

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

2014/HP/0223

BETWEEN:

EMMANUEL SHAWN TAVARIS

AND

LUCAS NJOVUS



PLAINTIFF

DEFENDANT

BEFORE : HON. G.C. CHAWATAMA - IN CHAMBERS

For the Plaintiff : In Person

For the Defendant : N/A

JUDGMENT

AUTHORITIES REFERRED TO:

1. *Authors Phipson on Evidence, 17th Edition in paragraph 6 - 06 at page 151*

This is an action commenced by way of Writ of Summons claiming the following:

- (1) *A declaration that the Plaintiff is now the bonafide owner of Stand Number 30885, Chalala, Lusaka*
- (2) *An order directing the Ministry of Lands to re-issue the certificate court of title in the names of the Plaintiff or*
- (3) *A vesting order for the Ministry of Lands to issue the certificate of title in the Plaintiff's names*
- (4) *Any other relief the courts may deem fit.*

The Plaintiff on Oath informed the court that his late father bought Stand Number 30885, Lusaka in his names from the Defendant herein. He testified the signed an assignment drawn between the Defendant and himself. The assignment dated 18th June, 2005 was produced from the bundle of documents. The assignment was witnessed by Emmah M. Simukoko on his behalf, while a Muzyani Francis witnessed the signature of the Defendant. Also exhibited was the offer in the Defendant's name from the Ministry of lands for the same land.

The Plaintiff's testimony was that he signed the assignment while he was still at school. Upon completion of his studies he went to Ministry of Lands to have his title deed processed. It was then that he was told by the Registrar that he needed a vesting order as he could not trace the Defendant.

The Applicant is desirous to complete the transfer formalities of the property in his favour. It was his testimony that he has on several occasions tried to contact the Defendant with a view to have the Deed of Assignment registered and convey the property but her efforts have proved futile.

On the file is an Affidavit of service dated the 14th October, 2014. The Plaintiff was unable to establish the whereabouts of the Defendant as a result he could not effect personal service of the documents. He served by substituted service. There is evidence that the same appeared in the news paper n the 11th and 12th May, 2011, the advert was exhibited.

I am thus satisfied that the Defendant was properly served within the confines of the law and has failed or neglected to appear before the court.

In Civil matters the Plaintiff is expected to prove his or her case on a balance of probabilities. This principle has been articulated in a number of authorities such as ***Khalid Mohamed vs Attorney General, William Masauso Zulu vs Avondale Housing Project Limited and Galaunia Farms Limited V National Company Limited and Another.***

The Learned ***Authors Phipson on Evidence, 17th Edition in paragraph 6 – 06 at page 151¹*** states the following regarding the burden of proof in civil cases:

“So far as that persuasive burden is concerned, the burden of proof lies upon the party who substantially asserts that affirmative of the issues. If when all the evidence is adduced by all the parties; the party who has this burden has not discharged it, the decision must be against him. It is an ancient rule founded on consideration of good name and should not be departed from without strong reasons.”

The Applicant in this case has to satisfy me therefore on a balance of probabilities that he is entitled to be granted a vesting order.

Section 14 of the High Court Act, Chapter 27 of the Laws of Zambia. provides that:

“Where any person neglects or refuses to comply with a Judgment or order directing him to execute any Conveyance, contract or other

“Where any person neglects or refuses to comply with a Judgment or order directing him to execute any Conveyance, contract or other documents 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 documents 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 court orders as follows:

1. *That the Applicant is entitled to a vesting order relating to the property known as Stand Number 30885, Chalala, Lusaka.*
2. *That the Registrar of Lands shall effect transfer of ownership of the property to Emmanuel Shawn Tavaris the Applicant herein and shall issue a certificate of title in the name of the said Emmanuel Shawn Tavaris in accordance with section 63 of the Lands and Deeds Registry Act Cap 185 of the Laws of Zambia.*
3. *I make no order as to costs.*

DELIVERED AT LUSAKA THIS 18TH DAY OF FEBRUARY, 2016.


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G.C.M. CHAWATAMA
JUDGE