

IN THE COURT OF APPEAL OF ZAMBIA
HOLDEN AT LUSAKA
(Civil Jurisdiction)

Appeal No. 232/2021

BETWEEN:

DON MUTENDA

AND

BILEX KENNETH MUTALE



APPELLANT

RESPONDENT

CORAM: Chashi, Muzenga and Patel, JJA
On 19th September 2023 and 8th December 2023.

For the Appellant: In person

For the Respondent: Not in attendance

J U D G M E N T

MUZENGA JA, delivered the Judgment of the Court.

1.0 INTRODUCTION

1.1 This is an appeal against a decision of the Registrar of the High Court, Hon. A. M. Chulu dismissing the appellant's application for assessment of damages.

2.0 BACKGROUND

2.1 The background to this appeal is that the appellant commenced an action in the court below in which he sued the respondent by way of writ of summons claiming for:

- (a) A declaration that he is the legal owner of the plot in issue of Subdivision of Sub F/687/A/a/B/21/D Makeni, Lusaka.**
- (b) Punitive and exemplary damages**
- (c) Interest**
- (d) Costs**
- (e) Any relief the Court may deem fit.**

2.2 Prior to the appellant commencing this matter, the respondent sued him together with others, who appeared to have been squatters on the land which belonged to the respondent, under Cause No. 2004/HP/0093. Under this Cause, Judge Nyangulu delivered a Judgment dated 17th January 2005, in which he seemed to regularise the status of the appellant and his co-defendants as owners of the respective portions of land on which they were squatters, following what appeared to have been by consent or agreement.

2.3 It would appear the respondent was slack in giving quiet possession to the appellant, leading to him commencing a matter in the court below

against the respondent in which judgment in default of appearance and defence was entered.

- 2.4 The respondent made an attempt to set aside the judgment in default before the Deputy Registrar, Hon. C. Lunda, which application was unsuccessful. This prompted him to lodge an appeal to the Judge in Chambers and applied for a stay pending determination of the appeal. Judge Banda-Bobo declined to grant a stay. What became of the appeal in Chambers is unknown.
- 2.5 The appellant enforced the judgment in default through a writ of possession. What remained unenforced was the portion of the judgment in default which awarded exemplary and punitive damages.
- 2.6 He subsequently applied for assessment of damages before the Registrar, Hon. A. M. Chulu, which application was declined.

3.0 DECISION OF THE COURT BELOW

- 3.1 The learned Registrar found that the Judgment of Judge Nyangulu did not award the appellant any amounts neither did it order assessment of damages. On that score, she found the application for assessment to be misconceived and dismissed the same vide a Ruling dated 23rd December 2020.

4.0 GROUNDS OF APPEAL

4.1 Unsettled by the dismissal of his application for assessment, the appellant launched the within appeal on two grounds:

- (i) **The Hon. Registrar erred in law and fact when she dismissed the appellant's application on assessment based on the Judgment delivered by then Hon. Justice Nyangulu dated 17th January 2005.**
- (ii) **The appellant's application before the Hon. Registrar was based on Cause 2012/HP/1542 the matter before the Hon. Mr. Justice E. M. Hamaundu, now Supreme Court Judge.**

5.0 APPELLANT'S ARGUMENTS

5.1 The gist of the appellant's contention in both grounds of appeal is that the learned Registrar fell in grave error when she declined the application for assessment on a misapprehension that it was made flowing from the Judgment of Nyangulu, J under Cause No. 2004/HP/0093, when it was instead made under Cause No. 2012/HP/1542.

6.0 DECISION OF THE COURT

- 6.1 We have carefully considered the record of appeal and the arguments by the appellant. We note that the respondent did not turn up at the hearing of this appeal, neither did they file any opposition.
- 6.2 This appeal is pretty much straight forward. The Judgment which the court below relied on dismissing the application for assessment was not the Judgment under which the application for assessment was sought.
- 6.3 The appellant sought to have the award of punitive and exemplary damages, contained in the judgment in default of appearance and defence under Cause No. 2012/HP/1542, assessed. For unknown reasons, the learned Registrar referred to a judgment by Nyangulu, J under Cause No. 2004/HP/0093 in dismissing the application for assessment. This was a serious misdirection.
- 6.4 We agree with the appellant's arguments in support of the appeal. We find merit in the appeal and we allow it.
- 6.5 The effect is that we send the matter for hearing of the application for assessment before the Registrar.

7.0 CONCLUSION

- 7.1 Having allowed the appeal, we quash the learned Registrar's Ruling dismissing the application for assessment.
- 7.2 We refer the matter back to the High Court for hearing of the assessment application by the Registrar.
- 7.3 We order that costs abide the outcome of the matter in the court below.



J. Chashi

COURT OF APPEAL JUDGE



K. Muzenga

COURT OF APPEAL JUDGE



A. N. Patel, SC

COURT OF APPEAL JUDGE