

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

**2017/HP/1916**

*(Civil Jurisdiction)*

IN THE MATTER OF:

**S.I. NO. 156 OF 1969 OF THE  
FUNDAMENTAL FREEDOMS & RIGHTS**

IN THE MATTER OF:

**THE CONSTITUTION OF ZAMBIA, THE  
CONSTITUTION OF ZAMBIA ACT,  
CHAPTER 1, VOLUME 1 OF THE LAWS  
OF ZAMBIA**

IN THE MATTER OF:

**ARTICLE 16 OF PART III FOR THE  
PROTECTION OF THE FUNDAMENTAL  
RIGHTS AND FREEDOMS OF AN  
INDIVIDUAL CAP 1 OF THE LAWS OF  
ZAMBIA**

IN THE MATTER OF:

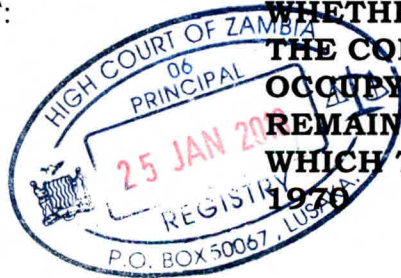
**SECTIONS 3, 4 AND 5 OF THE LANDS  
ACT CHAPTER 184 OF THE LAWS OF  
ZAMBIA**

IN THE MATTER OF:

**SECTION 58 OF THE LANDS AND  
DEEDS REGISTRY ACT, CHAPTER 185  
OF THE LAWS OF ZAMBIA**

IN THE MATTER OF:

**WHETHER THE PETITIONERS HAVE  
THE CONSTITUTIONAL RIGHT TO  
OCCUPY AND POSSESS THE  
REMAINING EXTENT OF FARM 1957  
WHICH THEY HAVE OCCUPIED SINCE  
1976**



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

JACKSON MAMBO SAKALA & 200 OTHERS

**PETITIONERS**

**AND**

KWATHU FARMS LIMITED  
JOHN WILLIAM KELLY CLAYTON  
THE ATTORNEY GENERAL

**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT  
3<sup>RD</sup> RESPONDENT**

**Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on the 25<sup>th</sup> day of January, 2018**

*For the Petitioners* : *Mrs. M. Mushipe, Mesdames Mushipe & Associates*  
*For the Respondents* : *Mr. K. Wishimanga, Messrs A. M. Wood & Company*

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## **R U L I N G**

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### **Cases Referred To:**

1. *Development Bank of Zambia and Another v Sunvest Limited & Another (1995 – 1997) ZR 187*
2. *BP Zambia PLC v Interland Motors Limited (2001) ZR 34*
3. *Muyawa Liuwa v The Attorney General SCZ Judgment No. 38 of 2014*
4. *Mukumbuta Mukumbuta & 4 Others v Mongu Meat Corporation Limited & 3 Others SCZ Judgment No. 8 of 2003*

### **Legislation Referred To:**

1. *Rules of the Supreme Court, 1999 Edition*

This is the 1<sup>st</sup> and 2<sup>nd</sup> Respondents Notice of Motion to raise preliminary issues made pursuant to Order 14A Rules 1 and 2 and Order 33 Rule 7 of the Rules of the Supreme Court, read together with Practice Direction No.1 of 2002. The issues raised *in limine* are the following:

- (i) *Whether or not this matter is properly before the Court in light of the proceedings and subsequent Judgment in Cause No. 1999/HP/0684?*

- (ii) *Whether or not this matter is properly before this Court in light of the proceedings and subsequent Ruling in Cause 2014/HP/0828?*
- (iii) *Whether or not this matter is properly before this Court in light of the proceedings in the Supreme Court concerning the two causes above?*
- (iv) *Whether or not this matter in its current form constitutes a multiplicity of Court actions?*
- (v) *Whether or not the proceedings herein are res judicata the same having been fully and finally determined in all the proceedings above?*
- (vi) *Whether or not arising from the above, the action is an abuse of the Court process?*
- (vii) *Whether or not and consequent to the above, this is an action wherein the Petitioners Advocates may also be personally condemned in the costs of the action?*

The Notice of Motion is supported by Affidavit sworn by **John**

**William Kelly Clayton**. He deposes that the reliefs sought in this action include:

- i. *A declaration that they should not be evicted from the property known as Farm 1957 because they have occupied the said for over 47 years.*
- ii. *A declaration that the Certificate of Title was obtained fraudulently and therefore ought to be cancelled.*

The deponent states that on 20<sup>th</sup> April, 1999, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents issued Originating Summons against the Petitioners for the possession of Farm 1957 and their eviction from the property. That the Petitioners challenged the action by filing an

Affidavit in Opposition, which is shown as exhibit “**JWKC1.**” That the Court subsequently deemed the matter to have commenced by way of Writ of Summons and the parties subsequently filed the relevant documents into Court, as shown in the exhibit marked “**JWKC2.**” That the Petitioners placed reliance on their Affidavit in Opposition to the Originating Summons in their Defence and it contains the same content as the Affidavit filed herein.

The deponent avers that by a Judgment of the High Court dated 14<sup>th</sup> November, 2012, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were granted possession of Farm 1957 and the Petitioners were ordered to vacate their property. He also states that after receiving the Court’s Judgment, the Petitioners, through their Advocates, Mesdames Mushipe & Associates, sought leave to appeal the Judgment out of time as shown in exhibit “**JWKC3.**” That by a Ruling dated 26<sup>th</sup> August, 2015, in exhibit “**JWKC4**”, the Court dismissed the application.

The deponent avers that being dissatisfied with the Court’s Ruling, the Petitioners filed an application for leave to appeal

against the Ruling into the Supreme Court on 30<sup>th</sup> September, 2015. That by a Ruling dated 4<sup>th</sup> February, 2016, the Supreme Court dismissed the Petitioners application as shown in the exhibit marked "**JWKC5.**" The deponent avers that being dissatisfied with the Supreme Court Ruling, the Petitioners filed a Notice of Motion to the full bench of the Supreme Court on 18<sup>th</sup> February, 2016, which has not been heard. That the Petitioners have asked the Supreme Court to reverse, vary or discharge its Ruling, as shown in exhibit "**JWKC6.**"

The deponent states that while the proceedings stated above were in process, the Petitioners commenced another action in the High Court on 30<sup>th</sup> May, 2014, under Cause No. 2014/HP/0828 seeking *inter alia* the following reliefs:

- i. *A declaration that the land occupied by them was not affected by the Judgment.*
- ii. *That the intended eviction was illegal and unlawful.*

The deponent avers that by a Notice of Motion dated 23<sup>rd</sup> June, 2014, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents asked the Court to determine whether or not the matter was properly before it in view

of the proceedings under Cause No. 1999/HP/0684. That by a Ruling dated 2<sup>nd</sup> December, 2014, the High Court dismissed the action under Cause No. 2014/HP/0828 as shown in exhibit “**JWKC7.**”

It is further deposed that being dissatisfied with the Ruling, the Petitioners appealed to the Supreme Court by a Notice and Memorandum of Appeal dated 4<sup>th</sup> December, 2014, shown in exhibit “**JWKC8.**” That despite filing a Notice and Memorandum of Appeal, the Petitioners did not take any steps to prosecute their appeal. That consequently, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents applied to the Supreme Court to dismiss the appeal as shown in the exhibit marked “**JWKC9.**” That according to exhibit “**JWKC10**” the application was granted on 26<sup>th</sup> February, 2015. That being dissatisfied with the Order dismissing the appeal, the Petitioners applied to the full bench of the Supreme Court to vary discharge or reverse the Ruling as shown in the exhibit marked “**JWKC11.**” That the Notice is pending determination by the Supreme Court.

The deponent states that the Petitioners have launched various applications against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, which have been fully determined by the High Court and are before the Supreme Court. The deponent avers that the Petitioners have engaged in acts amounting to a multiplicity of actions and should not be entertained by the Court as their action is an abuse of Court process.

The deponent further avers that the Petitioners have been represented by Mesdammes Mushipe & Associates in the applications prior to this action. That the Advocates are fully aware that the High Court settled this dispute and should not have commenced this action. The deponent prays to Court to dismiss the matter with costs.

The Petitioners' Advocates did not file an Affidavit in Opposition even after undertaking to do so by 19<sup>th</sup> December, 2017.

I have earnestly considered the issues raised *in limine* and the Affidavit filed in Support. The application invites me to determine

three clusters of questions, that is firstly; whether this action is properly before Court, secondly; whether this action amounts to a multiplicity of Court actions, and thirdly; whether this action is an abuse of Court process.

The background facts are sufficiently stated in the Affidavit in Support, and are set out in the earlier part of this Ruling. The facts disclose that there were two earlier actions involving the same parties and property. Briefly recapitulated, the 2<sup>nd</sup> Respondent sued the Petitioners on 28<sup>th</sup> April, 1999 in Cause No. 1999/HP/684. The High Court delivered Judgment on 14<sup>th</sup> November, 2012 against the Petitioners. On 26<sup>th</sup> August, 2015, the Petitioners unsuccessfully attempted to appeal the Judgment of the Court out of time. They renewed their application for leave before the Supreme Court on 4<sup>th</sup> February, 2016, and were equally unsuccessful. They proceeded to file a Notice of Motion to the full bench of the Supreme Court, which is pending hearing.

The Petitioners thereafter, took out Cause No. 2014/HP/0528 against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents claiming possession of the



disputed property. On 2<sup>nd</sup> December, 2014, the Court dismissed their action on the grounds that it was *res judicata* and an abuse of Court process. Disenchanted by the decision, the Petitioners lodged an appeal with the Supreme Court on 4<sup>th</sup> December, 2014. The matter is pending hearing.

It is worth pointing out that the Petitioners' claims are substantially the same in all the causes. In Cause No. 2014/HP/0528 the Petitioners claimed *inter alia*:

- i. *A declaration that the land occupied by them was not affected by the Judgment.*
- ii. *That the intended eviction was illegal and unlawful.*

In the present case, the Petitioners seek:

- i. *A declaration that they should not be evicted from the property known as Farm 1957 because they have occupied the said for over 47 years.*
- ii. *A declaration that the Certificate of title was obtained fraudulently and therefore ought to be cancelled.*

In the case of **Development Bank of Zambia and Another v Sunvest Limited & Another**<sup>1</sup>, the Supreme Court held *inter alia* that:

***"We also disapprove of parties commencing a multiplicity of procedures and proceedings and indeed a multiplicity of actions over the same subject matter. We also disapprove of the multiplicity of actions between the same parties involving various issues proposed to be raised in the new action which as we said we disapproved of."***

This principle was reinforced in the case of **BP Zambia PLC v Interland Motors Limited<sup>2</sup>**, where the Court stated that:

***"(....) A party in dispute with another over a particular subject should not be allowed to deploy his grievance piecemeal in scattered litigation and keep hauling the same opponent over the same matter before Courts. The administration of Justice would be brought into disrepute if a party managed to get conflicting decisions which undermined each other, from two or more different Judges, over the same matter."***

The fact that the Attorney-General has been added as party to the proceedings does not veil the old dispute between the parties, which was determined by the Court. A final judgment was delivered in Cause No. 1999/HP/0684 and it addressed the Plaintiffs' claims. In consequence, this Court is *functus officio*. The Petitioners' recourse lies in prosecuting the appeal or applications in the Supreme Court. I hold that the issues raised *in limine* have merit.

In **Muyawa Liuwa v The Attorney General**<sup>3</sup>, the Supreme Court stated that:

**“...this Court has inherent jurisdiction not only to prevent abuses of Court process; but also to protect its authority and integrity. We have said it before, that a party in a dispute with another over a particular subject cannot be allowed to deploy his grievances piecemeal in scattered litigation and keep on hauling the same opponent over the same matter.”**

The Petitioners through their Advocates have been hauling the 1<sup>st</sup> and 2<sup>nd</sup> Respondents into Court since 2014, even after being fully aware of the Court’s final Judgment. I find that the Petitioners’ actions are oppressive and amount to an abuse of Court process.

In the case of **Mukumbuta Mukumbuta & 4 Others v Mongu Meat Corporation Limited & 3 Others**<sup>4</sup>, the Supreme Court held *inter alia* that:

**"In view of the fact that the advocates for the respondents deliberately and consciously went forum shopping resulting in the parties being before several High Court Judges, it is the advocates of the respondents and not the respondents who should be punished in costs."**

From the facts on record, I find that the Petitioners' Advocates have engaged in forum shopping and must be condemned for their actions. I order them to bear the costs of this application to be taxed in default of agreement.

Dated this 25<sup>th</sup> day of January, 2018.

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