

IN THE HIGH COURT FOR ZAMBIA
AT THE KITWE DISTRICT REGISTRY
HOLDEN AT KITWE
(Civil Jurisdiction)

2010/HK/505

IN THE MATTER OF: AN APPLICATION FOR REMOVAL OF A CAVEAT
FROM PLOT NO. 5001 CHIMWEMWE

AND

IN THE MATTER OF: SECTION 26 AND 31 OF THE HOUSING
(STATUTORY IMPROVEMENT AREAS) ACT
CHAPTER 194 OF THE LAWS OF ZAMBIA

B E T W E E N:

BURTON KAPEKA MUHONE - APPLICANT

AND

MAGGIE MKANDAWIRE - RESPONDENT

Before the Honourable Mr. Justice I. Kamwendo in Chambers

For the Applicant : Ms. Grace Kumwenda of MNB Legal Practitioners

For the Respondent: Margaret Mkandawire (In Person)

R U L I N G

Legislation referred to:

1. *Housing (Statutory improvement Areas) Act CAP 194 of the Laws of Zambia*
2. *Subordinate Court Act CAP 28 of the Laws of Zambia*
3. *High Court Act CAP 27 of the Laws of Zambia*

The application before me is brought pursuant to the provisions of Section 26 and 31 of the Housing (Statutory Improvement Areas) Act Chapter 194 of the Laws of Zambia¹.

In interpretation section of the said Act, “*Court*” means any Subordinate Court.

Further, Section 23 of the Subordinate Act CAP 28 of the Laws of Zambia² provides as follows;

“If, in any civil case or matter before a Subordinate Court, the title to any land is disputed, or the question of the ownership thereto arises, the court may adjudicate thereon, if all parties interested consent; but, if they do not consent, the presiding Magistrate shall apply to the High Court to transfer such cause or matter to itself.”

The law in this matter is very clear. From the provisions of the Acts I have referred to above, this court has no jurisdiction to hear this matter unless the matter is referred to it from the Subordinate Court.

I will therefore, pursuant to Section 23(2) of the High Court Act CAP 27 of the Laws of Zambia³ which provides as follows:

“Any cause or matter may, at any time or at any stage thereof, and either with or without the application of any of the parties thereto, be transferred by the court or Judge from any Subordinate Court to any other Subordinate Court or to the court or from the court to any Subordinate Court, or from any session or sitting of the court to any other sitting of the court to any other session or sitting”.

Order that this matter be transferred to the Kitwe Subordinate Court. I will further order that the matter be dealt with expeditiously, and if, the parties, wish that this matter be heard by this court, they can indicate that to the Magistrate who will handle this matter and the matter and the Magistrate will then proceed to

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transfer the matter in terms of Section 23 of the Subordinate Courts Act referred to above.

Lastly, the application for joinder of parties should be made in the Subordinate Court that shall hear this matter.

Leave to appeal is granted.

Delivered in chambers at Kitwe this 3rd day of December, 2010

I. Kamwendo
HIGH COURT JUDGE