

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2014/HP/0428

BETWEEN:

MOSES BANDA

VS.

**ALL UNKNOWN CLAIMANTS OF PLOT L/26228/M
CHIEF MULONGA'S AREA - SOLWEZI**

Applicant

Respondents



Before the Honourable Mrs. Justice J. Z. Mulongoti

on the 21st day of November, 2014

For the Applicant: In Person

For the Respondent: N/A

J U D G M E N T

Cases Cited:

1. *Choka v. Chilufya* (2002) ZR 33 (SC)

Legislation referred to:

1. Section 33 of Lands & Deeds Registry Act Chapter 185 of the Laws of Zambia

By originating summons and supporting affidavit, pursuant to *Order 113 Rule 2 of the Rules of the Supreme Court*, the applicant alleges that he is the rightful and lawful owner of property known as Plot L/262228/M

measuring 17.5484 hectares in extent, located in chief Mulonga's area in Solwezi District. His claim is for an order of summary possession to evict and have possession of the said land. In the affidavit in support, the applicant deposed inter alia that:

- (i) That sometime in 2010, I applied for virgin farm land held under traditional tenure (Customary Land) under his Royal Highness Chief Mulonga. My application was approved on 6th October 2010 and the chief wrote to me to this effect advising that I should proceed to see officials from the Ministry of Agriculture (Technical Services Branch), Solwezi Municipal Council and Ministry of Lands to formalize the whole process of conversion of the land. There is now shown to me the letter from the Chief produced and marked as exhibit 'MB1'.
- (ii). That I applied to Solwezi Municipal Council for conversion of the farm land to 99 years lease hold and on 6th June, 2011, my application together with other several applications was tabled before the full Council meeting for consideration. The same was approved and there is now shown to me receipt of payment and minutes of the council meeting produced and marked 'MB3' and 'MB4' respectively.
- (iii). That on 30th August, 2012 I was formally offered the farm land by Ministry of Lands, which farm land now numbered as farm number L/26228/M and I accepted the offer. There is now shown to me letter of offer produced and marked as 'MB7'.
- (iv). That on 16th November, 2012 I paid for the survey fees for my land to be surveyed at the Ministry of Lands. There is now shown to me receipt of payment produced and marked as exhibit 'MB8'.

- (v). That the survey diagram was lodged at the Deeds Registry, which eventually resulted in my being given the certificate of Title L/26228/M certificate number to the land in extent 17.5484 hectares. There is now shown to me certificate of title produced and marked as exhibit 'MB12'.
- (vi). That sometime in October and November, 2013 I mobilized equipment to start developing my property and discovered that some unknown people had started encroaching in my land with the view of cultivating and ultimately claiming the land to be theirs.
- (vii). That the unknown Respondents have been threatening my workers and partners that they will start demarcating my land and their continued activities are depriving me of quiet and peaceful enjoyment of my land eventually interfering with my intended development of the same.

The Respondents did not file an affidavit in opposition neither did they attend court on numerous occasions that the matter was adjourned. At the hearing on 25th August 2014, the applicant relied on the affidavit in support and documents exhibited. He informed the court that exhibit 'MB2' is a Report from the council showing that the land was occupied at the time it was allocated to him. Exhibit 'MB3' are council minutes and item 11 revealed that his case was presented and approved in the council meeting. Exhibit 'MB12' is a copy of the certificate of title in his name in relation to the said land.

I perused the affidavit in support together with the exhibits. The applicant has demonstrated how he applied for the land in question and how he had it converted from customary land to a 99 year lease hold. 'MB3' shows that the full council meeting met and approved his application for conversion to 99 year leasehold on 6th June 2011. The applicant further reveals in the affidavit that he paid all the necessary fees and had the land surveyed. Eventually a certificate of title was issued in his name per exhibit 'MB12'. I note that in paragraph 14 he deposed that he became aware of unknown people who had started encroaching on his land with a view of cultivating and ultimately claiming the land to be theirs. That these unknown claimants have threatened his workers and partners and efforts to remove them through the local police and the chief have proved futile.

It is trite law that order 113 pursuant to which the applicant has made his claims, provides for summary procedure. In the case of **Choka v. Chilufya (1)**, the Supreme Court noted that the summary procedure provided under *Order 113 of the RSC*, can only be suitable for squatters and others without any genuine

claim of right or who have since transformed into squatters. I am satisfied that the applicant has proved his ownership to the land. He has a certificate of title in his name. It is trite law that a certificate of title is conclusive evidence of ownership of land. It can only be challenged where there is evidence of fraud etc, see *section 33 of the Lands & Deeds Registry Act*.

The unknown claimants in this case have not bothered to attend court and there have been attempts to evict them by the police and the chief to no avail. I opine if they had a genuine claim of right to the land, they would have come to court. Accordingly, I find merit in the applicant's case and I find that he has proved his case on a balance of probabilities. I find that the applicant is the rightful owner of the land in question and I grant the order of possession as prayed. I award costs of and incidental to the action to applicant, to be taxed in default of agreement. Leave to appeal is granted.

Delivered in Open Court this...^{21st} day of...^{Nov}.....2014.


J. Z. MULONGOTI
HIGH COURT JUDGE