

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

2015/HP/0574

IN THE MATTER OF:

ORDER XXXX RULE 11 OF THE HIGH COURT
RULES, CAP 27 OF THE LAWS OF ZAMBIA AND
ORDER 113 RULE 1 OF THE RULES OF THE
SUPREME COURT OF ENGLAND 1999 EDITION

IN THE MATTER OF:

AN APPLICATION FOR AN ORDER FOR
SUMMARY POSSESSION OF STAND NO. 37341
LUSAKA BY THE APPLICANT AS REGISTERED
OWNER

BETWEEN:

PAUL TOMMY BWALYA



APPLICANT

AND

**STANLEY TEMBO AND OTHERS
UNKNOWN OCCUPYING STAND NO. 37341
LUSAKA**

RESPONDENTS

**Before the Hon. Mrs. Justice J.Z. Mulongoti
on the 19th day of February, 2016.**

For the Applicant:

Mr. Nhari of Nhari Mushemi and Associates

For the Respondents:

N/A

J U D G M E N T

Case cited to:

1. Liamond Choka v. Ivor Chilufya SCZ Judgment No. 2 of 2002

Legislation referred to:

1. Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia.

By originating summons pursuant to order XXXX Rule 11 of the High Court Rules Chapter 27 of the Laws of Zambia and Order 113 Rule 1 of the Rules of the Supreme Court of England 1999 Edition (white book), the applicant seeks an order for summary possession of stand No. 37341 Lusaka. The originating summons is accompanied by an affidavit in support of originating summons deposed by the applicant. The salient features are that the applicant is the registered and legal owner of the property known as stand No. 37341 Lusaka per exhibit 'PTB1' which is a copy of the certificate of title. The respondents have encroached upon and invaded the said land without permission or authority of the registered owner.

That the named respondent Stanley Tembo, in the company of others unknown have not only sold portions of the said land but also built houses as shown by exhibit 'PTB2', copies of photo graphics. And that the respondents do not hold any title to the said land.

The respondents did not respond to the originating summons and never attended the hearing. At the hearing, learned counsel for the plaintiff relied on the affidavit in

support. He submitted also that despite several notices of hearing being served on the respondents by way of substituted service, they still have not filed anything. He prayed for the court to grant summary possession with costs.

It is noted that the respondents did not respond to the applicant's claims against them.

It is trite law that Order 113 of the white book is a summary procedure suitable for squatters and others without any genuine claim of right or who have since transformed into squatters. This was elucidated by the supreme court in the case of **Liamond Choka v. Ivor Chilufya (1)**.

The plaintiff has demonstrated that he is the lawful owner of stand No. 37341 Lusaka. He produced a copy of his certificate of title No. 99288 in relation to the same piece of land. It is settled law that a certificate of title is conclusive evidence of ownership. It can only be challenged where there is evidence of fraud etc. See section 33 of the Lands and Deeds Registry Act. I, therefore, find that he is the lawful owner of stand No. 37341. Accordingly, the

defendants have no right to build on his land and are therefore, squatters or people without any genuine claim to the land and thus amenable to Order 113. I opine that if they had a genuine claim of right to the land they would have come to court. I find merit in the applicant's case and I find that he has proved his case on a balance of probabilities. Accordingly, I order summary possession of stand No. 37341 Lusaka as prayed by the plaintiff. The respondents as squatters are not even entitled to any compensation. I make no order as to costs.

Delivered at Lusaka this 19th day of February, 2016.



J.Z. MULONGOTI
HIGH COURT JUDGE