

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA

(Civil Jurisdiction)

2013/HP/1752

BETWEEN:

ZAMBEZI RANCHING & CROPPING LIMITED

APPLICANT

AND

OCCUPIERS OF FARM NO. 1145

RESPONDENT



BEFORE : HON. G.C. CHAWATAMA

*For the Applicant : Mr. Silas Mambwe - Messrs Mambwe, Siwila & Lisimba
Advocate*

For the Respondent : In Person

RULING

CASES REFERRED TO:

1. *Raphael Ackim Namungandu V Lusaka City Council 1978 ZLR 358.*

AUTHORITIES REFERRED TO:

1. *Order 113 Rule 2 Rules of the Supreme Court 1999 Edition*

This matter came by way of originating summons for the possession of land under **Order 113 Rule 2 Rules of the Supreme Court 1999 Edition**. The same was filed on the 26th November, 2013 together with an Affidavit in Support sworn by Robinson Lukunka Nkonde in which he states that the Applicant Zambezi Ranching and Cropping Limited is the beneficial and registered owner of Farm no. 1145 Chisamba.

Exhibited is a copy of the land register transcript relating to the said farm in the Applicant's name Mr. Nkonde in his affidavit states that without the Applicant's consent, some unknown people have taken possession of the said Farm no. 1145 Chisamba where they have mobilized fencing equipment and are in the process of erecting poles and other unknown structures.

Attempts have been made to serve the occupiers on several occasions but to date none of the occupiers have attended court. Order 113 provides for proceedings to be by a new originating summons procedure in which it is no longer necessary to name the Defendant. It dispenses with the need for acknowledging services and forces the attendance of the occupier before the court on the return day if he wishes to contest proceedings. Clearly in this case the occupiers although given an opportunity to contest proceedings chose not to contest.

An application for leave to proceed in the absence of the occupiers was sought which leave was granted. Counsel Mr. Mambwe proceeded to make the application for possession of property 1145 Chisamba drawing the court's attention to the exhibit on record which showed that the Applicant is entitled to possession by virtue of being the registered owner under Certificate of Title Number L8043 and that the person in occupation are there without licence or consent.

Counsel sought an order that any structures erected on the said property be demolished without compensation and for costs. The court was referred to the case of ***Raphael Ackim Namungandu V Lusaka***

City Council 1978 ZLR 358. Briefly in this case the Plaintiff erected a building on land belonging to the Defendant and he had no permission to do so.


Held:

“Squatters build on their own risk and if the owners of the land withdraw their permission or licence or if they decide to demolish a structure built in the absence of any permission or other lawful relationship the squatters loses though much regrettable are not recoverable in court.”

I am satisfied based on the record and Counsel’s submissions that those occupying the property number 1145 Chisamba are doing so without a licence or consent of Zambezi Ranching and Cropping Limited to be taxed in default of agreement.

Upon perusal of the originating summons for possession under **Order 113 Rule 2 of the Rules of the Supreme Court 1999 Edition** and the Affidavit. Further upon hearing Counsel for the Applicant the application for possession of Farm number 1145 Chisamba is hereby granted to the Applicant. Further that any structures erected on the said property be demolished without compensation and costs to the Applicant.

DELIVERED AT LUSAKA THIS ^{31ST}..... DAY OF ^{JULY}.....2014.


G.C.M CHAWATAMA
JUDGE