

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)**

2002/HP/0425



BETWEEN:

FLORENCE MUHANDIKA KAUNDA PLAINTIFF

AND

**INDEX INVESTMENTS LIMITED 1ST DEFENDANT
BENNY MAKONDO 2ND DEFENDANT**

**Before the Hon. Mrs. Justice J. Z. Mulongoti, in Chambers
on the 3rd day of July, 2014**

For the Plaintiff : Mr. N. K. Mubonda of DH Kemp & Co

For the Respondent : N/A

R U L I N G

This is a Ruling for an order for the nomination of a person to execute assignment in the 1st Defendant's name as vendor, pursuant to Section 14 High Court Act Chapter 27 of the Laws of Zambia.

The application was by summons supported by an affidavit sworn by Florence Muhundika Kaunda the Plaintiff herein. She deposed inter alia that by writ of summons and statement of claim issued against the Defendants, she claimed specific performance of the contract of sale dated 30th July, 2001 among other reliefs as revealed in exhibit 'FMK2'.

That after the conclusion of the trial this Honourable Court handed down its reserved judgment on the 21st November, 2011 and found in favour of the Plaintiff. With regard to the claim for specific performance, the Court held as follows as set out at page J20, line 3 to 13:

"I therefore, find in favour of the Plaintiff, that her interests should be protected by this Court. The purported repudiation of the contract of sale was obviously invalid and travesty of the law.

On the question of specific performance, this remedy was specifically pleaded for by the Plaintiff, this is an appropriate case in which the order of specific performance should be considered against the wanton breach of contract of the sale of land by the Defendants. I therefore award the relief sought.”

Per exhibit “FMK3” which is a copy of the said reserved judgment dated 21st November, 2011.

At the hearing of the application on 13/06/14 only the Plaintiff’s counsel was present. I proceeded to hear the application after being satisfied that the Defendants advocate was served with the application and notified of the hearing date. I also took note of the length of time the matter has taken as it began way back in 2002.

The Plaintiff’s advocate relied on the affidavit in support sworn by the Plaintiff. He also submitted that this Court handed down a judgment on 21st November 2011 and ordered that the property in issue stand No. 22844 Lusaka be registered in the name of the Plaintiff. In addition that the contract of sale between the Plaintiff and the 1st Defendant be specifically performed by the 1st Defendant per exhibit ‘FMK3’ of the supporting affidavit.

Mr. Mubonda also disclosed that after Judgment a letter was written to the 1st Defendant's advocates dated 10th April 2012 requesting their confirmation that the client would sign all the necessary documents as well as the Deed of Assignment, in keeping with the judgment.

On 16th April 2012 the Plaintiffs advocates Messrs S.M. Kapumpa advocates responded indicating that they were awaiting instructions from their client on the said Judgment. Learned counsel contended that since then there had been no confirmation by the Defendants counsel that their client will comply and sign the requisite documents more especially to execute the Assignment, to ensure that the Plaintiff gets title to the property in issue. That it was against this background that the Plaintiff had no choice but to come back to court and apply for an order that the Deed of Assignment be executed and that the Court nominates the Deputy Registrar of the High Court to execute the Assignment for and on behalf of the 1st Defendant as Vendor. Further, that the Court had power under Section 14 of the High Court Act to make the order which is prayed for.

I have perused Section 14 of the High Court Act and the Judgment herein. I am inclined to allow the application to nominate the Deputy Registrar of the High Court to execute the Assignment. Section 14 provides that:

“where any person neglects or refuses to comply with a judgment or order directing him to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the court may, on such terms and conditions if any, as may be just, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the court may nominate for the purpose, and a conveyance, contract, document or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it.”

By the Judgment of this Court dated 21st November 2011, the Court ordered specific performance of the contract of sale between the parties and to have the said stand No. 22844 Lusaka registered in the name of the Plaintiff. To date the 1st Defendant has neglected to execute the Assignment despite requests by the Plaintiff’s advocate to its advocate. The Judgment was delivered in 2011 and the matter which commenced in 2002 prolonged until that date. The Plaintiff has been more than patient with the Defendants.

Accordingly, I allow the application as prayed and order that the Deputy Registrar of the High Court executes the assignments in the 1st Defendant's name as Vendor together with all the necessary documents.

It is further ordered that the Plaintiff should pay all the fees that the 1st Defendant as a vendor is supposed to pay and later recover them from the 1st Defendant as a debt. I make no order as to costs.

Delivered this 3rd day of July.....2014.



**J. Z. MULONGOTI
HIGH COURT JUDGE**