

IN THE HIGH COURT FOR ZAMBIA

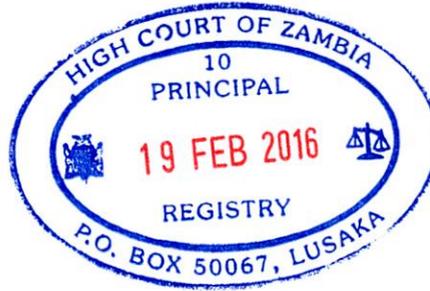
2014/HP/1039

AT THE PRINCIPAL REGISTRY

AT LUSAKA

(Civil Jurisdiction)

BETWEEN:



DESMOND BANDA + 12 OTHERS

PLAINTIFFS

AND

PHESTINA CHISUWA

DEFENDANT

Before the Honourable Mr. Justice C.F.R. Mchenga SC

For the Plaintiffs: E. Khosa, Nganga Yalenga & Associates

For the Defendant: L. Zulu, Tembo Ngulube & Associates

J U D G M E N T

The plaintiffs (appellants) pursuant to Order 30 Rule (10), of the High Court Rules, of the High Court Act, Chapter 27 of the Laws of Zambia appealed against the Learned Deputy Registrar ruling on 5th March 2015, dismissing this matter on the grounds of duplicitous and an abuse of the court process. In their Notice of Appeal dated 14th May 2015, they advanced two grounds of appeal which are:

1. *That the Learned Deputy Registrar erred in law and fact when she held that the action commenced by the applicants was an abuse of court process and a duplication of the actions without considering the reliefs sought under the current action; and*
2. *That the Learned Deputy Registrar erred in both law and fact when she did not consider that the appellants were not served with any court process in the earlier action and that the current action is not lying claim to the respondent's property but that the respondents wrongly executed on the applicant's property.*

When the matter came up for hearing on 11th February 2016, I gave both parties up to 17th February 2016, to file in written submissions. At the expiry of the prescribed period, none of the parties have done so but I will proceed to deliver my judgment.

In her ruling of 5th March 2015, the learned Deputy Registrar found that the subject matter of these proceedings is the same and that in the case of **Phestina Chisuwa v John Ng'andwe and Others (2013/HP/0858)**; in that case, the plaintiffs were the defendants and judgment was entered against them when they failed to enter an appearance. She also considered their argument that they failed to enter appearance because they were not served with process and found that even if it was the case, they should have appealed against the judgment and not commenced these (new) proceedings.

In cause No. 2013/HP/0858, Phestina Chisuwa sought the following relief:

“.....for an order that she do recover possession of Lot No. 11556/m LUSAKA and that the person in occupation thereof are in occupation without licence or consent”

In this case, the plaintiffs seek the following reliefs:

- (i) *Damages for wrongful execution*
- (ii) *An order that Lot 11556/M does not exceed two (2) hectares*
- (iii) *An order to survey the extent of Lot 11556/M*
- (iv) *Interest.*
- (v) *Costs.*
- (vi) *Any other relief the court deem fit.*

From the forgoing, it is clear that both action are centred on Lot 11556/M. The defendant's position, as is set out in cause 2013/HP/0858, is that it is her land and the plaintiffs were illegally on it. The plaintiff's position is that they were wrongly ejected from that land and the defendant's land does not extend to the area where they were settled.

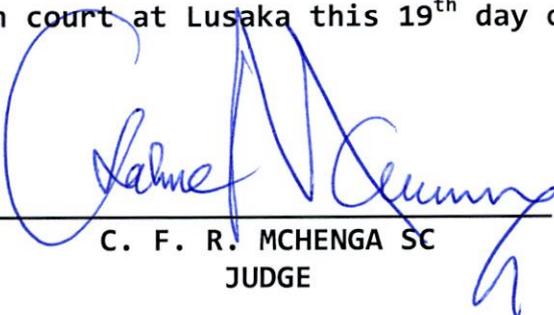
Though I agree that *prima facie*, the reliefs sought in both causes are different, scrutiny of the pleadings clearly indicates that we are dealing with the same issues. The issue is whether the land on which they plaintiffs were settled was Lot. 11556/M and if so, whether they were legally on it. The court, in cause 2013/HP/0858 found that they

were illegally on land which is Lot. 11556/M and ejected them. They cannot now come to this court and say they were not on Lot 11556/M and their ejection was therefore unlawful. Consequently, I find that the learned Deputy Registrar was on firm ground when she found that this action was duplicitous and an abuse of process. The 1st ground of appeal therefore fails.

Coming to the 2nd ground of appeal, which is similar to the 1st ground of appeal, I find that the learned Deputy Registrar did not err when she found that there was abuse of process because the claims were the same. As indicated earlier on, both actions revolve on how the plaintiffs found themselves on land that is Lot. 11556/M and whether they are entitled to remain on it. This being the case, I find that the 2nd ground of appeal also fails.

Both grounds of appeal having failed, this appeal is dismissed with costs.

Delivered in open court at Lusaka this 19th day of February 2016



C. F. R. MCHENGA SC
JUDGE