

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

2014/HP/0891



BETWEEN:

DAVISON MTONGA

PLAINTIFF

AND

COLLINS NGOMA

DEFENDANT

**Before Honourable Mr. Justice I. C. T Chali, in Chambers, the 19th
day of December, 2014.**

For the Petitioner : In Person

For the Respondent : In Person

J U D G M E N T

Legislation referred to:

Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia.

This action was commenced on 9th June 2014 by way of originating summons supported by an affidavit. The reliefs sought are as follows:

- (i) A declaration that the Applicant is the rightful owner of Stand No. 33913, Lusaka;
- (ii) An order of interim injunction restraining the Defendant from trespassing on the said property;

- (iii) An order directing the Defendant to vacate the property and consequently demolish the Defendant's illegally erected building thereon;
- (iv) Damages for trespass
- (v) Interest and costs.

The Applicant who was the deponent to the affidavit in support stated in his affidavit that he is the bona fide purchaser of stand No. 33913 which is situated in Libala South, Lusaka. He stated that he applied for the said piece of land at Lusaka City Council in November 2004 and he paid the necessary application fees of which he was issued with receipts, which he attached as exhibit to the affidavit. He was subsequently offered the piece of land in issue on 13th December 2004 by the Ministry of Lands which he also exhibited. He said that after further complying with the necessary prerequisites he was finally issued with a Certificate of Title No. 71795 for Stand 33913 by the Commissioner of Lands on 20th December 2007.

However, in August 2008, when he visited the Plot, he found people digging a foundation, apparently under the instruction of the Defendant who also claimed to be the owner of the said piece of land. The Applicant said that he tried to resolve this dispute with the Defendant by engaging the Police on 15th August 2008 but this failed.

The Defendant filed an affidavit in opposition to the Plaintiff's application on 18th August 2014. The gist of this affidavit is that the Plaintiff had commenced this action in 2008 under cause number 2008/HP/0919 which was subsequently dismissed in March 2014

before it was determined on its merits. It was on this basis that he proceeded to develop the said piece of land. However, I note that the Defendant has not led evidence to dispute the legal ownership of the Plaintiff's title to this land let alone to substantiate his legal right to the said piece of land.

In his affidavit in reply on 25th August 2014, the Applicant has made lengthy responses to the allegation by the Defendant, the summary of which is that the earlier matter was dismissed due to non-attendance of the parties, hence this fresh application.

What emerges from the affidavit evidence before me is that the Applicant is in possession of a Certificate of Title No. 71795 over the said property while the Respondent has none. According to Section 33 of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia, a Certificate of Title is conclusive of the ownership of any piece of land. It can only be challenged under very limited circumstances which I do not think are available to the Respondent in this case.

In the circumstance, I find that the Applicant has duly proved his claim to the property in issue. The application is allowed and I hereby declare the Applicant the rightful owner of Stand No. 33913 Lusaka. I order the Respondent to vacate the said piece of land within seven days from today after demolishing any structures he may have erected thereon, and removing all material used in the construction thereof.


The Applicant had also asked for damages for trespass. However, he did not place before me any further evidence as to what he has suffered as a

result of the trespass, apart from the fact that the Respondent has been on his property illegally.

In the circumstances, I can only award him nominal damages in the sum of K5,000-00 which I think is appropriate. Judgment is therefore entered for the Applicant in that sum which shall carry interest at the rate of 20 per cent per annum from 9th June 2014 when he commenced this action to the date of payment.

I also award the Applicant the costs of the action, said costs to be taxed if not agreed.

Delivered in Chambers, at Lusaka, the 19th day of December, 2014.


I. C. T. Chali
JUDGE