

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



2017/HP/1655

BETWEEN:

SHAUKAT DUDHIA

1st PLAINTIFF

**GREENVIEW REAL ESTATES AND PROPERTIES
DEVELOPMENT LIMITED
(AND 21 OTHERS)**

2nd PLAINTIFF

REMO MWANAMUWILA BOKA

INTENDED 24th PLAINTIFF

AND

ZAMBIA AIRPORTS CORPORATION

1st DEFENDANT

THE ATTORNEY GENERAL

2nd DEFENDANT

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 9th
DAY OF SEPTEMBER, 2020**

*For the 1st, 2nd, 6th 7th 8th 11th
14th, 15th, 16th, 18th and 19th Plaintiffs : Ventus Legal Practitioners*

For the rest of the plaintiffs : in person

For the 1st defendant : in house counsel

For the 2nd defendant : Attorney General's Chambers

R U L I N G

CASES REFERRED TO:

- 1. Hope Foundation for Women v Munalula Linyati SCZ/8/54/2013**

LEGISLATION REFERRED TO:

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

This is a ruling on an application made by the intended 24th plaintiff for an order for joinder to the proceedings on 29th May, 2020. The application is made pursuant to Order 14 Rule 5(1) of the High Court Rules, Chapter 27 of the Laws of Zambia.

In the affidavit filed in support of the application, which is deposed to by the intended 24th plaintiff, he avers that he purchased sub division E of Lot 14915/M from the 1st plaintiff in 2016, as evidenced by the contract of sale, exhibited as 'RMB1' to the affidavit. It is his averment that Lot No 14915/M became the subject of litigation, and the 1st defendant obtained an order of injunction in 2018.

The intended 24th plaintiff deposes that the injunction proscribes him from developing the subdivision that he purchased from the 1st plaintiff, and from obtaining title deeds to the property. Further in the affidavit, the intended 24th plaintiff deposes that the 1st defendant applied for joinder of all the owners of the subdivisions of Lot No 14915/M, but did not include the intended 24th plaintiff in the application, although he purchased sub division 'E' of the property.

It is stated that the intended 24th plaintiff obtained a Survey Report for the survey that was carried out by the Survey Department of the Ministry of Lands, which is exhibited as 'RMB2', and which clearly shows that the subdivision that the intended 24th plaintiff purchased does not encroach on the 1st defendant's land. The intended 24th

plaintiff avers that efforts to engage the 1st defendant with regard to the Survey Report in a bid to settle the matter amicably has failed.

The 1st defendant filed an affidavit in opposition on 24th August, 2020. The said affidavit is sworn by Jackson Chirwa an Assistant Airport Manager at Kenneth Kaunda International Airport. The gist of that affidavit is that Lot 947/M Lusaka in the extent of 1900 hectares, on which the Kenneth Kaunda International Airport sits was leased to the Department of Civil Aviation on a fourteen (14) year lease.

Subsequently, the Ministry of Transport and Communications gave consent to have the Lot transferred to the 1st defendant in line with the provisions of the law regarding the transfer of Government properties relating to designated airports. Exhibit 'JC1' is a copy of the fourteen (14) year certificate of title.

The averment is further that the 1st defendant commenced the process of effecting the registration formalities related to transfer of the property, and in 2017, during a survey that was conducted by the Government surveyors from the office of the Surveyor General, it was established that properties, including Lot No 14915/M was amongst the properties that are encroaching on Lot 947/M, as shown on the report exhibited as 'JC2' to the affidavit.

It is deposed that the report was copied to the Commissioner of Lands, and the 1st defendant wrote to the Commissioner of Lands to take the necessary action, and rectify the encroachments on the 1st defendant's land. The deponent goes on to depose that the Commissioner of Lands

has since confirmed that the properties were created within the boundaries of the airport land, in the letter exhibited as 'JC3'.

Further, that among the encroaching properties, particularly Lot 14915/M, subdivisions were created therefrom, being A1-A13 and A-Z, as shown on the printout of the Lands Register, which is exhibited as 'CS4' to the affidavit. He avers that all the subdivisions forming part of the encroaching properties were made part of these proceedings by a ruling of this court dated 15th January, 2019, and an order of injunction was obtained in respect of those properties.

With reference to the Lands Register exhibited as 'JC5' to the affidavit, the deponent states that subdivision Lot No 14915/M/E purported to be the intended 24th plaintiff's property, as at 23rd October, 2018 was registered in the names of Shaukat Dudhia, the 1st plaintiff herein. The deponent also states that the said property is already subject of these proceedings, and that the intended 24th plaintiff cannot claim to be the legitimate owner of that property.

It is further deposed in the affidavit that the legitimacy of title to Lot No 14915/M is yet to be determined by this honourable court, and consequently, the legitimacy of subdivision E of that Lot is also yet to be determined.

In the skeleton arguments also filed on 24th August, 2020, Order 14 Rule 5(1) of the High Court Rules, Chapter 27 of the Laws of Zambia is referred to, stating that under provision, a party will not be joined to the proceedings, unless they have an interest in the subject matter of the proceedings, or they will be affected by the outcome of that action.

The argument is that the 1st defendant in the affidavit in opposition, has shown that subdivision Lot No 14915/M/E, is already subject of these proceedings, and as at 23rd October, 2018, the property was registered in the names of Shaukat Dudhia. Consequently, the intended 24th plaintiff has not shown that he has an interest in these proceedings. It is prayed that the application be denied.

No affidavit in reply has been filed.

I have considered the application. It has been made pursuant to Order 14 Rule 5 (1) of the High Court Rules, Chapter 27 of the Laws of Zambia, which provides that;

“5. (1) If it shall appear to the Court or a Judge, at or before the hearing of a suit, that all the persons who may be entitled to, or claim some share or interest in, the subject-matter of the suit, or who may be likely to be affected by the result, have not been made parties, the Court or a Judge may adjourn the hearing of the suit to a future day, to be fixed by the Court or a Judge, and direct that such persons shall be made either plaintiffs or defendants in the suit, as the case may be. In such case, the Court shall issue a notice to such persons, which shall be served in the manner provided by the rules for the service of a writ of summons, or in such other manner as the Court or a Judge thinks fit to direct; and, on proof of the due service of such notice, the person so served, whether he shall have appeared or not, shall be bound by all proceedings in the cause:

ownership of, was registered to the 1st plaintiff, and it is already subject of these proceedings.


Indeed, exhibit 'JC5' to the affidavit in opposition which is the Lands Register, shows that the plaintiff is the registered owner of subdivisions A-Z and A1-13. However, exhibit 'RMB1' to the affidavit in support of the application, is a contract of sale between the 1st plaintiff and the intended 24th plaintiff for the sale of subdivision No E of Lot 14815/M Lusaka. There is a letter dated 6th January, 2020, which was written to the 2nd plaintiff by Augustine Mubanga Chanda, a Field Survey Officer in the Survey Department, which is exhibited as 'RMB2' to the affidavit in support of the application.

In that letter, he advises that subdivisions A-D, K-M, P-R, W-Z, A1, A2, A5-A11 fall within Lot 947/M according to the desktop verification. Subdivision E of Lot 14915/M has not been stated as falling within Lot 947/M, and this is even confirmed by the letter exhibited as 'RMB3' to the affidavit in support of the application, which the then advocates for the intended 24th plaintiff wrote the 1st defendant's legal Counsel on 27th April, 2020.

Clearly, subdivision E of Lot 14915/M does not fall within the land that the 1st defendant claims ownership of, and which the plaintiffs claim the 1st defendant is trespassing on. Any decision that this court may make, will relate to the properties that have been cited as having encroached on Lot No 947/M. In that regard, the intended 24th plaintiff has not demonstrated that he has sufficient interest in the proceedings or that he will be affected by the outcome of these proceedings, warranting that he be joined to the action.

This is because even without him being a party to these proceedings, the matter will be effectually and completely adjudicated. The application accordingly fails, and it is dismissed. The matter shall come up for trial on 3rd and 4th March, 2021 at 09: 00 hours on both dates. Costs shall be in the cause, and leave to appeal is granted.

DATED AT LUSAKA THIS 9th DAY OF SEPTEMBER, 2020



S. KAUNDA NEWA
HIGH COURT JUDGE