

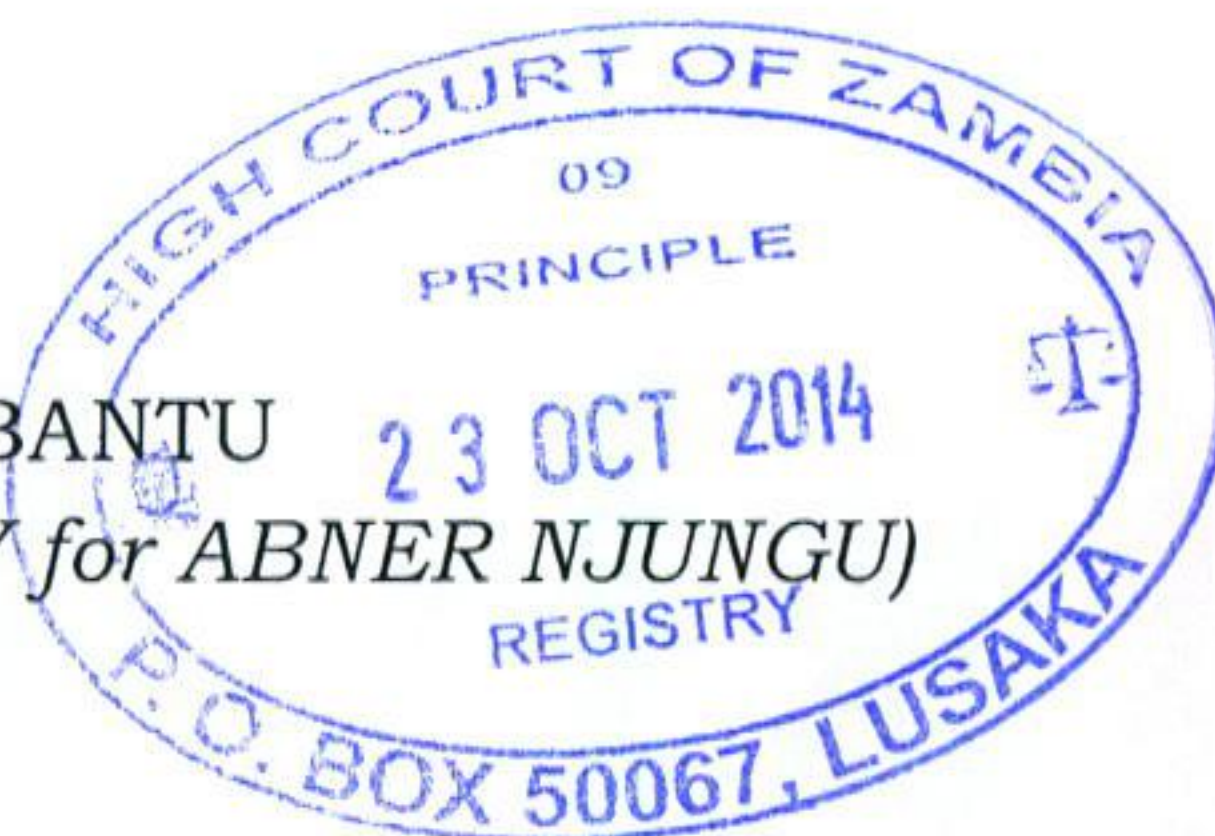
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IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

2008/HP/1233

BETWEEN:

NASON IBIKA MUSHAKABANTU
(The appointed ATTORNEY for ABNER NJUNGU)



PLAINTIFF

AND

JUSTINE MUKOLWE

1ST DEFENDANT

THE ATTORNEY GENERAL

2ND DEFENDANT

BEFORE : HON. G.C. CHAWATAMA

For the Plaintiff : Messrs Chilupe & Permanent Chambers

For the Defendant : Messrs M.L. Mukande & Company

RULING

AUTHORITIES REFERRED TO:

1. Order XVIII, 25/h/4 & Rule 15 (6) (2) of Chapter 27 of the Laws of Zambia and Order 15 Rule 6 (2) (b) of the Rules of the Supreme Court 1999 Edition
2. Order 25/L/4 Rules of the Supreme Court 1999 Edition.

The Plaintiff in this matter; by a writ issued on the 27th November, 2008 claimed:

- a) An Order that the offer letter and other related documents pertaining to house No. 21 Mongu/3049 issued to the 1st Defendant be revoked and that the Appointer's letter of offer and alike be restored to this effect.

- b) *The Title Deeds of house No. 21 stand No. Mongu/3049 be issued in the name of the Appointer.*
- c) *The Defendant do pay the Plaintiff the sum of K17,365,000.00 being the amount equivalent to the property destroyed by the 1st Defendant, his servants or agents incurred during the unlawful eviction as per attached schedule 1.*
- d) *The Defendant do pay the sum of K9,000,000.00 the amount spent on hiring a truck to move the family to Lusaka.*
- e) *The Defendants do pay the refund of house rentals the Appointer has incurred from the date of eviction to the date of final payment.*
- f) *The Defendant to pay damages, physical and mental torture to the Appointer and his family have been subjected to.*
- g) *Costs and interest at the current lending bank rate on monies found due to the Plaintiff till final payment.*
- h) *Any other relief that the court may deem fit and just.*

An inter-parte Application for interim injunction and affidavit in support of the same was filed on the 9th December, 2008. On the 18th December, 2008 an affidavit in support of an application for the injunction was filed. The same was not granted. The first Defendant filed a Memorandum of Appearance on the 31st December, 2008. An Amended statement of claim was filed on the 13th March, 2009 in which the Plaintiff claimed:

- a) *A declaration that the Plaintiff was entitled to purchase the said stand No. 3049 Mongu from the 1st Defendant.*
- b) *An order that the offer made to the 1st Defendant by the 2nd Defendant together with any other like documents by the 2nd Defendant to the 1st Defendant purporting to vest title to the said property are null and void and should be cancelled.*

- c) *An Order against the 2nd Defendant directing the Commissioner of Lands to forthwith issue Title Deeds to the property in question therein in favour of the Plaintiff.*
- d) *An Order directing the 1st and 2nd Defendant to pay the Plaintiff the sum of K17,365,000.00 being the value of the Plaintiff's goods destroyed by the 1st Defendant.*
- e) *An Order directing the 1st and 2nd Defendants to pay the Plaintiff the sum of K9,000,000.00 being the cost incurred by the Plaintiff on hiring a truck to transport his family and goods from Mongu to Lusaka.*
- f) *An Order directing the 1st and 2nd Defendants to pay the Plaintiff the sum of K54,750,000.00 by way of refund of rent paid by the Plaintiff in respect of alternative accommodation from May 2004 to January 2009. 157 months at the rate of K950,000.00 per month.*
- g) *An Order for damages against the 1st and 2nd defendants.*
- h) *An Order for further or other relief; and*
- i) *Costs.*

On the 13th March, the Advocates for the Plaintiff filed summons to amend statement of claim and substitute Plaintiff under **Order XVIII of Chapter 27 of the Laws of Zambia and Order 15 Rule 6 (2) (b) of the Rules of the Supreme Court 1999 Edition** and affidavit in support of the same.

On the 25th March, 2008 summons to dismiss action for want of prosecution **Order 25/L/4 Rules of the Supreme Court** was filed together with an affidavit in support of the same. On the 31st December, 2008 the first Defendant filed a Memorandum of Appearance and defence.

In a ruling dated and delivered on the 27th August, 2009, the court found that the Plaintiff had shown their seriousness to prosecute their matter. The Application to dismiss the action for want of prosecution was denied and the court directed that the application to amend the statement of claim and substitute Plaintiff be heard.


The court observes that on the 29th March, 2013 a notice of Appeal was filed by Counsel for the Plaintiff filed also filed was the Plaintiff submissions. On the 8th April, 2014, the Defendants' submissions in opposition to Notice of Appeal were filed by Counsel for the 1st Defendant. Since in the ruling dated the 27th August, 2009 the court had already directed that parties should be heard on the application to amend the statement of claim and substitute Plaintiff it follows that this application was to be heard by this court and not by the Deputy Registrar.

In order to bring order to these proceedings since the first application the application to amend the statement of claim and substitute Plaintiff under **Order XVIII of Chapter 27 of the Laws of Zambia and Order 15 Rule 6(2)(b) of the Rules of the Supreme Court** came before the application to dismiss the action and also taking into consideration that there is a ruling already and bearing in mind that the effect of **Rule 15 (6) (2)** is designed to save rather than to destroy, to cure that which is capable of curing, the application

is granted as per the direction of the court. In order to save time the court will allow the application.

First and second Defendants are hereby directed to file any opposition to this application.

DELIVERED AT THIS 23rd DAY OF OCTOBER 2014.


G.C.M CHAWATAMA
JUDGE

