

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

2004/HP/0093

BETWEEN

BILEX KENNETH MUTALE

PLAINTIFF

AND

LENARD BWALYA KALUBA
DON MULENGA
FELIX KANGWA



1ST DEFENDANT
2ND DEFENDANT
3RD DEFENDANT

**BEFORE THE HONOURABLE LADY JUSTICE M. CHANDA THIS 28TH DAY
OF FEBRUARY, 2020**

APPEARANCES:

For the plaintiff : Mr B. Mukatuka of Robson Malipenga and Company

For the 1st defendant : No appearance

For the 2nd defendant: In person

For the 3rd defendant : No appearance

R U L I N G

Legislation referred to

ORDER XXII OF THE HIGH COURT RULES CHAPTER 27 OF THE LAWS OF
ZAMBIA

This is an application by the plaintiff for the review of the judgment delivered by Judge Nyangulu on 17th January, 2005. The brief

background of this case is that the plaintiff commenced this matter on 6th February, 2004 by way of Originating Summons pursuant to Order 113 of the Rules of the Supreme Court of England, 1999 edition. The plaintiff's claim was for summary possession of farm S/D21 of S/DB of S/D1 of S/DA of Farm Number 687, Makeni, Lusaka from the defendants who were in occupation without a licence or consent from the plaintiff.

During the hearing of the matter, it was brought to the court's attention that the extent of the land in contention was five acres and that the plaintiff had built his property on two acres while the defendants were occupying three acres. The court expressed its view that the defendants should reimburse the plaintiff the amount of money that he paid for the three acres. The court further stated that two acres of the land was to be retained by the plaintiff and could not be taken away from him more so that the land had been bought from an individual and not from the government.

When the judgment was delivered on 17th January, 2005, the plaintiff noticed that despite the defendant being ordered to pay him K4.75 million kwacha for the land, there was no mention of the two acres of land that he was entitled to retain. It was on this premise that the plaintiff applied for review of the judgment stating that the issue of the two acres of land was not dealt with by the court.

Before the application for review could be heard, the 2nd defendant also commenced proceedings under cause number 2012/HP/1542 in which he sued the plaintiff (who now became the defendant)

claiming for a declaration that he was the legal owner of the same land. He stated that his claim was arising from the fact that despite him paying the plaintiff the sum of K4.75 million as ordered in the judgment, the plaintiff had continued to harass him and his family and had sold part of his plot to an unknown person. He also filed an application for an order of interim injunction to restrain the plaintiff from harassing, interfering, encroaching or developing a structure on the property in contention. The 2nd defendant filed an affidavit in opposition on the ground that the second cause was a parallel litigation to the first one and therefore amounted to multiplicity of action. The court's ruling in this regard dated 21st February, 2013 was that there was no multiplicity of action by the 2nd defendant because commencing a fresh action was the only route available to him in a situation where the judgment had not made a specific order to the defendant for which he could be cited for contempt of court in those proceedings. The court also granted the application for an injunction in the same ruling. There was no appearance entered or defence filed by the defendant and therefore a judgment in default of appearance and defence was entered in the plaintiff's favour. The judgment was later upheld by the Deputy Registrar in his ruling dated 3rd May, 2017. The defendant then filed an application to stay execution of the ruling pending appeal which was dismissed by the court on 16th June, 2017 and he was granted leave to appeal.

The plaintiff in this cause then reverted to these proceedings to file his notice of intention to proceed in July, 2017 before Banda-Bobo J and the 2nd defendant also filed his opposition to the application

for review of the judgment. The matter was reallocated from Mrs Justice Banda-Bobo to this Court on 17th July, 2018.

The matter came up for a status conference on 13th November, 2018. In Keeping with *Order XXII of the High Court Rules Chapter 27 of the Laws of Zambia* the Court proceeded to ascertain and determine what the material issues in controversy between the plaintiff and the 2nd defendant were. Upon hearing the parties and a thorough perusal of the proceedings under causes 2004/HP/0093 and 2012/HP/1542, the parties were accordingly directed that the resolution of their long standing grievance over farm number 687 Makeni Lusaka lay in them retaining a surveyor to demarcate the property in line with the initial proceedings of 15th September, 2004 before Hon. Justice Nyangulu and the subsequent judgment of the Court rendered on 17th January, 2005.

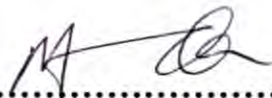
When the matter came up for a status report on 22nd January, 2019 the parties indicated that they had failed to comply with the Court's directive. The Court proceeded to order that the office of the Surveyor General under the Ministry of Lands be engaged by the parties to carry out the said demarcation of the property and render a report to the Court.

In compliance with the Court's order the office of the Surveyor General subdivided the farm and submitted the site plans showing the location of the subdivision in relation with the boundary of the parent property, Sub D of Sub 21 of Sub B of Sub 1 of Sub A of farm 687.

It is my affirmation that the subdivision and the specified dimensions marked as exhibit “**BKM1**” submitted by the office of the Surveyor General on 24th May, 2019 is in line with judgment rendered by Nyangulu J on 17th January, 2015. In view of the foregoing I order that the parties herein should proceed to obtain title deeds in accordance with the specified dimensions in the Surveyor General’s site plan. I further order that Mr Don Mutenda should reimburse Mr Bilex Mutale half of the surveyor’s fees.

I accordingly order that this marks the close of the two actions under caused 2004/HP/0093 and 2012/HP1542.

Dated at Lusaka this 28th day of *February*, 2020.



.....
M. CHANDA
HIGH COURT JUDGE