

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

2017/HP/1897

**IN THE MATTER OF: ORDER 113 OF THE RULES OF THE SUPREME
COURT, 1999 EDITION**

AND

**IN THE MATTER OF: AN APPLICATION FOR AN ORDER OF POSSESSION
OF PART OF FARM No 380a ANNISDALE, LUSAKA**

BETWEEN:

ENVIRO FARMS LIMITED

AND

FRANK DAKA AND SEVEN OTHERS



PLAINTIFF

DEFENDANT

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 1st DAY OF
DECEMBER, 2017**

For the Plaintiff : Mr J. Chibalabala, John Chibalabala Legal Practitioners

For the Defendant : No appearance

J U D G M E N T

LEGISLATION REFERRED TO:

1. The Rules of the Supreme Court, 1999 Edition

This matter was commenced by way of Originating Summons on 4th November, 2017 in which the Plaintiff claims;

1. *An order of possession of Farm No 380a Annisdale, Lusaka situated in the Lusaka Province of the Republic of Zambia.*

2. *An order for the eviction of the Defendants and demolition of the illegal structures erected on the Plaintiff's land.*
3. *An order of mandatory injunction restraining the Defendant's or their servants, agents and whomsoever from entering the Plaintiff's land.*
4. *An order for mense profits from 18th August, 2017 to the date of vacant possession.*
5. *Any other relief that the court may deem fit.*

The affidavit in support of the application states that the Plaintiff is the registered and beneficial owner of Farm No 380a Annisdale, Lusaka, as shown on the certificate of title exhibited as 'MM1' to the said affidavit, which certificate of title was obtained on 5th February, 2001.

That the Defendants namely Frank Daka, Frank Daka Jr, Maxwell Daka, Davy Daka, Anthony Daka alias Zulu, Bernard Chepelani, Dorica Chepelani and Tembo are children, sisters, grandchildren or in laws to the late Chepelani Daka, and are occupying the Plaintiff's land without its licence or consent.

Paragraph 7 of the said affidavit states that the late Chepelani Daka occupied part of the Plaintiff's land with its consent until he died, and was buried there. The photograph of his burial site is exhibited as 'MM2' to the affidavit. That the Defendants have remained on the Plaintiff's land and erected structures there without the consent of the Plaintiff despite several warnings.

It is also deposed in the affidavit that the Defendants were served an eviction notice through the lead Defendant, as evidenced by the letter dated 16th May, 2017, but the same has been ignored, refused or neglected. Paragraph 10 of the affidavit states that Plaintiff wishes to embark on agricultural development of the land and started erecting a boundary wire fence, but the lead Defendant has refused to allow the contractor to carry out its works at the boundary near the Defendant's illegal structures. The lead Defendant also did not allow the

Plaintiff to make a fire- break along the boundary of the land. Photographs of the houses and other illegal structures constructed on the Plaintiff's land are exhibited as 'MM4' collectively.

The Defendants did not file any affidavit in opposition despite the 1st Defendant having acknowledged service on 9th November, 2011.

I have considered the matter. Order 113/1 of the Rules of the Supreme court, 1999 edition provides 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.”

Order 113/8/2 of the said Rules of the Supreme Court provides for the scope of the Order. It states that;

“The application of this Order is narrowly confined to the particular circumstances described in r.1, i.e. to the claim for possession of land which is occupied solely by a person or persons who entered into or remain in occupation without the licence or consent of the person in possession or of any predecessor of his.”

In this case the allegation is that the Defendants have remained on the Plaintiff's land after the late Chepelani Daka who lived on the land with Plaintiff's consent died, and they have ignored calls for them to vacate the land. The Defendants have not disputed this, and they are therefore persons who have remained on the Plaintiff's land without its licence or consent after Chepelani Daka who had a licence to occupy the land died, and the Plaintiff succeeds on that basis.

Order 113/8/14 of the Rules of the Supreme Court, 1999 edition provides for the relief that may be granted for proceedings instituted under the Order. It states that;

“If, on the hearing of the summons, it should appear that the claim of the plaintiff is not within the ambit of this Order or that claims for relief or remedy have been joined with the claim for possession of land which could not or ought not to have been so joined or that the supporting affidavit is defective or that for some other reason the proceedings are irregular, the Court may dismiss the summons or give leave to amend to correct any irregularity on such terms as it thinks fit”

Therefore going by the Order, I will only proceed to grant the order for possession, and not the reliefs of mense profits and injunction sought by the Plaintiff. To this effect I order that the Defendants are given fourteen days from today within which to vacate the part of Farm 380a Annisdale which they occupy. In default thereof a writ of possession shall issue. Each party shall bear their own costs of the proceedings. Leave to appeal is granted.

DATED THE 1st DAY OF DECEMBER, 2017

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S. KAUNDA NEWA
HIGH COURT JUDGE