

2016/HP/674

**IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**

(Civil Jurisdiction)



IN THE MATTER OF :

**THE LANDS AND DEEDS REGISTRY
ACT, CHAPTER 185 OF THE LAWS OF
ZAMBIA**

AND

IN THE MATTER OF :

**AN APPLICATION TO CONVEY A
PORTION OF LAND OTHERWISE
KNOWN AS PROPOSED SUBDIVISION
OF STAND NUMBER 14070, LUSAKA**

JOHN SETA

APPLICANT

AND

THE ATTORNEY GENERAL

1ST RESPONDENT

COMMISSIONER OF LANDS

2ND RESPONDENT

ABEL KAFULA (*Sued as Attorney for
Marapode Guilia Carmelian Penza
Sahra*)

3RD RESPONDENT

CHINTU MULENDEMA (*Sued as Receiver
/Manager for Agriflora (Z) Ltd*)

4TH RESPONDENT

BEFORE HON MRS JUSTICE S. KAUNDA NEWA THE DAY OF 2016

For the Applicant : In person

For the Respondents : No appearance

J U D G M E N T

LEGISLATION REFERRED TO:

1. *The High Court Act, Chapter 27 of the Laws of Zambia*
2. *The Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia*

The Applicant commenced this action on 6th April, 2016, by way of Originating Summons claiming the following reliefs;

1. *Whether the Applicant is entitled to a vesting order in respect of the portion of land described on the diagram relating to Stand No LUS 14070*
2. *An order that the Court vests the said land Stand No LUS 14070 Ibex Hill Lusaka in the name of the Applicant*
3. *That the Commissioner of Lands expedites the process of numbering the said land*
4. *Costs*
5. *Further or other relief*

At the hearing of the matter the Applicant stated that he relied on the affidavit filed in support of the application with the exhibits 'JS1' to 'JS4'. He further stated that there was a caveat on the property prompting him to commence the action under cause number 2015/HP/1020. That by the judgment delivered in the matter, the caveat was discharged. He prayed that a vesting order be granted as he could not locate Marapodi Guriyana whose Attorney is Abel Kafula, the owner of the land, in order to execute the assignment.

The Respondents did not file any affidavit in opposition to the Originating Summons or attend the hearing, despite being served

the notice of hearing, and I proceeded to hear the Applicant as there was proof of service.

I have considered the application. The Applicant in the affidavit in support of the application deposes that he bought the land being Stand No LUS 14070, as evidenced on exhibit 'JS2' the contract of sale. This land is a sub division of Stand No LUS 14070 as shown on the site plan exhibited as 'JS1'. That he could not conclude the sale transaction as there was a caveat that was lodged against the property.

In paragraph 4 of the affidavit in support of the Originating Summons it is averred that he then commenced proceedings under cause number 2015/HP/1020, under which the caveat was discharged by way of judgment, which was exhibited as 'JS3'. That the Applicant registered the said judgment at the Ministry of Lands as shown on the Lands Register exhibited as 'JS4'.

In paragraph 6 he deposes that the caveat being discharged, he cannot expedite the process of numbering the land and consequently assigning the property, as the same has to be sanctioned by the title holder or his agents, failing which the Court can compel the Commissioner of Lands to do so through a vesting order.

Exhibit 'JS3' being the judgment of the court delivered on 28th December, 2015 granted the prayer to discharge the caveat. The

Applicant applies for a vesting order. Section 4 of the Lands and Deeds Registry Act provides that;

"4. (1) Every document purporting to grant, convey or transfer land or any interest in land, or to be a lease or agreement for lease or permit of occupation of land for a longer term than one year, or to create any charge upon land, whether by way of mortgage or otherwise, or which evidences the satisfaction of any mortgage or charge, and all bills of sale of personal property whereof the grantor remains in apparent possession, unless already registered pursuant to the provisions of "The North-Eastern Rhodesia Lands and Deeds Registration Regulations, 1905" or "The North-Western Rhodesia Lands and Deeds Registry Proclamation, 1910", must be registered within the times hereinafter specified in the Registry or in a District Registry if eligible for registration in such District Registry:

Provided that if a document creating a floating charge upon land has been registered under the provisions of section ninety nine of the Companies Act or section thirty-two of the Co-operative Societies Act, it need not be registered under the provisions of this Part unless and until such charge has crystallised or become fixed".

It is trite that once a contract for the sale of land is executed, and states consent to assign the property is obtained pursuant to Section 5 of the Lands Act, Chapter 184 of the Laws of Zambia, an assignment is executed between the parties so that ownership of the property can be transferred into the buyer's name. The Applicant in the affidavit in support of the application states that he has been unable to expedite the process of numbering and

assigning the property as title holder of the property cannot be found.

Section 14 of the High Court empowers the Court to nominate a person to execute documents relating to conveyance of property. It provides that;

“14. 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 that 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”.

The affidavit evidence shows that the 3rd Respondent transacted with the Applicant as owner of the property. The caption of the Originating Summons shows that the 3rd Respondent is sued as Attorney for Marapode Giulia Carmelian Penza Sahra, who appears as the owner of the property as evidenced on the Lands Register exhibited as ‘JS4’. Following the removal of the caveat entered against the said property by the 4th Respondent, and there being no evidence that the Applicant and the 3rd Respondent did not enter into a valid contract for the sale of the property, I find that the Applicant is entitled to the said property. I accordingly order that sub division of Farm No 14070 shall vest in the Applicant.

As the 3rd Respondent who sold the land to the Applicant cannot be found, I direct that the Registrar shall execute all the documents required to complete the conveyance of the said land on behalf of the 3rd Respondent, in his capacity as Attorney for Marapode Giulia Carmelian Penza Sahra. Leave to appeal is granted.

DATED THE 22ND DAY OF DECEMBER, 2016

S. Kaunda

**S. KAUNDA NEWA
JUDGE**