

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

2014/HP/A/0020

BETWEEN:

DANIEL MWIZABI
PROGRESS MUYUMBANA
JACK ZULU
COLLIES MWEETWA
KAFUE DISTRICT COUNCIL
COMMISSIONER OF LANDS



1ST APPELLANT
2ND APPELLANT
3RD APPELLANT
4TH APPELLANT
5TH APPELLANT
6TH APPELLANT

AND

ALEX MUMBA
APOSTOLIC REVIVAL EVANGELICAL MINISTRIES

1ST RESPONDENT
2ND RESPONDENT

BEFORE HON. MRS. JUSTICE P.C.M. NGULUBE ON 4TH DAY OF JUNE 2015

FOR THE 1st - 4th APPELLANTS : Mr Mutale- Messrs BCM Legal Practitioners
FOR THE RESPONDENTS : In Person

R U L I N G

Cases referred to:

1. *Bellamona v Ligure Lombarda Limited* [1976] Z.R. 267 (S.C.)
2. *Twampane Mining Co-operative Society Limited v E and M Storti Mining Limited* SCZ Judgment no. 20 of 2011

This is a Ruling on the preliminary point of law raised by the Appellants pursuant to Order 14A of the Rules of the Supreme Court in respect of the

Respondent's Application to dismiss the Appeal pursuant to rule 55 of the Supreme Court Rules, chapter 25 of the Laws of Zambia.

Counsel submitted that the application was totally incompetent as the law cited is applicable to appeals in the Supreme Court and not in compliance with the High Court Rules nor the Rules of the Supreme Court of England.

That the Appellants had been at pains to respond to the application as it was void *abi initio* and that this Court had no jurisdiction on the law cited. It was Counsel's prayer that the application be dismissed with costs.

In response, the 1st Respondent submitted in relation to the property subject of litigation that he had followed government procedure to acquire it unlike the appellants who encroached with an intention to grab the same from the Respondents who have legal documents from relevant authorities.

That if the application is dismissed, the Respondent's will suffer irreparable loss at the hands of the 1st, 2nd, 3rd and 4th Appellants who were squatters on the property.

I have considered the submissions by Learned Counsel for the Appellants as well as those for the Respondents. The question that this court is being invited to consider is whether the Respondent's Application is tenable at law and before this Court.

The subject application is made pursuant to rule 55 of the Supreme Court rules of the Supreme Act, Chapter 25 of the Laws of Zambia which provides as follows;

"If an appeal is not lodged as aforesaid the respondent may make application to the Court for an order dismissing the appeal for want of prosecution and, or alternatively, for such other order in regard to the appeal as he may require."

The preamble of the Supreme Court Act clearly states that the provisions thereunder relate to the constitution, jurisdiction and procedure of the

Supreme Court. Therefore the provisions of the Supreme Court Act do not apply to the High Court as the High Court has its own legislated rules of procedure under the High Court Act.

That said, I am alive to the fact that the Respondents act in person thus I have strived to get the import of their application however, no section under the High Court rules mirror the rule relied upon by the Respondents in their application therefore there is no procedural authority for the application that the Respondents have brought before court. In essence, the Respondent's application is as good as having been made without citing an authority.

In **Bellamona v Ligure Lombarda Limited**, the Supreme Court stated as follows;

"it is always necessary, on the making of applications, for the summons or notice of application to contain a reference to the order or rule number or other authority under which relief is sought."

I am further guided by the decision of the Supreme Court in **Twampane Mining Co-operative Society Limited v E and M Storti Mining Limited**, where it held that it is important to adhere to the rules of the Court in order to ensure that matters are heard in an orderly and expeditious manner.

The Respondents not having cited the correct provision of the law, this application is not properly before Court. I accordingly uphold the preliminary issue raised by the Plaintiff and dismiss this application forthwith.

Costs awarded to the Appellants.

Dated this 4th June, 2015



.....
P. C. M. NGULUBE
HIGH COURT JUDGE