

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



**2016/HP/2388**

**B E T W E E N:**

BATIZO NZUNDA

**APPLICANT**

**AND**

JOPA BANDA

**RESPONDENT**

**Before Hon. Mrs. Justice M. Mapani-Kawimbe in Chambers on  
21<sup>st</sup> February, 2017**

*For the Applicant* : *In Person*  
*For the Respondent* : *No Appearance*

---

## **J U D G M E N T**

---

**Legislation Referred To:**

1. *High Court Act, Chapter 27*

I was approached in this matter by way of Originating Summons endorsed with a claim for:

1. *An order for specific performance of the agreement dated 1<sup>st</sup> April, 2013 which agreement situated at Plot 32097 be paid as security in view of the payment of sum K45,000.00.*
2. *An order of eviction of whoever shall be found in possession of occupancy of the same.*
3. *Damages for mesne profit.*
4. *Costs and any relief the Court may deem fit.*

An Affidavit in Support was sworn by the Applicant **Batizo Nzunda** who deposed that on 12<sup>th</sup> September, 2012, the Respondent sold her Plot No. 32a in Ngwerere Villa, Kabanana, Lusaka as shown in the exhibit marked "**BM1**".

The deponent states that she paid ZMW 45,000.00 (rebased) in consideration for the plot, adding that the Respondent failed to honour his obligations under the sale agreement. She subsequently reported the Respondent to the Zambia Police Service, after which the parties agreed to amicably resolve their dispute. The amicable settlement culminated into the surety agreement which was executed by the parties on 21<sup>st</sup> April, 2013. In the surety

agreement, the Respondent pledged to deliver Plot No. 32097 to the Applicant if he failed to refund her money (ZMW 45,000.00), as shown in the exhibit marked "**BM2**".

The Applicant avers that the Respondent has failed to refund her money and she seeks the relief of specific performance of the surety agreement which the parties executed; and an order of eviction of persons who will be found on the property.

The Respondent did not file an Affidavit in Opposition.

At the hearing, the Applicant told the Court that she served Court process on the Respondent on 4<sup>th</sup> January, 2017. Further, that she filed an Affidavit of Service into Court on 5<sup>th</sup> January, 2017, showing proof of service. Being satisfied of the Applicant's efforts, I proceeded to hear the application in accordance with Order XXXV Rule 3 of the High Court Rules. At the hearing, the Applicant entirely relied on her Affidavit in Support and prayed to the Court to grant her the reliefs stated in the Originating Summons.

I have seriously considered the affidavit evidence *in casu*. There is no dispute that the Respondent sold the Applicant Plot No. 32a Ngwerere Villa, Kabanana in Lusaka. As proof of the sale, a certificate of ownership was executed by the parties. The Respondent did not deliver the property to the Applicant as expected and instead promised to refund her money. Subsequently, the parties executed a surety agreement, in which the Respondent pledged to deliver Plot No. 32097 to the Applicant if he failed to refund the Applicant by 1<sup>st</sup> May, 2013. According to the Applicant, the Respondent has not refunded her money.

From the outset, I wish to remark that the issue between the parties is not contentious and largely requires the Court to determine whether it can order specific performance of the surety agreement. From the evidence, I am satisfied that the Applicant has proved her case and is entitled to an order of specific performance.

Accordingly, I order specific performance of the surety agreement dated 1<sup>st</sup> April, 2013 between the Applicant and Respondent in respect of Plot 32097. The Applicant is granted immediate possession of Plot 32097 and to evict any person(s) who will be found on the property without further recourse to Court. The claim for mesne profits has not been proved, it is therefore unsuccessful.

I award the Applicant costs to be taxed in default of agreement.

Dated this 21<sup>st</sup> day of February, 2017.



M. Mapani-Kawimbe  
**HIGH COURT JUDGE**