

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

(Civil Jurisdiction)



2015/HP/2210

BETWEEN:

GILBERT S. SIACHAYA AND 24 OTHERS

PLAINTIFFS

AND

WEBSTER BANJI NG'ANDU (Sued as Administrator
of the Estate of the late Wilson Ng'andu)

1ST DEFENDANT

GRACE NG'ANDU (Sued as Administrator of the
Estate of the late Wilson Ng'andu)

2ND DEFENDANT

**Before Honourable Mrs. Justice S. M. Wanjelani on 19th day of
April, 2018.**

***For the Plaintiffs: Mr. L. Mwanabo with Mr. A Banda,
Messrs L. M. Chambers***

For the Defendants: Absent

JUDGMENT

Cases referred to:

1. *Printing and numerical Registered Company V Simpson(1875)
LR19*
2. *National Drug Company Limited and Zambia Privatization
Agency V Mary Katongo Appeal No. 79/ 2001.*
3. *Holmes V Buildwell Construction Company Limited(1973) ZR97*
4. *Gideon Mundanda V Timothy Mulwani and Others(1987) ZR 29*

Legislation and materials referred to:

1. *Lands Deeds Registry Act, Cap 185 of the Laws of Zambia*
2. *Halsbury's Laws of England, Vol 17, 4th Edition*
3. *Blacks Laws Dictionary, 10th Edition*

The Plaintiffs commenced this action against the Defendants by way of a Writ and Statement of Claim which were subsequently amended seeking the following reliefs:

- i. *A declaration that the Defendants have no legal right to change the terms of the various contracts of sale entered into by the Plaintiffs individually with the late Wilson Ng'andu and that the Defendants are duly bound as administrators to complete the terms of the contracts executed by the deceased.*
- ii. *An order for specific performance of the individual contracts of sale of the respective subdivisions out of Farm 3563 Choma entered into by the Plaintiffs individually and some in common and directing the Defendants to attend completion requirements to facilitate issuance of the Certificate of Title to the Plaintiffs according to their respective contracts and the purchased portions of land.*
- iii. *An Order for removal of the caveat lodged by the Defendants on 11th June, 2015.*
- iv. *Further or any other relief the Court may deem fit.*
- v. *Costs.*

The Defendants did not file any defence despite being served several times, both in person and through Substituted Service as evidenced by the Affidavits of Service on record. When the matter came up for hearing, the Defendants were not before Court and being satisfied

that they were aware of the proceedings, I allowed the Plaintiffs to proceed with their case.

PW1 was **Gilbert Siamutwe Siachaya**, who testified that he was the Chairperson of the group that bought land from Mr. Wilson Ng'andu (the Deceased), while Mr. **Thomas Siamujompa**, was the Secretary of the group. He stated that the Deceased advertised that his farm was on sale on portions and people that were interested showed up to buy the portions and that the said **Farm 3563/7** was on title as per Certificate of Title on page 127 of Plaintiffs' Bundle of Documents

PW1 testified that on 5th January, 2012, the Plaintiffs individually entered into Contracts of Sale with the Deceased for various sizes of land ranging between 9.271 hectares and 300.311 hectares at various amounts ranging from Fifteen Thousand Kwacha (K15,000.00) to Three Hundred and Fifty Thousand Kwacha (K350,000.00) as per attached scheduled and that the majority of the Plaintiffs have since paid for their respective plots in full. To this effect, the witness produced receipts headed **Kabeleka Farms**, acknowledging receipt of payments that the Plaintiffs bought and paid for the land; Agreement Forms and Contracts of Sale as per 102 – 110 of Plaintiff Bundle of Documents, in respect of his portion.

In his continued testimony **PW1** informed the Court that Deceased had appointed Mr. **Shakayayi** to act on his behalf, as the latter was mobile as per the Memorandum of Understanding on Page 129

of the Plaintiffs' Bundle of Documents. PW1 added that Mr. **Shakayayi** was involved in issuing receipts and on 16th November, 2013 after the payments, the Plaintiffs received from him, a handover of the parent Title for **Farm 3563** through PW1 as the Chairman of the Buyers Committee in order to facilitate the change of ownership.

It was his evidence that he bought the land in 2010 and cleared the balance in 2011 and that the Vendor, the Deceased died on or about 31st January, 2014 before completion of the transaction. He added that by this time the process had advanced and title should have been processed as part of the money paid was meant for processing title deeds including survey charges for each subdivision.

The Witness informed the Court that first person chosen as Administrator of the Estate of the Deceased was Mr. Shakayayi but was removed and the Defendants were appointed as the new Administrators on or about 9th April, 2015.

It was his evidence that the Defendants acting as Administrators of the Estate of the Deceased have since refused to complete the transaction on the terms of the existing contracts of sale and are demanding to resale the land to the Plaintiffs on their own new terms and conditions in breach of the existing contracts of sale executed between the Deceased and the Plaintiffs. He added that on 11th June, 2015, the Defendants placed a Caveat against **Farm 3563** and that they are not cooperative in processing the titles for

the people that had bought land on that Farm and discussing with them has proved futile.

He concluded by praying that the Court lifts the caveat put on the Farm and as well as granting the reliefs endorsed on the Statement of Claim.

PW2 was **Thomas Muleya Siamujompa**, the Committee Secretary for the group of buyers, whose evidence was similar to that of **PW1**. He also produced an Agreement Form, receipts with a photocopy of the cheque on pages 124-126 in the Plaintiff's Bundle of Documents for the purchase of his portion of land measuring 40 hectares and that he had paid the full purchase price as agreed with the Deceased. PW2 added that the Plaintiffs were able to access their portions of the land but were not working full time at their farms pending resolution of the matter.

At the close of the case, Plaintiffs filed detailed written submissions, the gist of which is that there were agreements between the Deceased and the Plaintiffs which the Court is enjoined to enforce and reference was made to the cases of **Printing and numerical Registered Company V Simpson⁽¹⁾** and the **National Drug Company Limited and Zambia Privatization Agency V Mary Katongo⁽²⁾**.

It was further contended that once the Parties have embodied the terms and conditions of their contract in a written document, no person or party is permitted to add, vary and/or subtract from

those terms as alluded to in the case of **Holmes V Buildwell Construction Company Limited**⁽³⁾

With regard to the caveat, it was submitted that the Defendants had failed to file a response to discharge their burden of proof as to why it should not be removed. In addition, it was submitted that the Court should grant the relief of specific performance as prayed for and reference was made to the case of **Gideon Mundanda V Timothy Mulwani and Others**⁽⁴⁾ where the Supreme Court stated that damages were not be an adequate compensation for breach of contract of sale in a particular piece of land.

I have carefully considered the evidence on record as well as the submissions on behalf of the Plaintiffs.

The copy of the Certificate of Title on Pages 127 -128 of the Plaintiffs' Bundle of Documents shows that **Mr. Wilson Mwanamainda Ng'andu** was the Title holder of Property **No. F/3563** under Certificate Title Number L5512 and that this Certificate of Title was handed over by Mr. L. C. Shakayayi, to the Chairperson of the Buyers' Committee on 16th November, 2013 *"to facilitate the property transfer process"*.

In addition, a Memorandum of Understanding on Pages 129-133 shows that Mr. Wilson Mwanamainda Ngandu appointed Mr. Shakayayi to, among other duties, *"act as a vendor relating to the sale and / or Lease of Farm No. 3563"*. In addition, there are Agreement/Contract Forms with defined parcels of land, the price

and the terms of payment clearly stated as well as what would happen in case of default.

Given the above factors, I find that there were valid contracts between the Deceased (Wilson Ng'andu) as vendor and the Plaintiffs with the terms fully embodied in the written contracts. In addition, there is no allegation to the contrary from the Defendants.

It is not in dispute that the Defendants were appointed as Administrators of the Estate of the Deceased as this is confirmed by the entry in the Lands Register Entry No.13 wherein they placed the caveat "*claiming an interest as the Administrators of the Estate of the Late Wilson Ng'andu as per attached letters from the High Court*". This then raises the issue of the role of Administrators in relation to the Contracts not fully performed by the Deceased.

According to Halsbury's Laws of England, in Para 703,

"an administrator is a person appointed by a court of competent jurisdiction to administer the estate of a deceased person"

While Black's Law Dictionary (10th Edition) sheds more light as in that it defines an administrator as:

" a person authorised by a competent Court to manage and distribute the estate of an intestate."

In my view, this simply means that the Administrator merely steps into the Deceased's shoes to carry out the acts the Deceased would have undertaken and manage his affairs. This does not extend to undoing what the Deceased had legally done or committed to doing. Thus the Defendants cannot, where there has been no breach of contract, set aside the contracts that the Deceased entered into with the Plaintiffs. I, therefore declare that the Defendants have no legal right to change the terms of the contracts entered into between the Deceased Wilson Ng'andu and the Plaintiffs and further that the Defendants have a duty to facilitate the completion of those contracts according to the terms already agreed upon. As alluded to in the **Holmes Limited V Build Well Construction Limited**⁽³⁾ that:

“where the Parties have embodied the terms of their contract in a written document, extrinsic evidence is generally not admissible to add to, vary, subtract from or contractual, the terms of the written document”.

With regard to the claim for an Order for specific performance, **Black's Law Dictionary** gives an explanatory note on the remedy and states:

“the rationale of specific performance is that common law remedy of damages was often inadequate. It would in effect compel a promisee to sell his right to performance for pecuniary consideration”

In the case in casu, the subject matter is land and the Supreme Court has stated in a number of authorities that a damages for a breach of contract on the sale of land are an inadequate remedy and further in the case of that ***Gideon Mundanda V Timothy Mulwani and the Agricultural Finance Co. Ltd and S.S.S. Mwiinga***⁽⁴⁾, it was held that:

" ... A judge's discretion in relation to specific performance of contracts for the sale of land is limited as damages cannot adequately compensate a party for breach of a contract for the sale of land...."

In view of the above facts and guidance from the Supreme Court, I grant the Order of specific performance as sought by the Plaintiffs. The Defendants shall complete the process of the sale of the various parcels of land as per the contracts of sale.

The Plaintiffs also seek an Order for the removal of the caveat lodged by the Defendants on 11th June, 2015. Contrary to the submissions by the Plaintiffs that the Defendants do not have a beneficial interest in the land, it is my considered view that as Administrators, they do have an interest in the land as they are under an obligation to protect the interests of the beneficiaries of the Estate of the Deceased, including the Plaintiffs whose transactions were not concluded by the Deceased and further the proper management of the Deceased's affairs.

However the Defendants, despite being called upon to show cause why the caveat should not be removed, failed to do so. Section 81 of the **Lands and Deeds Act** provides as follows:

"(1) Such Registered Proprietor or other interested person may, if he thinks fit, summon the caveator, or the person on whose behalf such caveat has been lodged, to attend before the Lands Tribunal, Court or Judge thereof to show cause why such caveat should not be removed.

(2) Such Lands Tribunal, Court or Judge, upon proof that such person has been summoned, may make such order in the premises, either ex parte or otherwise, as to such Lands Tribunal, Court or Judge seems meet."

In the premise and pursuant to the above provisions, and upon application by the Plaintiff as interested persons, I direct the removal of the caveat lodged by the Defendant in so far as it affects the various parcels of land sold to the Plaintiffs as per the various survey diagrams exhibited in the Plaintiffs' Bundle of Documents.

On the whole the Plaintiffs have proved their case on a balance of probabilities as stated herein. For the avoidance of doubt, I direct that the Defendants conclude the sale process of the land to the Plaintiffs including ensuring that Certificates of Title are given to the Plaintiffs on the terms agreed upon with the Deceased. In the event that the Defendants do not comply, the Plaintiffs are at liberty to make the relevant application for the Registrar of the High Court

to conclude the transactions. I further award costs of these proceedings to the Plaintiffs.

Delivered at Lusaka this 19th day of April, 2018.



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**S.M. WANJELANI
JUDGE**