

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

**2016/HP/1605**

*(Civil jurisdiction)*

**BETWEEN:**

**MIRRIAM CHIBWE**

**AND**

**PATRICK MUTALE AND OTHERS**



**PLAINTIFF**

**DEFENDANT**

**BEFORE HON. JUSTICE G. MILIMO- SALASINI IN CHAMBERS ON  
THE 30<sup>TH</sup> DAY OF JULY, 2020**

*For the Plaintiff: Mr. G. Pindani- Messers Chonta, Musaila &  
Pindani Advocates*

*For the Defendant: No Appearance*

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

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**CASE REFERRED TO:**

1. *Anti-Corruption Commission vs Barnette Development Corporation Limited*
2. *Raphael Ackim Namung'andu vs Lusaka City Council*
3. *Masausu Zulu vs Avondale Housing Project*

**LEGISLATION REFERRED TO:**

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

This matter, commenced by way of Originating Summons on 15<sup>th</sup> August, 2016 pursuant to Order 113(1) of the Rules of the Supreme Court, (White Book) 1999 edition, by one MIRRIAM CHIBWE, the Plaintiff against the Defendants, PATRICK MUTALE and OTHERS in which the Plaintiff is, claiming for:-

1. *An order for the removal of the Defendants from Lot No. 36048/M, Copperbelt Province, belonging to the Plaintiffs, but which the Defendants have illegally occupied without the authority of the Plaintiff.*
2. *For an Order for Possession of Lot No. 36048/M Copperbelt Province currently illegally occupied by the Defendants*
3. *An order directed at the Defendants and/ or their agents to render vacant possession of the said Lot No. 36048/M Copperbelt Province.*
4. *An order directed at the Defendant and/ or their agents to demolish the illegal structures being built on Lot No. 36048/M Copperbelt Province, failure to which the Sheriffs of Zambia moves in to demolish the structures.*
5. *Any further or other relief the Court may deem fit.*
6. *Costs*

In the Affidavit in Support of Originating Summons that accompanied the Originating Summons of the same date, the Plaintiff deposed that she is the registered owner of Lot No. 36048/M, situate in the Copperbelt Province of the Republic of

Zambia. Produced and marked "MC1" is a true copy of the Certificate of Title for Lot No. 36048/M, Copperbelt Province. She deposed that on the 1<sup>st</sup> August 2016, when she decided to visit her property, she found that the Defendants had taken occupation of the said piece of land without her authority or the authority of her agent. The Plaintiff also deposed that the Defendants have refused to vacate the said property.

In opposition, the Defendants filed an affidavit in opposition on 29<sup>th</sup> August 2016, sworn by the deponent Patrick Mutale on behalf of the other Defendants. The deponent states that they received the Originating Summons on 22<sup>nd</sup> August, 2016 which was dated 15<sup>th</sup> August, 2016. The Defendant in his Affidavit in Opposition deposed that he will oppose removing them from Lot 36048 because he has been living on the said piece of land for over 25 years and has been given offer letters by Luanshya City Council. The Defendant also deposes that the Plaintiff's farm borders Baluba steam but their land borders Luanshya Steam dam. Hence, the claims by the Plaintiff are unjustified because of the differences on the geographical landscape. The defendant argues that he has invested a lot of equipment and machinery on the said land in question and would challenge the applicant's assertion that she has title when others are at offer letters stage.

What followed was an application by the Defendant, Patrick Mutale, filed on 29<sup>th</sup> August, 2016 seeking that the matter be transferred from Lusaka High Court to Ndola High Court because

the land in dispute is in the Copperbelt Province and that all the Respondents are Copperbelt residents, who are mostly peasant farmers who may not meet the cost of travelling to Lusaka.

The Plaintiff opposed the application on 10<sup>th</sup> October, 2016 on the basis that since she resides in Lusaka and works in Lusaka, at Zambia Revenue Authority where her presence is required on a daily basis, she would not be permitted by her superiors to be absent from work to attend court. The application was dismissed by a Ruling delivered on 6<sup>th</sup> January, 2017 on the basis that the applicant had contravened Practice Direction No 1 of 2002, which states that:-

***“an application brought to court should indicate the Act and Section or Rule under which the application is brought, failure to which the application shall not be accepted for filing or entertainment.”***

The Honourable District Registrar Mr. Kenneth Mulife ruled that based on the said Practice Direction, which is couched in mandatory terms, the matter could not be entertained.

The matter then proceeded with a Reply. The Plaintiff filed her affidavit in Reply on 19<sup>th</sup> June 2017 in which she deposed that she already had a Certificate of Title to Lot No. 36048/M, Copperbelt Province of Zambia and argued that a letter of offer cannot override a Certificate of Title.

When trial commenced on 22<sup>nd</sup> March, 2018 both parties were present. The Plaintiff was represented by Messrs Chonta, Musaila & Pindani Advocates while the cited Defendant, Mr. Patrick Mutale, was represented by one Peter Shuko as the 1<sup>st</sup> Defendant. The 2<sup>nd</sup> Defendant was Kapungwe Remmy, the 3<sup>rd</sup> Defendant was Ronald Kawanga, the 4<sup>th</sup> Defendant was Chileshe Sakaria and the 5<sup>th</sup> Defendant was Maureen Loma.

The Plaintiff, Mirriam Chibwe, testified that in 2003 she applied for land at Luanshya Municipal Council and was invited for interviews in 2004 where she was offered land in Mansansa area in Luanshya. She testified how she went to see the land and accepted the offer as it was bare land. She also explained how she was told to wait for the Council to meet. She went on to state how she was given an offer letter in 2009 and paid K2,100 (rebased) to Ministry of Lands. She explained how she was advised to have the land surveyed before Title would be issued. She testified how she paid K4500 for the survey. She went on to state that sometime in 2013 she was issued with a Certificate of Title and consequently she sent money to her brother to erect structures. She recalled how her brother in 2016 went on site with a bricklayer but found the 1<sup>st</sup> Defendant who was checking on some vegetables he had grown. She testified how she was contacted by one Mr. R. Chibwe who informed her that the 1<sup>st</sup> Defendant was claiming the area. She went to state that she told her brother to report the matter to police, and he reported to Baluba Police Station. She further testified that she also requested a call out for the 1<sup>st</sup> Defendant which was

issued. She recalled how she, her two brothers and the defendant met at the police station and the police presented her Certificate of Title to the defendant Mr. Mutale but no conclusion was reached. She also recalled how the Defendants did not produce any document of title, at the request of the police. She testified how in 2016 there was no structure but just tomatoes and rape growing there. She went on to state that in December 2017, when she went to the said land, she found a slab which had been erected there against her authority and she did not know who put it there. She then referred to the Affidavit in Support filed on 15<sup>th</sup> August 2016 and the affidavit in Opposition which she read in court.

She also referred to her reply dated 19<sup>th</sup> June 2017 and stated in relation to the statement of the Defendant Mr. Mutale that he has lived there for 25 years, she testified how there was no house there. She further went on to state that she had not seen any offer letters as claimed by the Defendant.

On the issue of the border of Baluba river and Luanshya stream, she testified that to the best of her knowledge, Baluba stream is popularly known as Luanshya steam as it is the same stream. On the issue of investment of equipment and machinery, she went on to state that, it was not true.

The witness stated that the 1<sup>st</sup> Defendant was not present during trial despite being given notice of hearing after the last Status Conference. The witness informed the court that notifications were sent to the 1<sup>st</sup> Defendant through SMS, email and

WhatsApp. The witness informed the court that the 1<sup>st</sup> Defendant was served with the court notice on 22<sup>nd</sup> March, 2018. The witness testified that the 2<sup>nd</sup> Defendant, Mr. Remmy Kapungwe has no interest in her land. She stated that she was surprised that the 3<sup>rd</sup> Defendant, Mr. Ronald Kawanga was in court as he was not there at the police station. The witness further testified that as for the 4<sup>th</sup> Defendant, Mr. Chileshe Sakaria, she did not know Him. She stated that she knew the 5<sup>th</sup> Defendant, Maureen Loma as she was growing vegetables on her piece of land.

She prayed for the court to order for the removal of the Defendants from Lot No. 36048/M belonging to her; an order for possession of Lot No. 36048/M; an order directed to the Defendants to render Vacant possession of Lot No. 36048/M in Copperbelt Province; an order to demolish the illegal structures being built on the property; any other relief the court may deem fit; and costs.

Trial was adjourned to 23<sup>rd</sup> April 2018 for continued trial. As the record shows there was no appearance from the Defendants. Mr. G. Pindani, Counsel for the Plaintiff, informed the court that it was not known why the Defendants had not come. Counsel further informed the court that his client had reminded Mr. Shuko by WhatsApp message who had agreed but he did not reply. Counsel noted that the Defendants had not filed any documents and prayed that the case be closed and parties file submissions with 21 days and await judgement.

There was no cross examination of the Plaintiff.

On the same date of the continued trial, 23<sup>rd</sup> April, 2018 an application by summons for an Order to Substitute party pursuant to *Order XVI rule 5 of the High Court Act, Chapter 27 of the laws of Zambia* was filed into Court by one Peter Shuko an intended respondent which application came to the attention of the Court at a late stage. **Order XI rule 5** provides for: - “*circumstances where a sole Plaintiff dies or for a surviving Plaintiff.*”

It was therefore the wrong provision in respect of the application by Peter Shuko, as this rule does not provide for substitution of a party. I therefore dismissed the application.

Albeit, the Summons was supported by an Affidavit in which Peter Shuko, deposed that he is the absolute owner of the land in issue. He exhibited a copy of a letter of offer from Luanshya Municipal Council marked “**PS1**”. A perusal of exhibit “**PS1**” reveals that an Offer of Plot Number LN/1000807/20/M TWAPELWA TWALUBUKA – SMALL HOLDING was made to Shuko Peter on 4<sup>th</sup> December, 2017 by the Acting Town Clerk, Luanshya Municipal Council.

The deponent continues to state that the copy of the Certificate of Title produced by the Applicant was held by the Forestry Department and that many people who have farmed in the area are not on Title, but only had offer letters. The intended respondent exhibited another letter of offer “**PS3**”, and stated that no farm in the area in dispute is on title, save for a letter relating to demarcations of the Twapelwa Twalubuka Small Holdings. Peter



Shuko also attached an unmarked letter dated 22<sup>nd</sup> June, 2015 from the Town Clerk for Luanshya Municipal Council to the Chief Lands Officer at the Lands department to process the sub-division and numbering of sub division of Twapelwa Twalubuka Small Holdings in Mansansa Area, Luanshya Municipality after the Luanshya Council approved the subdivision. However, the intended respondent has not produced nor exhibited evidence that the subdivisions and numbering was conducted or processed in favour of the intended respondent or any other respondent in the case in casu.

I will now turn to consider the evidence adduced by the Plaintiff and the affidavits on record as well as the Defendant's evidence. From the evidence on record it is common cause that the Plaintiff's claim against the Defendants is that she holds a statutory title in respect of Lot No. 36048/M Copperbelt Province. That the Defendants have settled on the said land without her authority or consent and are squatters. She seeks to have them evicted from her property as they hold no title. The Defendants claim they have offer letters from by Luanshya Municipal Council. They have argued however that the land in issue belongs to them as the survey diagram indicates that the plaintiff's land borders on Baluba steam but their land borders Luanshya stream Dam. The intended respondent also claims that he has a letter of offer from Luanshya Municipal Council.

The main issue for determination by this Court is who is the legal owner of Lot No. 36048/M Copperbelt Province.

The Plaintiff filed into Court her written submission and cited the cases which I have taken note of accordingly.

It is a well-established fact that Legal ownership of land is evidenced by a Certificate of title to the property. This is as per section 33 of the Lands and Deeds Registry Act which states as follows: -

*“A certificate of Title shall be conclusive as from the date of its issue and upon and after the issue thereof, notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the President or otherwise, which but for Parts III to VII might be held to be paramount or to have priority; the registered proprietor of the land comprised in such Certificate shall, except in case of fraud, hold the same subject only to such encumbrances, liens, estates or interests as may be shown by such Certificate of Title and any encumbrances, liens, estates or interests created after the issue of such Certificates as may be notified on the folium of the Register relating to such land but absolutely free from all other encumbrances, liens, estates or interests whatsoever:*

*Except the estate or interest of a proprietor claiming the same land under a current prior Certificate of Title issued under the provisions of parts III to VII; and*

*Except so far as regards the omission or misdirection of any right of way or other easement created in or existing upon any land; and*

*Except so far as regards any portion of land that may be erroneously include in the Certificate of Title, evidencing the title*

*of such Registered Proprietor by wrong description of parcels or of boundaries.”*

In the case of **Anti-Corruption Commission vs Barnette Development Corporation Limited**<sup>1</sup> as cited in the Plaintiff's written submission, it was held that: -

***“Under section 33 of the Lands and Deeds Registry Act, a certificate of title is conclusive evidence of ownership of land by a holder of a certificate of title. However, under section 34 of the same Act, a certificate of title can be challenged and cancelled for fraud or reasons for impropriety in its acquisition.”***

The Plaintiff has exhibited Certificate of Title No. 36048 of Lot No. 36048/M Copperbelt Province issued on 29<sup>th</sup> May, 2015. The conclusion therefore is that the Plaintiff is the legal owner of Lot No. 36048/M Copperbelt Province. There has been no title exhibited by the Defendants but only the offer letters purportedly obtained from Luanshya Municipal Council dated 4<sup>th</sup> December, 2017.

According to Section 33 of the Land Act, a Certificate of Title is conclusive evidence of ownership of the land. I therefore find and hold that the Plaintiff is the owner of Lot No. 36048/M Copperbelt Province. The Defendants are mere squatters.

The case of **Raphael Ackim Namung'andu vs Lusaka City Council**<sup>2</sup> is instructive where Commissioner Mathew Ngulube (as he then was) held as follows: -

***“Squatters build at their own risk and if the owners of the land withdraw their permission or licence or if they***

***decide to demolish a structure built in the absence of any permission or other lawful relationship, the squatter losses' though very much regrettable, are not recoverable in a Court of Law."***

***"A squatter is a squatter and the Defendants can demolish unauthorized structures build without their permission."***

In light of the preceding paragraphs the Defendants have no legal standing in the eyes of the law because they do not possess any Certificates of Title in accordance with **Section 33 of the Lands and Deeds registry Act.**

Therefore, I find that the Plaintiff has proved her case on a preponderance of probability which is the standard of proof required in civil matters, as per the case of **Masausu Zulu vs Avondale Housing Project**<sup>3</sup>. She is the registered owner of Lot No. 36048/M Copperbelt Province. The Defendants are squatters with no legal rights. I enter Judgment in her favour and order that the Defendants be removed from Lot No. 36048/M Copperbelt Province and the Plaintiff be given vacant possession effective forthwith.

Leave to appeal is granted.

**Delivered at Lusaka this 30<sup>th</sup> day of July, 2020**



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**HON. JUSTICE G. MILIMO- SALASINI  
HIGH COURT JUDGE**