

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



2017/HP/0873

IN THE MATTER OF:

Order 113 of the Rules of the Supreme Court  
(White Book) 1999 Edition

IN THE MATTER OF:

An application for an Order for possession of  
Lot No. 13303/M Chilanga being occupied by  
Mr. David Sililo and other unknown squatters

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

MIRRIAM MUMBA

**APPLICANT**

**AND**

DAVID SILILO

**1<sup>ST</sup> RESPONDENT**

OTHER PERSONS UNKNOWN

**2<sup>ND</sup> RESPONDENT**

**Before Honourable Mrs. Justice M. Mapani-Kawimbe on the 20<sup>th</sup> day of  
September, 2017**

*For the Applicant* : Mr. A. Banda, Messrs LM Chambers  
*For the Defendant* : N/A

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

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**Cases Referred To:**

1. *Khalid Mohamed v The Attorney General* (1982) Z.R. 66

**Legislation Referred To:**

1. *Rules of the Supreme court 1999 Edition*
2. *Lands and Deeds Registry Act, Chapter 187*

I was approached in this matter by way of Originating Summons pursuant to Order 113 of the Rules of the Supreme Court wherein the Applicant seeks the following reliefs:

1. *An Order for possession of the said Lot 13303/M Chilanga situate in the Lusaka Province of the Republic of Zambia.*
2. *An Order for mandatory injunction restraining the Respondents either by themselves, servants, agents or whosoever.*
3. *Damages and any reliefs the Court may deem fit.*
4. *Costs*
5. *And that the persons in occupation thereof are in occupation without licence or consent.*

The application is supported by an Affidavit sworn by **Miriam Mumba**. The deponent states that she is the registered and legal owner of Lot No. 13303/M situate in Chilanga District, Lusaka Province and holds a Certificate of title shown in exhibit marked **"MM1."** She also states that the Respondents have illegally occupied her property and have continued to build houses without her consent or licence. She avers that the Respondents have no proof of title. She prays to the Court to recover vacant possession of Lot No. 13303/M Chilanga and to order the demolition of the Respondents' illegal structures.

The Respondents did not oppose the application.

At the hearing, Learned Counsel relied on the Affidavit in Support and reiterated its contents. He prayed for an order of possession, the eviction of the Respondents and the demolition of their illegal structures.

I have seriously considered the application and the Affidavit filed in Support. Order 113 of the Rules of the Supreme Court states that:

**“Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this Order.”**

In the case of **Khalid Mohamed v The Attorney General**<sup>1</sup>, it was held that a Plaintiff must prove his case and if he fails to do so the mere failure of the opponent's defence does not entitle him to judgment. It therefore follows that for the Applicant to succeed, it would not be enough to say that the Respondents have completely failed to provide a defence but that the evidence adduced establishes the issues raised to the required standard of proof, that is on a preponderance of probabilities.

The evidence on record shows that the Respondents did not challenge the application. However, the Respondents raised an issue *in limine* on 10<sup>th</sup> July, 2017, which I dismissed on 3<sup>rd</sup> August, 2017, because it did not raise any point of law.

Be that as it may, I am now confronted with the main application. As such, it is necessary that I should consider all the evidence on record. I am particularly drawn to the Affidavit in Support of the Notice of Motion to Raise a Preliminary Objection, which contains compelling evidence. The relevant portions of it are reproduced herebelow:

**“I Davie Sililo do make oath and say as follows.....**

- 7. That the Honourable Court may wish to note that the Plaintiff in 2016, opened a docket against the Defendants at the anti-fraud section at Lusaka Central Police Station claiming inter alia that the Defendants produce title deeds for the same subject land.***
- 8. That the 1<sup>st</sup> Defendant did avail all the title deeds to police, copies which were given to the Plaintiff and am aware the Commissioner of Lands did not disclaim***

*the title deeds and the alienation of the now cancelled Lot 13303/M in favour of the Defendants.*

9. *That Lot 13303/M that was previously on a 14 years offer from 1998 to one Wilson Hamabibi did expire in 2012 notwithstanding that the Plot was previously repossessed in 2009 by the State.*
10. *That on 4<sup>th</sup> April, 2011, under minute LUSP/PPH/CHH/20, the Lusaka Province Planning Authority approved the request by the Commissioner of Lands to have the said Lot 13303/M cancelled and re-planned into the Defendants' 11 plots, Lots 25607/M to 25617/M as shown in the exhibit marked "DS1."*
11. *That after cancellation of Lot 13303/M and other plots, the final layout plan was renumbered on 10<sup>th</sup> February, 2012. I submitted the same to the Committee of the Kachenjela Community, who recommended a list of applicants through me to the Commissioner of Lands whose approval was granted in April 2012 and the subject plots, Lots 25607/M to 25617/M were offered to the Defendants herein in*

*April, May and October 2012 and leases for 99 years granted by the State for all the 11 plots as hereunder:*

- i. Chitundu Sinyangwe – Lot 25607/M under Certificate No. 216083 and lease No. 94824 from 1<sup>st</sup> April, 2012.*
- ii. Caroline Sichone Namonje – Lot 25608/M under Certificate No. 207534 and lease No. 94496 from 1<sup>st</sup> May, 2012.*
- iii. Royce Moonga and Faides Muwani – Lot 25609/M under Certificate No. 220553 and Lease No. 94869 from 1<sup>st</sup> May, 2012.*
- iv. Fabian Likuhunga – Lot 25610/M under Certificate No. 218714 and lease No. 94878 from 1<sup>st</sup> May, 2012.*
- v. Simon Bwanali – Lot No. 25611/M under Certificate No. 210273 and lease No. 94642 from 1<sup>st</sup> May, 2012.*
- vi. Miranda Phiri – Lot 25612/M under Certificate no. 215710 and lease no. 94824 from 1<sup>st</sup> May, 2012.*
- vii. Cuma Mutakatala – Lot 25613/M under Certificate no. 210249 and lease no. 94649 from 1<sup>st</sup> October, 2012.*
- viii. Albert Katongo and Raphael Kasamu – Lot 25614/M under Certificate no. 209151 and lease no. 94650 from 1<sup>st</sup> May, 2012.*
- ix. Ester Twapwashaga – Lot 25615/M under Certificate no. 204932 and lease no. 94377 from 1<sup>st</sup> April, 2012.*
- x. Esnart Chiyumba and Christine Nayame – Lot 25616/M under Certificate no. 215709 and lease no. 94644 from 1<sup>st</sup> May, 2012.*
- xi. Christine Njovu and Maria Sichombolwa – Lot 25617/M under certificate no. 210274 and lease No. 94645 from 1<sup>st</sup> May, 2012. This is shown in the exhibits marked “DS2a” to “DS2k,” are the said Certificates of Title for the 2<sup>nd</sup> Defendants respectively.*

12. *That I have perused the copy of the title no. 16927 for the purported Lot 13303/M exhibited by the Plaintiff herein as "MM1" and the same reveals that that the alienation under lease no. LE 5044 in the title thereof was wrong as the lease granted under it on 18<sup>th</sup> December, 2015 was based on a cancelled Survey diagram that was superceded by the re-plan and cancellation of Lot 13303/M in 2012.*
13. *That the Plaintiff has failed to show that her title deed that she only acquired in 2015 holds precedent over the Defendants, neither has she stated if the Defendants title deeds are invalid or at least adduced evidence that they have either been revoked or disclaimed by the Commissioner of Lands for her to be entitled to the remedies she is working."*

Essentially, what is stated in that Affidavit affects the core of this application and it has not been gainsaid by the Applicant. The Applicant is well aware that the Respondents hold title deeds for their properties, which were issued by the Commissioner of Lands

between April 2012 and 2013 and prior to her title in 2015. The Applicant has not alleged fraud in the manner that the Respondents obtained their titles. Under section 33 of the Lands and Deeds Registry Act, a certificate of title is conclusive proof of ownership in the absence of fraud. Therefore, I hold that the Applicant's claims against the Respondents lack merit. This action is accordingly dismissed. I make no order as to costs.

Leave to appeal is hereby granted.

Dated this 20<sup>th</sup> day of September, 2017.

*M. Mapani-Kawimbe*

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