

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

*(Civil Jurisdiction)*



**2016/HP/2499**

IN THE MATTER OF: THE PROPERTY KNOWN AS STAND NO. 2430  
LIVINGSTONE

IN THE MATTER OF: ORDER 30 RULE 1 OF THE HIGH COURT ACT  
CHAPTER 27 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: SECTIONS 81 (1) OF THE LANDS AND DEEDS  
REGISTRY ACT CHAPTER 185 OF THE LAWS OF  
ZAMBIA

IN THE MATTER OF: AN APPLICATION FOR AN ORDER TO WITHDRAW  
REGISTERED CAVEAT

**BETWEEN:**

RONALD LWAMBA

**APPLICANT**

**AND**

CELPAY ZAMBIA LIMITED

**RESPONDENT**

**BEFORE THE HONOURABLE LADY JUSTICE P. K. YANGAILO ON 14<sup>TH</sup>  
MARCH, 2017.**

*For the Applicant: Ms. H. Musonda - Legal Aid Board*  
*For the Respondent: N/A*

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

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**CASE REFERRED TO:**

1. *Rural Development Corporation Vs Bank of Credit & Commerce Limited (1987) ZR 35*

**LEGISLATION AND OTHER WORKS:**

1. *The High Court Act Chapter 27 of the Laws of Zambia.*

The Applicant RONALD LWAMBA by way of Originating Summons made pursuant to **Order XXX Rule 1 of the High Court Act Chapter 27** as read together with **Sections 81 (1) of the Lands and Deeds Registry Act Chapter 185 of the Laws of Zambia** seeks the following reliefs: -

- (i) A declaration that the Applicant is the lawful owner of Stand No. 2430 Livingstone;*
- (ii) A declaration that the Respondent prematurely lodged a caveat on Stand No. 2430, Livingstone before any interest in the said property accrued to it;*
- (iii) An Order that the caveat lodged by the Respondent was wrongly and or erroneously lodged as the Respondent had no interest in the land;*
- (iv) An Order that the caveat lodged by the Respondent be removed;*
- (v) In the alternative, an Order that the said caveat be removed as the interest of the Respondent, if any, has ceased to exist owing to its failure to meet its obligations under the Dealer Credit Agreement entered between the Applicant and the Respondent;*
- (vi) Further or other relief the Court may deem fit; and*
- (vii) Costs.*

The application is supported by an Affidavit in Support deposed to by the Applicant and dated 28<sup>th</sup> December, 2016. It is deposed that the Applicant is the registered owner of Stand No. 2430 Livingstone having been issued Certificate of Title No. 54995. It is stated that

by Dealer Credit Agreement executed on 26<sup>th</sup> April 2010, the Respondent agreed to advance funds to the Applicant up to a maximum sum of K60,000.00 upon request as a loan which will be credited to the Respondent's Account. The Applicant agreed to provide collateral to the Respondent for the said advance of Stand No. 2430, Livingstone. That it was a common understanding that the Agreement would only be effective once the loaned amount was remitted to the Applicant and that it was never effected because shortly thereafter, Bank of Zambia disclosed that the Respondent remained insolvent as it had failed to sustain its going concern status. Accordingly, Bank of Zambia revoked the designation licence for the Respondent on account that the Respondent was technically insolvent and directed the Respondent not to conduct or offer payment system business. That unknown to the Applicant, the Respondent pursuant to the said Agreement, had already placed a caveat on the Stand No. 2430, Livingstone. It is also deposed that the despite executing the Agreement, the financial loan facility never materialised owing to the fact that the Respondent's payments systems business licence had been revoked and thus no money was advanced to the Applicant as agreed in the Agreement. That it was only brought to his attention that there was a caveat lodged on the said property, when the Applicant wanted to secure it as a mortgage for a bank loan. The Applicant made several attempts to locate the Respondent but failed to locate it. The Applicant further deposed that the Respondent has no interest over the said property as it failed to meet its obligations under the Dealer

Credit Agreement executed by the parties. The Applicant made several attempts to locate the Respondent, so that it may withdraw the registered caveat or show cause why the caveat should not be removed. The Applicant further deposed that he has had challenges to use his Certificate of Title due to the Caveat placed upon his property by the Respondent.

The originating process was duly served on the Respondent through substituted service by placement of an advert in the Zambia Daily Mail and proof of service filed herein. The Respondent did not cause its appearance to be entered and did not file any Affidavit in Opposition to the application herein. I set the matter down for hearing on 14<sup>th</sup> March, 2017. At the scheduled hearing of the matter, there was no appearance by the Respondent and no reason was advanced for its absence. Being satisfied that the Respondent had sufficient notice of the scheduled hearing and pursuant to **Order XXXV Rule 3** of the **High Court Act Chapter 27** of the **Laws of Zambia**, I proceeded to hear the application before this Court. Counsel for the Applicant Ms. Musonda, in her submissions relied on **Section 81 (1) of the Lands and Deeds Registry Act**.

I have considered the application by the Applicant for an Order that the caveat on *Stand No. 2430, Livingstone* be removed and that the Applicant be at liberty to deal with the property, as prayed. The Applicant's application is properly before the Court. The Court in

the case of *Rural Development Corporation Vs Bank of Credit and Commerce (Z) Limited* held that: -

**“Although Section 81 of the Lands and Deeds Registry Act provides no procedure for removal of a caveat, an originating summons is the proper form for commencing proceedings for removal of a caveat”.**

**Section 81 (2) of the Lands and Deeds Registry Act** empowers the Court **“upon proof that such person has been summoned”** to make such order as it seems just. The Applicant, unable to locate the Respondent, applied to serve the originating process by substituted service and this was effected pursuant to the Order of Court dated 8<sup>th</sup> February 2017, by way of advertisement in the Zambia Daily Mail Newspaper on the 13<sup>th</sup> February 2017. According to **Section 81 (1) of the Lands and Deeds Registry Act**, an interested proprietor or other interested person may summon the caveator to attend before the Court or Judge to show cause why such caveat should not be removed. The Respondents were served with the said summons as per Affidavit of Service dated 23<sup>rd</sup> February 2017, which is on record and have not come before Court to show cause why the caveat should not be removed.

There is evidence, in the form of a Dealer Credit Agreement executed between the Applicant and Respondent on record, which shows that *Stand No. 2430 Livingstone* was provided as collateral to the Respondent by the Applicant for funds amounting to K60,000.00 which the Respondent agreed to remit to the Applicant

upon request. There no evidence on record to suggest that such request was made by the Applicant as agreed in the Agreement and that the said funds were advanced to the Applicant. The Applicant submitted that the property could only be secured, upon compliance of the terms of the Dealer Credit Agreement. The Caveator who is the Respondent herein registered the caveat on 4<sup>th</sup> February 2011 as collateral for credit, but there is no proof on record to show that the funds were disbursed as provided under the terms of said Agreement, which may suggest that the Respondent has an interest in the property. Therefore, I am of the view and declare that the Respondent has no more interest or claim to warrant the continued entry of a caveat on *Stand No. 2430 Livingstone*.

The Applicant deposed that in order to effectively use his certificate of title freely and from such encumbrance placed by the Respondent, it is necessary to have the caveat removed. For the foregoing reasons, I Order that the caveat lodged on *Stand No. 2430* by the Respondent be forthwith removed by the Registrar of the Lands and Deeds Registry. I make no order as to costs.

**Delivered at Lusaka the 14<sup>th</sup> day of March, 2017.**



**P. K. YANGAILO  
HIGH COURT JUDGE**