

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

2017/HP/0332



BETWEEN:

PATSON PHILIP HAMBAMBA MULOONGO PLAINTIFF

AND

BLACK MITI 1ST DEFENDANT

MARRIN MUSONDA 2ND DEFENDANT

ALFRED KAYULA 3RD DEFENDANT

JETHRO MULOONGO 4TH DEFENDANT

BEFORE HONORABLE JUSTICE MR. MWILA CHITABO, SC

*For the Plaintiff: Mrs. L.S Shea of Messrs M.L Mukande &
Company*

For the Defendants: N/A

JUDGMENT

Legislation referred to:-

1. *Lands and Deeds Registry Act Chapter 185 of the Laws of Zambia.*

Cases referred:-

1. *Khalid Mohamed V The Attorney General (1982)ZR 49.*
2. *Honoros Maurice Chilufya V Kelvin Kangundu (1999) ZR 166.*

The Legend of this case is that the plaintiff launched proceedings by mode of writ of summons and statement of claim against the Defendant seeking the following reliefs:

- (i) The Plaintiff is the rightful owner of the subdivision 15 of subdivision "B" of farm Number 873 "Lilanda" situate in Lusaka of the Lusaka Province of the Republic of Zambia.
- (ii) Damages for agony, stress and expenses incurred by the plaintiff in the process of protecting the property.
- (iii) Damages for trespass and deprivation.
- (iv) For an eviction Order of the Defendants and their purchasers of the said land.
- (v) Injunction to restrain the Defendant's from trespassing on the plaintiff's property namely subdivision number 783 Lilanda situate in Lusaka.
- (vi) Any other order the Court may deem fit.
- (vii) Costs.

Order for Directions were issued which were not complied with by the Defendant which necessitated the plaintiff to apply for entry of Judgment in Default of appearance and defence.

Notwithstanding that this was impeccable proof of service of process by substituted service I declined to enter default Judgment and

directed that the plaintiff files in his list of documents and pleadings by the 14th November, 2019 and trial to take place on 27th November, 2019 at 09 hours.

On the return date, I was satisfied that the return date had been duly served by substituted service, I therefore signaled the plaintiff to present his case.

I also granted leave to the plaintiff to produce a filed Power of Attorney from the plaintiff **Patson Hambamba Mulongo** to **Maurice Kabombo Fenete**.

I had ocular view of the plaintiff and I was satisfied that he was unwell, weak and was not in position to give evidence.

PW1 was **Maurice Kabombo Mulongo** the lawfully appointed and holder of Power of Attorney on behalf of the plaintiff.

The 70 year old senior citizen and retired Banker gave sworn evidence.

The gravamen of his evidence was that the plaintiff has been a family since 1982 when he joined Barclays Bank.

The plaintiff obtained a mortgage from Zambia National Building Society in July, 1980 to purchase property number 15 of Subdivision "B" of farm number 873. Lilanda, Lusaka.

The witness was involved in the recalculating of a mortgage interest in 1996 after a consent order was given by the late Hon. Mr. Justice

Peter Chitengi. The account was reconciled and the mortgage was discharged later in 1996.

Between 2013 and 2015, the Defendants started demarcating parts of the plaintiff's land and were threatening him.

Efforts to resolve the matter excuria through a constituted Task Force by the then Deputy Minister Col. Panji proved fruitless.

Reference was made to page II of the Plaintiff's Bundle of Documents to show efforts made through Matero Police Station to resolve the matter.

The defendants then extended their threats on the witness and his wife. The Subdivision which had been illegally occupied by the Defendants was "Subdivision C". The said Subdivision had been offered to Dr. Sakala and David Sichinsambwe. Clearance was sought from Zambia National Building Society with a view to redeem the interest.

The subdivision was approved by Lusaka City Council. The Registered owner of the property is the Plaintiff as shown by provisional Certificate of Title number 17677 date nineth of June 1980 as appears at pages 1-4 of the bundles.

The witness conducted search as the Lands and Deeds Registry as appears at pages 9 – 10 of the Bundles.

The witness concluded by saying that reliance was placed on the Plaintiff's bundle of Document filed on 15th November, 2019 and

also on the Notice to produce filed on 27th November, 2015 which is the Power of Attorney donated by the Plaintiff to the witness.

He then invited the Court to grant the reliefs sought as prayed.

On the outset, I have disclosed my mind to the onus and burden of proof.

That is it on the one who alleges and the standard is on the preponderance of probability.

The case of ***Khalid Mohamed v The Attorney General***¹ is one such case in point.

I am satisfied that the process herein was duly served on the defendants by substituted service as shown by an affidavit of service filed unto Court on 22nd November, 2019.

Upon hearing the evidence of PW1 **Maurice Kabombo Fenete** and upon sight of Notice to produce filed on 27th November, 2019, I am satisfied that the Plaintiff is a bonafide holder of a Power of Attorney donated to him by the Plaintiff.

Upon further sight of exhibit "PPHM1" being a provisional Certificate of Title number 17677 relating to subdivision number 15 of subdivision "B" of farm number 873, Lilanda situate in Lusaka in the Republic of Zambia featured in the affidavit in support of exparte summons for an injunction filed on 1st March, 2017 deposed to by the Plaintiff **Patson Philip Kambamba Muloongo** and produced at pages 1-4 of the Plaintiff's bundle of Documents, I

am satisfied that the Plaintiff is the registered owner of the property subject of these proceedings.

I also make the following findings of fact.

1. That the Plaintiff on 15th February 2016 lodged a complaint with the Officer in Charge of Matero Police Station about the encroachment on his farm and illegal Land allocation by Black Miti 1st Defendant and Martin Musonda 2nd Defendant.
2. In the said letter of 15th February, 2016, the plaintiff lodged complaint about threats of violence on his person by the 2nd Defendant M. Musonda on the 31st of January 2016.
3. That the Defendants did not enter appearance nor defence to the writ and statement which were duly served on them by substituted service as ordered by the Court on 19th March, 2019.

I have accepted the evidence of **PW1** and have made a finding of fact that the plaintiff is the bonafide registered owner of the property subject to these proceedings.

It is trite law that, a Certificate of Title is conclusive evidence of ownership of the Certificate title holder under Section 14 of the ***Lands and Deed Registry Act***¹ against anyone in the whole world unless the same is shown to have been issued by fraud or mistake.

This legal position was subject of pronouncement by the Court of final resort in the case of **Honourous Maurice Chilufya v Kelvin Kang'unda** ¹.

On the foregoing, I find that this plaintiff has proved his case on the preponderance of probability and I make the following declaration and Orders.

- (i) The Plaintiff is the rightful owner of Subdivision number 15 of Subdivision "B" of farm number "873" Lilanda situate in Lusaka in the Republic of Zambia.
- (ii) I order that the Plaintiff recovers damages for agony, trespass and expenses incurred by the Plaintiff in the process of recovering his property and I **direct** such damages be assessed by the Learned Deputy Registrar on application by the Plaintiff within 30 days from date hereof.
- (iii) I award a sum **K10,000-00** for trespass. I however do not award anything on prayer for degradation of the land as no evidence has been led on this particular item.
- (iv) I grant an eviction order of the Defendants and their purchasers or their servants or agents however from the Plaintiffs land within 90 days from the date hereof.
- (v) The rate of interest on the awards of this Court and Learned Deputy Registrar will start running from the date of this

action at short bank deposit rate up to the dates of the awards and thereafter at bank lending rate until satisfaction.

- (vi) The costs are for the Plaintiff to be taxed in default of agreement.

Leave to appeal to the Superior Court of Appeal is granted.

gH
Delivered under my hand and seal thisday of July, 2020.



**Mwila Chitabo, SC
JUDGE**