

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

2015/HP/1359

**BETWEEN:**



**BERNADETTE KABWE MUSONDA** (Married Woman suing **PLAINTIFF**  
in her capacity as Attorney for ROSALIA NDAKALA)

**AND**

**DONATO KASHINGA NDAKALA** (Male sued in his capacity  
as Administrator of estate of Francis Xavier Ndakala) **1<sup>ST</sup> DEFENDNANT**

**MATILDAH MUSONDA NDAKALA** (FEMALE) **2<sup>ND</sup> DEFENDNANT**

Before Mrs. Justice A. M. Banda-Bobo on the 3<sup>rd</sup> day of June,  
2016

**FOR THE PLAINTIFF: Mr. O. Sitimela of Fraser Associates**

**FOR THE DEFENDANTS : Both in Person**

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**R U L I N G**

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**Cases referred to:**

1. Sebastian Size Zulu vs. The People (1990 – 1992) ZR 62
2. Lt. General Musengule vs. Attorney General (2009) ZR 359
3. Moonda Jane Mungaila Mapiko and Muchabi (suing on behalf of the Mungaila Royal Establishment) vs. Victor Makaba Chaande (2012) ZR Vol. 110
4. Khalid Mohammed vs. The People (1982) ZR 49

This is a Ruling on an application for contempt proceedings arising out of a refusal to abide by the provisions of an interim

order of injunction issued by this Court on 4<sup>th</sup> February, 2016 in which the defendants and their agents and servants were restrained from selling subdivision B of lot No. 12744/M Lusaka and from interfering with the plaintiff's occupation of subdivision B of Lot 12744/M until final determination of this matter or such further order of this Court.

I granted leave to commence contempt proceedings based on the evidence laid before Court.

When the matter came up for hearing on 17<sup>th</sup> May, 2016, both defendants were present before Court and were aware that the matter was for hearing of the contempt proceedings. However, the matter was adjourned upon notice by the 2<sup>nd</sup> defendant, who wanted to seek legal representation. I further granted that the matter would, in the interest of time be heard based on affidavit evidence rather than calling of witnesses.

In the interim, the 2<sup>nd</sup> defendant opted to settle with the plaintiff. This left the issue with the 1<sup>st</sup> defendant.

On 31<sup>st</sup> May, the applicant filed further supplementary affidavit in support of the Notice for committal proceedings in which she deposed that infact the son to the 1<sup>st</sup> defendant had since finished constructing a house on the property and had moved in to the structure with three other unknown people. She was therefore, fearful for her life, and that it was only proper that the said Don Ndakala be committed to prison together with his

father, as the injunction enjoined not only the defendants but any other person acting with concert of the defendant.

The matter came up for hearing on 2<sup>nd</sup> June, 2016 but the 1<sup>st</sup> defendant was not present. I proceeded. In support of his case, Mr. Sitimela relied on the affidavit filed in support of the contempt proceedings, statement supporting committal process, the supplementary affidavit supporting the ex-parte summons to issue contempt and committal proceedings filed on 6<sup>th</sup> May, 2016, and the supplemental affidavit filed on 31<sup>st</sup> May, 2016.

He buttressed his and said the evidence showed that there had been gross violation, with impunity of the injunction of this Court. That the injunction had been served on the advocates for the defendant then Messrs Willa Mutofwe. That there had been no opposition to this application despite the 1<sup>st</sup> defendant being fully aware of it, and has together with his son exhibited this attitude of defiance in the face of a Court order which restrained them from certain conduct until determination of the matter or further order of the Court.

He drew the Court's attention to the various exhibits showing the state of construction on the property in open defiance of the restraining order; and the house built by one Don Ndakala who has since moved in; and thus altering the status quo of the property.

He drew my attention to the case of **Sebastian Size Zulu vs. The People**<sup>1</sup> (1990 – 1992) on what amounts to contempt of Court, and the case of **Lt. General Musengule vs. Attorney General**<sup>2</sup>, (2009) for the holding that one could only be guilty of contempt if he intentionally disobeyed a Court order, and that he could only intentionally disobey a Court order if he was aware of it.

He also referred me to the case of **Moonda Jane Mungaila and John Muchabi (suing on behalf of the Mungaila Royal Establishment) vs. Victor Makaba Chaande**<sup>3</sup> (2012) for the proposition that due to the nature of contempt proceedings it was legally competent for the Court to issue a bench warrant of arrest in civil proceedings for contempt of Court.

He prayed, based on the evidence before Court, that a stiff punishment be meted out to the contemnor and his son; preferably a term of imprisonment to bring to the fore the serious nature of the transgression they had committed.

I have carefully considered the evidence on record and the authorities to which I have been referred. It is not in dispute that there is an order of injunction issued by the Court on 4<sup>th</sup> February, 2016. At the time the 1<sup>st</sup> defendant was represented. As already stated, upon granting leave to commence contempt proceedings, the parties appeared before Court; which hearing was adjourned. To that effect therefore, they were aware of these proceedings. It therefore follows that having been aware of the injunction, the 1<sup>st</sup> defendant and his son deliberately or

intentionally disobeyed the Court Order. The 1<sup>st</sup> defendant was aware that the plaintiff had been granted leave to commence contempt proceedings but rather than desist as did the 2<sup>nd</sup> defendant, they continued in contumelious disregard of the Court order. I find therefore that their conduct is contemptuous of Court as it lowers its dignity and if let to continue would erode its authority; and should not be tolerated.

I am well aware of the case of **Khalid Mohammed vs. The People**<sup>4</sup> (1982). However, based on the evidence placed before me, I am of the considered view that the plaintiff has proved her case. I therefore find the 1<sup>st</sup> defendant and his son Don Ndakala, guilty of contempt. As was pointed out in the **Moonda Mungaila** case (supra) it is legally competent for this Court to issue a bench warrant of arrest in civil proceedings for contempt of court. I order that a bench warrant of arrest be issued against the 1<sup>st</sup> defendant and his son Don Ndakala and that they both be sent to prison for eight days simple imprisonment.

**Delivered at Lusaka this 3<sup>rd</sup> day of June, 2016**



**Mrs. Justice A. M. Banda-Bobo**  
**High Court Judge**