

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

**2007/HP/0859**



**BETWEEN:**

**CHRISTINA SAKALA** (Suing in her capacity as  
Administratrix and Beneficiary of the Estate  
Of the late ERIC JIMU)

**PLAINTIFFS**

**AND**

**FALAWO KASIYA**

**DEFENDANT**

**Before Hon. Mrs. Justice M.S. Mulenga this 13<sup>th</sup> day of October 2014**

For the Applicant : Ms. M. Kalela – Legal Aid Counsel, Legal Aid Board  
For the Defendant : No Appearance

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**J U D G M E N T**

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**Case cited:**

**Khalid Muhamed v Attorney General (1982) ZR 49 (SC).**

This action was commenced by originating summons on 6<sup>th</sup> September 2007 seeking the following reliefs:

1. *A declaration that the Applicant is the rightful and legal owner of Plot No. 27/12 Kalingalinga Compound Lusaka.*
2. *An order restraining the Respondent from developing the said Plot No. 27/12 Kalingalinga Compound Lusaka.*
3. *Any other relief that the court may deem fit.*
4. *Costs of and incidental to this application.*



The Applicant in her affidavit in support stated that she is the only child and the administratrix of the estate of her mother the late Erica Jimu as per order of appointment marked "CS1." That the late Erica Jimu was the lawful owner of plot no. 27/12 Kalingalinga Compound Lusaka. However the occupancy licence in her name was lost together with other legal documents but the search on the Lusaka City Council records reveal that the property is in her name. That exhibit "CS2" has copies of receipts for ground rent settled by the late Erica Jimu. Since her demise, the Applicant has been receiving demand notices for ground rent arrears and has been paying the same as per receipts marked "CS3" and "CS4." The Applicant is also in occupation of the said plot no. 27/12 Kalingalinga as the rightful and only beneficiary.

The Applicant further averred that there was a small building on the said plot 27/12 Kalingalinga which was previously occupied by one Margret Banda who sold the same to the Respondent. That the Respondent started developing plot 27/12 and claimed that he had legal documents for the same. The Applicant sought the intervention of the Housing Department at Kalingalinga Compound and the Department of City Planning at Lusaka City Council to stop the Respondent from developing the said stand and to remove the said structure in the process of which she was given a note from Kalingalinga site office marked as "CS5." That however there has been no favourable intervention from Lusaka City Council hence this Court action.

The Respondent never filed an affidavit in opposition but only a conditional memorandum of appearance. In his affidavit in support of summons to strike out a party from the proceedings, the Respondent



stated that Plot B3/27/28 was purchased by the Pilgrim Wesleyan Church and was therefore vested in the Trustees of the Church. Further that the said plot B3/27/28 was next to the Applicant's plot B3/27/12. The Respondent however did not attach any document to support these assertions.

At the hearing, the Applicant gave evidence in line with her affidavit in support and so the same has not been recounted. The Applicant added that following the intervention of the Kalingalinga site office and the Lusaka City Council, it was discovered that the Respondent's name did not appear on the names of owners of neighbouring properties to the Applicants' plot. The Respondent was given a call out after which he stopped his activities of demarcating plot no. 27/12 and building thereon.

The Respondent was given a number of opportunities to attend the Court hearing but never appeared including his lawyers on record, Messrs T.S. Chilemba Chambers.

I have considered all the above. The general principle in civil matters is that he who alleges must prove as held in the case of **Khalid Muhamed v Attorney General (1982) ZR 49 (SC)**. The documents exhibited by the Applicant particularly the demand notice and receipts for ground rent issued by the Lusaka City Council in the names of Erica Jimu for plot 27/12 Kalingalinga prove that the said property belonged to the late Erica Jimu, the Applicant's mother. That as administratrix and beneficiary of the estate of the late Erica Jimu, the Applicant is the rightful owner of the subject plot. This fact that the Applicant owns plot



27/12 Kalingalinga is also acknowledged by the Respondent in his affidavit in support of summons to strike out a party from the proceedings in paragraph 6. The Respondent's position is that the plot purchased by his church is plot B3/27/28 and that the same is next to the Applicant's plot B3/27/12. It is therefore common cause that plot 27/12 Kalingalinga belongs to the Applicant.

The Applicant having proved her case, I hereby grant a declaration that the Applicant is the rightful legal owner of plot no. 27/12 Kalingalinga Compound as the administrator and beneficiary of her late mother's estate. I further grant an order restraining the Respondent from developing the said plot 27/12 Kalingalinga.

I award costs to the Applicant to be taxed in default of agreement.

Leave to appeal is granted.

**Dated this 13<sup>th</sup> day of October 2014.**



**M.S. MULENGA**

**HIGH COURT JUDGE**