. The plaintiff has never made any payment to the 1st defendant regarding the alleged contract of sale. Save in so far as is expressly admitted, the defendant denied each and every allegation in the statement of claim as if the same were traversed seriatim.

3.2 The 2nd Defendant's Defence

The 2nd defendant did not enter appearance or file a defence.

4.0 The Plaintiff's Reply

The plaintiff, on 14th December, 2020, filed a reply to the 1st defendant's defence in which the plaintiff joined issue with the 1st defendant.

5.0 Witness Statement

5.1 The Plaintiff's Witness Statement

The plaintiff filed two witness statements on 11th May, 2022.

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The first statement was for the plaintiff himself. He asserts that on or about 17th March, 2018, he and the 1st defendant executed a contract of sale for the purchase of a house known as No. C3, 14#, D4 - B of Stand No. Lusaka/Ln_24982/3, Lusaka at the purchase price of US\$146,222.00. He paid

the purchase price in the sum of Zambian Kwacha One Million Six Hundred Thousand (K1,600,000.00) to the 2nd defendant who received it on behalf of the 1st defendant in the presence of one person named Steve, the defendant's Marketing Manager, and one lady called Lucy the 1st defendant's Accountant. The 2nd defendant thereafter issued him with an acknowledgment of receipt for all the payments he made which are exhibited in his bundle of documents.

Upon paying the full purchase price in full, the 1st defendant called the plaintiff to execute the contract of sale as it is policy for the 1st defendant not to proceed with the signing of the contract of sale unless a purchaser has paid in full, which he had. However, despite several reminders, the 1st defendant has refused to hand over the property to him for the reason that it has not received the purchase price, as the 2nd defendant stole company money including the payment made by him. The 1st defendant informed him that it is still trying to pursue the 2nd defendant for money stolen from the company, hence it cannot hand over the property to the him. Despite his demands, the 1st defendant has not acted to comply and perform its

part of their obligation for completion of the sale in accordance with the terms and condition of the Contract of Sale.

5.1.2 The Statement of Amos Mwale

The second plaintiff's witness statement was that of Amos Mwale. He asserts that he was with the plaintiff when he made the payments to the 2nd defendant, for the purchase of the property in question. He equally purchased a property from the 1st defendant which however never materialized. His testimony is to confirm that the 2nd defendant was indeed working for the 2nd defendant, and used to receive money on its behalf.

5.2 The 1st Defendant's Witness Statements

The 1st defendant filled two witness statements on 8th June, 2022.

5.2.1 The Statement of John Shi

According to John Shi, the 1st defendant's Property Manager, he has the duty of receiving and appraising applications for purchase of properties at Kingsland City. The 1st defendant can only commence construction or handover a property for which it has received the purchase price, as per the contract of sale executed between the 1st defendant and the client. The 1st defendant never received the sum of \$146,222.00 from the plaintiff for purchase of the house known as C3,14#, D4-B of Stand No, Lusaka/Ln_24982/3, Lusaka. The 1st defendant could only vest title to the plaintiff for the property in question if the parties executed a contract of sale, and the 1st defendant received the purchase price.

5.2.2 The Statement of Huang Bing

According to Huang Bing, the Managing Director in the 1st defendant company, his duties include managing the purchase, sale, rental or development of properties, authoring maintenance, repair, equipment, and supply expenditure, monitoring real estate income and expenditure as well as collecting payments.

He is the only person that has the authority to sign and enter into binding contracts of sale for and on behalf of the 1st defendant. When a contract of sale is approved, funds are normally disbursed and received in instalments

as agreed in the contract of sale and a receipt is normally issued to the client to acknowledge proof of payment.

The 1st defendant did enter into a contract of sale with the plaintiff for the purchase of house No. C3, 14#, D4-4 of Stand No. Lusaka/Ln_24982/3, Lusaka for a total sum of United States Dollars One Hundred Forty-Six Thousand Two Hundred and Twenty-Two (\$146, 222. 00). It was a condition of the contract of sale that housing unit No. C3, 14#, D4-4 of Stand No. Lusaka/Ln_24982/3, Lusaka would only be given to the plaintiff once the purchase price is paid in full. However, the plaintiff never deposited into the 1st defendant's bank account the sum of U\$146, 222. 00 towards the purchase of the property, that the plaintiff is alluding to and that is why the 1st defendant did not acknowledge receipt of any of the payments the plaintiff is alleging to have made to the 2nd defendant. In the premises, the 1st defendant could not give title to a property for which it had never received the purchase price. The plaintiff has not furnished any particulars to substantiate, ascertain or demonstrate any damage or loss claimed to have been suffered as a result of the 1st defendant's fault. The 1st defendant could only vest title to the plaintiff for the property in question if he paid the full purchase price to the 1st defendant.

6.0 At the Trial

6.1 The Plaintiff's witnesses

The Plaintiff called two witnesses

6.1.1 The Testimony of PW1

The plaintiff's first witness, PW1, was the plaintiff himself. PW1 relied entirely on his witness statement.

6.1.2 Cross examination of PW1

PW1 was not cross examined.

6.1.3 The Testimony of PW2

PW2 was Amos Mwale. He relied entirely on his witness statement.

6.1.4 Cross examination of PW2

When cross examined, PW2 replied that he signed a contract with the 1st defendant for the purchase of a property and was given an account into which to deposit the purchase price. He came to know the 2nd defendant through a Mr. Banda who was in the process of purchasing a house from Kingsland. PW2 went to the 2nd defendant who gave him information on the properties they were selling in Kingsland. She told him that once he makes a deposit, he would sign the contract and start paying for the property in instalments. After paying the deposit, PW2 signed the contract as per the 2nd defendant's direction. He was given an account after signing the contract. He paid the cash deposit at Kingsland to a Chinese man called Chris in the presence of the 2nd defendant.

The account number he was given is with Standard Chartered Bank. He sometimes personally made deposits, while other times it was done on his behalf. He would deposit into the 2nd defendant's bank on specific dates as directed by her. He was not suspicious of depositing money into the 2nd defendant's account as she always issued him receipts after deposits. The receipts were from Kingsland with a logo and headline for Kingsland, which receipts were similar to the one he received upon making the first deposit. The receipts were signed by persons from the finance department and not the 2nd defendant. The plaintiff underwent a similar process.

6.1.5 Re-examination of PW2

In re-examination, PW2 stated that the receipts appearing at pages 13 to 17 of the plaintiff's bundle of documents are the receipts he was given at Kingsland. The 2nd defendant issued the receipts.

6.2 The defendants' witnesses.

6.2.1 The defendants did not call any witnesses at trial.

7.0 Submissions

Both parties filed written submissions, which I have carefully considered.

8.0 The Decision of the Court

I have prudently considered the evidence in this matter.

At the onset, I must comment on the 1st defendant's submissions, particularly counsel's arguments on vicarious liability. It is well-established that vicarious liability is a tort doctrine, typically found in employer-employee relationships. It arises when an employee commits a tort against a third party while performing their work duties. On the facts before the court, however, this case concerns contractual obligations rather than tortious wrongs. Although counsel's arguments are robust, in my view vicarious liability does not apply in this instance.

I will now proceed to the determination of this matter.

8.1 Findings of Facts

The only undisputed fact in *casu* is that the plaintiff and 1st defendant entered into a contract of sale.

8.2 Disputed Facts

The following are the facts in dispute:

1. Whether the 2nd defendant was an employee of the 1st defendant.
2. Whether the plaintiff paid the sum of US\$146,222.00 to the 2nd defendant.
3. Whether the 2nd defendant acted on behalf of, or as agent for, the 1st defendant when dealing with the plaintiff.
4. Whether the plaintiff is entitled to the reliefs sought.

8.3 Whether the 2nd defendant was an employee of the 1st defendant.

The first fact in issue for my determination is whether the 2nd defendant, whom the plaintiff alleges was his primary contact, was an employee of the 1st defendant. According to the plaintiff's statement of claim, the 2nd defendant was a Manager in the 1st defendant company. This assertion has been categorically refuted by the 1st defendant. The 1st defendant's defence

alleges that the 2nd defendant was merely a consultant who connected the 1st defendant to prospective clients and hence to say she was its Manager is misleading. I carefully reviewed the evidence on record. It is trite law that in civil cases, the standard of proof is satisfied on a balance of probabilities, which is to mean that the court is satisfied of a fact or occurrence of an event if the court considers that, on the evidence, the occurrence of the fact or event was more likely than not. In the case of **Zambia Railways Limited v Pauline S Mundia, Brian Sialumba**¹ the court held that:

“The standard of proof in a civil case is not as rigorous as the one obtaining in a criminal case. Simply stated, the proof required is on a balance of probability as opposed to beyond all reasonable doubt in a criminal case. The old adage is true that he who asserts a claim in a civil trial must prove on a balance of probability that the other party is liable ...”

8.3.1 In the **Mohamed v The Attorney General**², case, the court held that:

“A plaintiff must prove his case and if he fails to do so the mere failure of the opponent's defence does not entitle him to judgment.”

The plaintiff must prove that the 2nd defendant was at the material time an employee of the 1st defendant. To prove his assertion, the plaintiff has produced, in his supplementary bundle of documents, Facebook and newspaper publications issued by the 1st defendant, bearing the same message, which is:

“NOTICE is hereby given that JOY MUNTHALI whose NRC number is 966148/11/1 is NO LONGER an employee of Kingsland City Investments Limited with effect 6th May, 2019. JOY MUNTHALI is therefore not authorized to represent the company in any matter and in any capacity whatsoever. The General Public is therefore warned that any person dealing with JOY MUNTHALI shall do so at their own risk and that the Company shall not accept any liability for such dealings.” [underling for court’s emphasis]

8.3.2 The Facebook publication was issued on 30th September, 2019, while the date for the newspaper publication has not been indicated. It is clear from the publication, that the 2nd defendant was an employee of the 1st defendant until 6th May, 2019. Further PW2 testified that the 2nd defendant was an employee of the 1st defendant company. I am convinced that the plaintiff has proved his assertion that the 2nd defendant was an employee of the 1st defendant at the time he and the 1st defendant executed the contract.

8.4 Whether the plaintiff paid the sum of US\$146,222.00 to the 2nd defendant.

The next question for determination is whether the plaintiff in fact paid the sum of US\$146,222.00, which at the relevant time converted into K1,600,000.00, to the 2nd defendant as alleged. The plaintiff maintains that payment of that amount was made to the 2nd defendant, who acknowledged receipt thereof. The 1st defendant disclaims any knowledge of this alleged payment, while the 2nd defendant has failed to appear and hence has not given evidence.

8.4.1 I have carefully considered the plaintiff's evidence in support of this claim. In particular, the plaintiff relies upon handwritten acknowledgment notes, said to have been issued by the 2nd defendant, admitting receipt of the money. These documents are contained in the plaintiff's bundle of documents at pages 13 to 17. It is trite that signed handwritten acknowledgment of receipts may serve as proof of payment, in circumstances where authorship is not challenged. Having found that the 2nd defendant was an employee of the 1st defendant, I accept the plaintiff's testimony that he gave the stated sum to the 2nd defendant, especially in light of PW2's corroborative testimony that when he was transacting to purchase a property from the 1st defendant, he also paid monies to the 2nd defendant.

8.5 Whether the 2nd defendant acted on behalf of, or as agent for, the 1st defendant when dealing with the plaintiff.

8.5.1 The next question is whether the 2nd defendant in dealing with the plaintiff was acting on the 1st defendant's behalf. The plaintiff's submission is essentially that at the material time, the 2nd defendant was an agent of the 1st defendant as she held herself out as such. The plaintiff, relying on case law and provisions of the *Companies Act, No. 10 of 2017*, submitted that an outsider dealing with a company in good faith cannot be concerned with any alleged want of authority. This submission has been sternly refuted by the 1st defendant who submitted that the 2nd defendant had no actual or ostensible authority to receive money from the plaintiff for and its behalf. It is trite law that an agent is a person who is authorized to act on behalf of another person, the principal. The authors of **Chitty on contract Vol 2** state at **paragraph 31-001** that:

“At common law, the word agency can be said to represent a body of general rules under which a person, the agent has power to change the legal relations of another, the principal. The full paradigm relationship of principal and agent arises where one party, the principal, consents that another, the agent shall act on his behalf and the agent consents to act. The said consent is said to confer authority on the agent, and from this stems the authority...”

8.5.2 An agent may have actual authority, which is the authority that the principal intentionally gives him either expressly or impliedly, or he may have ostensible authority which is the authority an agent appears to have to third parties, because of the principal's words, conduct, or representations though the agent may not in fact have that authority. The authors of **Chitty on Contracts**, state, at **paragraph 31-042** at **page 28**, that:

“An agent’s power to affect the legal position of his principal rests upon his authority, and it may in fact be said that his authority is a power to affect his principal by doing acts on his behalf.”

8.5.3 In *casu*, I have earlier in this judgment made a finding that the 2nd defendant was in fact an employee of the 1st defendant. This fact alone does not automatically mean that the 2nd defendant had authority to receive monies on behalf of the 1st defendant, it must be proved that the 2nd defendant had actual or ostensible authority to act for the 1st defendant in that regard. The 1st defendant has categorically denied giving the 2nd defendant actual authority to act for and on its behalf, and there is no evidence on record to show that the 2nd defendant had such actual authority. The plaintiff’s evidence therefore needs to show that the 2nd defendant had ostensible authority for him to succeed in his claim.

8.5.4 While I have found that the 2nd defendant was an employee of the 1st defendant, there is no document on record that definitively states what position she held in the 1st defendant company though the plaintiff alleges that she was a Sales Manager. What can conclusively be deciphered from the evidence is that the 2nd defendant was indeed working in the sales department of the company. My finding is based on the testimonies of PW1 and PW2. PW2 in particular testified that it was the 2nd defendant who gave him information on the properties the 1st defendant was selling and was the one who gave him instructions on how the payments for the purchase of the property were to be made. Additionally, the 1st defendant’s statement in its defence states that the 2nd defendant’s role was to connect the 1st defendant to prospective buyers further cements my finding. By being a sales representative, it is clear how the plaintiff perceived that the 2nd defendant had ostensible authority to receive money on behalf of the 1st defendant, especially when the monies were paid in the presence of Steve and Lucy who were represented as the 1st defendant’s Marketing Manager and Accountant respectively. The plaintiff’s testimony that the 1st

defendant has personnel in its employ going by the said names and holding the said positions was not rebutted at all. Further, the 1st defendant's publication, which I have referred to earlier in this judgment, imputes that prior to 6th May, 2019, the 2nd defendant had authority to represent the 1st defendant company.

8.5.5 As to the 1st defendant's submission that the plaintiff should have been put on notice, on the ground that it is highly unusual for the Defendant to require a client to make payment into an employee's personal account, my observation is that the contract executed between the plaintiff and the 1st defendant does not stipulate a specific bank account to which the purchase price must be paid. However, even in assuming that the plaintiff was given an account to deposit the funds in, I note from the testimony of PW2 that purchasers were not limited to depositing funds into bank accounts. PW2 testified that his first payment was made in cash at Kingsland to a Chinese individual named "Chris," in the presence of the 2nd defendant. PW2, who said his process mirrored that of the plaintiff, also testified that he harboured no suspicion in paying into the 2nd defendant's account because she invariably issued him receipts bearing the 1st defendant's logo, identical in form to the receipt he received for his initial deposit. Given that other persons besides the plaintiff made payments to the 2nd defendant, I find that the plaintiff had a reasonable basis to believe that the 2nd defendant was authorized or permitted to receive monies on behalf of the 1st defendant.

8.6 Whether the plaintiff is entitled to the reliefs sought.

8.6.1 Premised on my findings, the plaintiff has proved his case on a balance of probabilities and he is therefore entitled to the completion of the sale and subsequent conveyance and possession of the subject property. As regards the claim for damages for breach of contract, it is trite that a breach of contract occurs if a party to a contract fails or refuses to comply with an obligation under the contract. From the evidence on record, the 1st

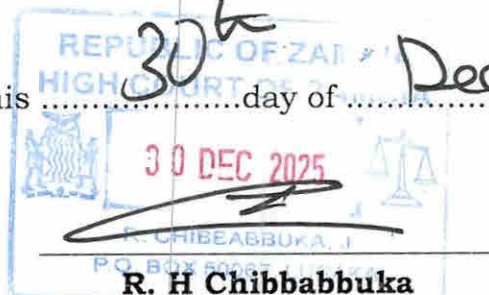
defendant's failure to complete the sale and convey the property to the plaintiff is a breach of contract, and I find accordingly. The plaintiff however, failing to prove the actual damage suffered is only entitled to a nominal award.

8.6.2 The net result of this action is that:

1. The sale of House No. C3, 14#, D4 - B of Stand No. Lusaka/ LN _ 24982/3, Lusaka from the 1st defendant to the plaintiff has been completed by virtue of the purchase price in the sum of K 1,600,000.00 having been paid in full to the 2nd defendant in her capacity as an agent of the 1st defendant.
2. The 1st defendant is ordered to convey the said property to the plaintiff or alternatively reimburse the sum of K 1,600,000.00 to the plaintiff within 30 days from the date of this judgment.
3. Should the 1st defendant opt to reimburse the plaintiff, interest to accrue on the K1, 600,000.00 at the average short-term deposit rate from the date of the action until judgment, and thereafter at the current Bank of Zambia lending rate until full payment.
4. The plaintiff is awarded nominal damages in the sum of K 8,000.00 for breach of contract, by the defendants.
5. The plaintiff is awarded costs to be taxed in default of agreement.

Leave to appeal is hereby granted.

Delivered at Lusaka this day of 2025

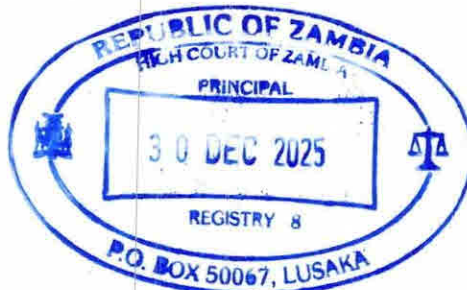


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For the 2nd Defendant: N/A

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Upon paying the full purchase price, the 1st defendant called the plaintiff to execute the contract of sale. However, despite several reminders, the 1st defendant has refused to hand over the property to the plaintiff under the reason that they have not received the purchase price as the 2nd defendant stole company money including payment made by the plaintiff. The 1st defendant informed him that it is still trying to pursue the 2nd defendant for money stolen from the company hence it cannot hand over the property to him. Despite his requests, the 1st defendant has not acted to comply and perform his part of his obligations for completion of the sale in accordance with the terms and conditions of the Contract of Sale.

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He is the only person that has the authority to sign and enter into binding contracts of sale for and on behalf of the 1st defendant. When a contract of sale is approved, funds are normally disbursed and received in instalments

as agreed in the contract of sale and a receipt is normally issued to the client to acknowledge proof of payment.

The 1st defendant did enter into a contract of sale with the plaintiff for the purchase of house No. C3, 14#, D4-4 of Stand No. Lusaka/Ln_24982/3, Lusaka for a total sum of United States Dollars One Hundred Forty-Six Thousand Two Hundred and Twenty-Two (\$146, 222. 00). It was a condition of the contract of sale that housing unit No. C3, 14#, D4-4 of Stand No. Lusaka/Ln_24982/3, Lusaka would only be given to the plaintiff once the purchase price is paid in full. However, the plaintiff never deposited into the 1st defendant's bank account the sum of U\$146, 222. 00 towards the purchase of the property, that the plaintiff is alluding to and that is why the 1st defendant did not acknowledge receipt of any of the payments the plaintiff is alleging to have made to the 2nd defendant. In the premises, the 1st defendant could not give title to a property for which it had never received the purchase price. The plaintiff has not furnished any particulars to substantiate, ascertain or demonstrate any damage or loss claimed to have been suffered as a result of the 1st defendant's fault. The 1st defendant could only vest title to the plaintiff for the property in question if he paid the full purchase price to the 1st defendant.

6.0 At the Trial

6.1 The Plaintiff's witnesses

The Plaintiff called two witnesses

6.1.1 The Testimony of PW1

The plaintiff's first witness, PW1, was the plaintiff himself. PW1 relied entirely on his witness statement.

6.1.2 Cross examination of PW1

PW1 was not cross examined.

6.1.3 The Testimony of PW2

PW2 was Amos Mwale. He relied entirely on his witness statement.

6.1.4 Cross examination of PW2

When cross examined, PW2 replied that he signed a contract with the 1st defendant for the purchase of a property and was given an account into which to deposit the purchase price. He came to know the 2nd defendant through a Mr. Banda who was in the process of purchasing a house from Kingsland. PW2 went to the 2nd defendant who gave him information on the properties they were selling in Kingsland. She told him that once he makes a deposit, he would sign the contract and start paying for the property in instalments. After paying the deposit, PW2 signed the contract as per the 2nd defendant's direction. He was given an account after signing the contract. He paid the cash deposit at Kingsland to a Chinese man called Chris in the presence of the 2nd defendant.

The account number he was given is with Standard Chartered Bank. He sometimes personally made deposits, while other times it was done on his behalf. He would deposit into the 2nd defendant's bank on specific dates as directed by her. He was not suspicious of depositing money into the 2nd defendant's account as she always issued him receipts after deposits. The receipts were from Kingsland with a logo and headline for Kingsland, which receipts were similar to the one he received upon making the first deposit. The receipts were signed by persons from the finance department and not the 2nd defendant. The plaintiff underwent a similar process.

6.1.5 Re-examination of PW2

In re-examination, PW2 stated that the receipts appearing at pages 13 to 17 of the plaintiff's bundle of documents are the receipts he was given at Kingsland. The 2nd defendant issued the receipts.

6.2 The defendants' witnesses.

6.2.1 The defendants did not call any witnesses at trial.

7.0 Submissions

Both parties filed written submissions, which I have carefully considered.

8.0 The Decision of the Court

I have prudently considered the evidence in this matter.

At the onset, I must comment on the 1st defendant's submissions, particularly counsel's arguments on vicarious liability. It is well-established that vicarious liability is a tort doctrine, typically found in employer-employee relationships. It arises when an employee commits a tort against a third party while performing their work duties. On the facts before the court, however, this case concerns contractual obligations rather than tortious wrongs. Although counsel's arguments are robust, in my view vicarious liability does not apply in this instance.

I will now proceed to the determination of this matter.

8.1 Findings of Facts

The only undisputed fact in *casu* is that the plaintiff and 1st defendant entered into a contract of sale.

8.2 Disputed Facts

The following are the facts in dispute:

1. Whether the 2nd defendant was an employee of the 1st defendant.
2. Whether the plaintiff paid the sum of US\$146,222.00 to the 2nd defendant.
3. Whether the 2nd defendant acted on behalf of, or as agent for, the 1st defendant when dealing with the plaintiff.
4. Whether the plaintiff is entitled to the reliefs sought.

8.3 Whether the 2nd defendant was an employee of the 1st defendant.

The first fact in issue for my determination is whether the 2nd defendant, whom the plaintiff alleges was his primary contact, was an employee of the 1st defendant. According to the plaintiff's statement of claim, the 2nd defendant was a Manager in the 1st defendant company. This assertion has been categorically refuted by the 1st defendant. The 1st defendant's defence

alleges that the 2nd defendant was merely a consultant who connected the 1st defendant to prospective clients and hence to say she was its Manager is misleading. I carefully reviewed the evidence on record. It is trite law that in civil cases, the standard of proof is satisfied on a balance of probabilities, which is to mean that the court is satisfied of a fact or occurrence of an event if the court considers that, on the evidence, the occurrence of the fact or event was more likely than not. In the case of **Zambia Railways Limited v Pauline S Mundia, Brian Sialumba**¹ the court held that:

“The standard of proof in a civil case is not as rigorous as the one obtaining in a criminal case. Simply stated, the proof required is on a balance of probability as opposed to beyond all reasonable doubt in a criminal case. The old adage is true that he who asserts a claim in a civil trial must prove on a balance of probability that the other party is liable ...”

8.3.1 In the **Mohamed v The Attorney General**², case, the court held that:

“A plaintiff must prove his case and if he fails to do so the mere failure of the opponent's defence does not entitle him to judgment.”

The plaintiff must prove that the 2nd defendant was at the material time an employee of the 1st defendant. To prove his assertion, the plaintiff has produced, in his supplementary bundle of documents, Facebook and newspaper publications issued by the 1st defendant, bearing the same message, which is:

“NOTICE is hereby given that JOY MUNTHALI whose NRC number is 966148/11/1 is NO LONGER an employee of Kingsland City Investments Limited with effect 6th May, 2019. JOY MUNTHALI is therefore not authorized to represent the company in any matter and in any capacity whatsoever. The General Public is therefore warned that any person dealing with JOY MUNTHALI shall do so at their own risk and that the Company shall not accept any liability for such dealings.” [underling for court’s emphasis]

8.3.2 The Facebook publication was issued on 30th September, 2019, while the date for the newspaper publication has not been indicated. It is clear from the publication, that the 2nd defendant was an employee of the 1st defendant until 6th May, 2019. Further PW2 testified that the 2nd defendant was an employee of the 1st defendant company. I am convinced that the plaintiff has proved his assertion that the 2nd defendant was an employee of the 1st defendant at the time he and the 1st defendant executed the contract.

8.4 Whether the plaintiff paid the sum of US\$146,222.00 to the 2nd defendant.

The next question for determination is whether the plaintiff in fact paid the sum of US\$146,222.00, which at the relevant time converted into K1,600,000.00, to the 2nd defendant as alleged. The plaintiff maintains that payment of that amount was made to the 2nd defendant, who acknowledged receipt thereof. The 1st defendant disclaims any knowledge of this alleged payment, while the 2nd defendant has failed to appear and hence has not given evidence.

8.4.1 I have carefully considered the plaintiff's evidence in support of this claim. In particular, the plaintiff relies upon handwritten acknowledgment notes, said to have been issued by the 2nd defendant, admitting receipt of the money. These documents are contained in the plaintiff's bundle of documents at pages 13 to 17. It is trite that signed handwritten acknowledgment of receipts may serve as proof of payment, in circumstances where authorship is not challenged. Having found that the 2nd defendant was an employee of the 1st defendant, I accept the plaintiff's testimony that he gave the stated sum to the 2nd defendant, especially in light of PW2's corroborative testimony that when he was transacting to purchase a property from the 1st defendant, he also paid monies to the 2nd defendant.

8.5 Whether the 2nd defendant acted on behalf of, or as agent for, the 1st defendant when dealing with the plaintiff.

8.5.1 The next question is whether the 2nd defendant in dealing with the plaintiff was acting on the 1st defendant's behalf. The plaintiff's submission is essentially that at the material time, the 2nd defendant was an agent of the 1st defendant as she held herself out as such. The plaintiff, relying on case law and provisions of the *Companies Act, No. 10 of 2017*, submitted that an outsider dealing with a company in good faith cannot be concerned with any alleged want of authority. This submission has been sternly refuted by the 1st defendant who submitted that the 2nd defendant had no actual or ostensible authority to receive money from the plaintiff for and its behalf. It is trite law that an agent is a person who is authorized to act on behalf of another person, the principal. The authors of **Chitty on contract Vol 2** state at **paragraph 31-001** that:

"At common law, the word agency can be said to represent a body of general rules under which a person, the agent has power to change the legal relations of another, the principal. The full paradigm relationship of principal and agent arises where one party, the principal, consents that another, the agent shall act on his behalf and the agent consents to act. The said consent is said to confer authority on the agent, and from this stems the authority..."

8.5.2 An agent may have actual authority, which is the authority that the principal intentionally gives him either expressly or impliedly, or he may have ostensible authority which is the authority an agent appears to have to third parties, because of the principal's words, conduct, or representations though the agent may not in fact have that authority. The authors of **Chitty on Contracts**, state, at **paragraph 31-042** at **page 28**, that:

“An agent’s power to affect the legal position of his principal rests upon his authority, and it may in fact be said that his authority is a power to affect his principal by doing acts on his behalf.”

8.5.3 In *casu*, I have earlier in this judgment made a finding that the 2nd defendant was in fact an employee of the 1st defendant. This fact alone does not automatically mean that the 2nd defendant had authority to receive monies on behalf of the 1st defendant, it must be proved that the 2nd defendant had actual or ostensible authority to act for the 1st defendant in that regard. The 1st defendant has categorically denied giving the 2nd defendant actual authority to act for and on its behalf, and there is no evidence on record to show that the 2nd defendant had such actual authority. The plaintiff’s evidence therefore needs to show that the 2nd defendant had ostensible authority for him to succeed in his claim.

8.5.4 While I have found that the 2nd defendant was an employee of the 1st defendant, there is no document on record that definitively states what position she held in the 1st defendant company though the plaintiff alleges that she was a Sales Manager. What can conclusively be deciphered from the evidence is that the 2nd defendant was indeed working in the sales department of the company. My finding is based on the testimonies of PW1 and PW2. PW2 in particular testified that it was the 2nd defendant who gave him information on the properties the 1st defendant was selling and was the one who gave him instructions on how the payments for the purchase of the property were to be made. Additionally, the 1st defendant’s statement in its defence states that the 2nd defendant’s role was to connect the 1st defendant to prospective buyers further cements my finding. By being a sales representative, it is clear how the plaintiff perceived that the 2nd defendant had ostensible authority to receive money on behalf of the 1st defendant, especially when the monies were paid in the presence of Steve and Lucy who were represented as the 1st defendant’s Marketing Manager and Accountant respectively. The plaintiff’s testimony that the 1st

defendant has personnel in its employ going by the said names and holding the said positions was not rebutted at all. Further, the 1st defendant's publication, which I have referred to earlier in this judgment, imputes that prior to 6th May, 2019, the 2nd defendant had authority to represent the 1st defendant company.

8.5.5 As to the 1st defendant's submission that the plaintiff should have been put on notice, on the ground that it is highly unusual for the Defendant to require a client to make payment into an employee's personal account, my observation is that the contract executed between the plaintiff and the 1st defendant does not stipulate a specific bank account to which the purchase price must be paid. However, even in assuming that the plaintiff was given an account to deposit the funds in, I note from the testimony of PW2 that purchasers were not limited to depositing funds into bank accounts. PW2 testified that his first payment was made in cash at Kingsland to a Chinese individual named "Chris," in the presence of the 2nd defendant. PW2, who said his process mirrored that of the plaintiff, also testified that he harboured no suspicion in paying into the 2nd defendant's account because she invariably issued him receipts bearing the 1st defendant's logo, identical in form to the receipt he received for his initial deposit. Given that other persons besides the plaintiff made payments to the 2nd defendant, I find that the plaintiff had a reasonable basis to believe that the 2nd defendant was authorized or permitted to receive monies on behalf of the 1st defendant.

8.6 Whether the plaintiff is entitled to the reliefs sought.

8.6.1 Premised on my findings, the plaintiff has proved his case on a balance of probabilities and he is therefore entitled to the completion of the sale and subsequent conveyance and possession of the subject property. As regards the claim for damages for breach of contract, it is trite that a breach of contract occurs if a party to a contract fails or refuses to comply with an obligation under the contract. From the evidence on record, the 1st

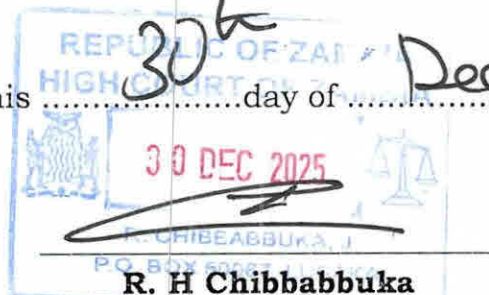
defendant's failure to complete the sale and convey the property to the plaintiff is a breach of contract, and I find accordingly. The plaintiff however, failing to prove the actual damage suffered is only entitled to a nominal award.

8.6.2 The net result of this action is that:

1. The sale of House No. C3, 14#, D4 - B of Stand No. Lusaka/ LN _ 24982/3, Lusaka from the 1st defendant to the plaintiff has been completed by virtue of the purchase price in the sum of K 1,600,000.00 having been paid in full to the 2nd defendant in her capacity as an agent of the 1st defendant.
2. The 1st defendant is ordered to convey the said property to the plaintiff or alternatively reimburse the sum of K 1,600,000.00 to the plaintiff within 30 days from the date of this judgment.
3. Should the 1st defendant opt to reimburse the plaintiff, interest to accrue on the K1, 600,000.00 at the average short-term deposit rate from the date of the action until judgment, and thereafter at the current Bank of Zambia lending rate until full payment.
4. The plaintiff is awarded nominal damages in the sum of K 8,000.00 for breach of contract, by the defendants.
5. The plaintiff is awarded costs to be taxed in default of agreement.

Leave to appeal is hereby granted.

Delivered at Lusaka this day of 2025



R. H Chibbabbuka
HIGH COURT JUDGE