

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

2019/HP/1672



IN THE MATTER OF:

PROPERTY KNOWN AS HOUSE NO
13/30/19174 MATERO, LUSAKA

AND

IN THE MATTER OF:

AN APPLICATION FOR A VESTING ORDER,
PURSUANT TO SECTION 14 OF THE HIGH
COURT ACT, CHAPTER 27 OF THE LAWS OF
ZAMBIA

BETWEEN:

MAJORY MUSONDA

APPLICANT

AND

GETRUDE MWAPE

RESPONDENT

BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 11th DAY OF MARCH,
2020

For the Applicant : in person

For the Respondent : no appearance

J U D G M E N T

LEGISLATION REFERRED TO:

The High Court Act, Chapter 27 of the Laws of Zambia

This action was commenced on 21st October, 2019 by originating summons, in which the applicant seeks the following reliefs;



- i. *An order that the applicant is entitled to a vesting order relating to the property situated at House number 13/30/19174 Matero, and is entitled to summary possession of the said land.*
- ii. *An order that the Deputy Registrar of the High Court of Zambia shall execute a deed of assignment on behalf of Getrude Mwape, the principal vendor of the property, and whose whereabouts are unknown, as she is believed to be deceased.*
- iii. *An order that the Registrar of Lands and Deeds shall effect transfer of ownership of the property, and shall duly issue a certificate of title in the names of Majory Musonda.*
- iv. *Any other relief that the court may deem fit.*

The affidavit in support of the application, which is deposed to by the applicant, reveals that the applicant purchased the property known as House No 13/30/19174 Matero from the respondent on the 5th day of March, 2004. The contract of sale that was executed between the parties is exhibited as 'MM1' to the affidavit. It is averred that the applicant, as shown on exhibit 'MM2' to the affidavit, wrote a letter to the Director, Legal Services for regularization of the property, House No 13/30/19174 Matero, on 28th December, 2016.

However, the Lusaka City Council wrote a notice to the applicant, directing that the property, House No 13/30/19174 Matero, be transferred into her name. Further, that she should cause a notice to be published within fourteen (14) days, as shown on the notice which is exhibited as 'MM3' to the affidavit. To this effect, the applicant made the necessary payments as shown on the receipt exhibited as 'MM4', and on

3rd May, 2018, she caused to be published a notice in the Times of Zambia newspaper, which is exhibited as 'MM5'.

Further, on 10th October, 2019, the applicant swore an affidavit for not having a copy of the respondent's national registration card. Exhibit 'MM6' is a copy of the said affidavit. It is the applicant's averment that she has not been touch with the respondent from the date that she purchased the property from her, and she is desirous of having title to the property transferred into her names.

At the hearing, the applicant relied on the affidavit filed in support of the application, and she explained that the names on her national registration card are different from those on the letter of sale, as on the letter of sale, she used her late husband's name Kawangu. She filed a further affidavit in support of the originating summons on 14th November, exhibiting her national registration card, which indicates her names as Majory Musonda.

On 24th February, 2020, the applicant filed an affidavit of service showing that the proceedings had been advertised in the Times of Zambia newspaper on 12th February, 2020.

I have considered the matter. It was brought pursuant to Section 14 of the High Court Act, Chapter 27 of the Laws of Zambia. The Section provides that;

“14. Where any person neglects or refuses to comply with a judgment or order directing him to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the Court may, on such terms and conditions, if any, as may be just, order that the conveyance, contract or

other document shall be executed or that the negotiable instrument shall be endorsed by such person as the Court may nominate for that purpose, and a conveyance, contract, document or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it”.

As can be seen from the affidavit filed in support of the originating summons, the applicant deposes that she has not been in contact with the respondent, who was the vendor of the property known as House No 13/30/19174, since the sale took place on 5th March, 2004. The said contract of sale is exhibited ‘MM1’ to the affidavit in support of the originating summons.

On that document, the vendor is indicated as Getrude Mwape, and the buyer as Majory Kawangu holder of national registration card number 219737/61/1. The applicant commenced these proceedings as Majory Musonda, and in the further affidavit in support of the application, she exhibited her national registration card as ‘MM1’. The said registration card bears the number 219737/61/1, with the names as Majory Musonda. The applicant in her submissions told the court that she had used the name Majory Kawangu when executing the contract of sale for the property, Kawangu being her late husband’s name.

It can be seen that the number on the applicant’s national registration card tallies with the one that is on the contract of sale, and I am therefore satisfied that the Majory Kawangu indicated on the letter of sale, exhibited as MM1’ to the further affidavit in support of the originating summons, is the same person as the applicant, whose

identity is confirmed by the national registration card, exhibited as 'MM1' to the further affidavit in support of the application.

Further, the proceedings were advertised in the Times of Zambia newspaper, and the respondent was put on notice as to the proceedings, but she has not filed anything in response to the reliefs sought by the applicant. I am satisfied that the applicant is entitled to a vesting order, which I accordingly grant.

I also direct that the respondent shall within forty five (45) days from today execute the assignment and all the other documents necessary to transfer ownership of the property, House No 13/30/19174 Matero, into the applicant's name. To this end, the applicant shall forthwith advertise the judgment in the daily newspapers, that enjoy wide circulation in the country.

If the respondent shall not execute the documents as directed, and upon an affidavit of service being filed as proof of service, the Registrar of the High Court shall execute the said documents. I make no order as to costs.

DATED AT LUSAKA THIS 11th DAY OF MARCH, 2020

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S. KAUNDA NEWA
HIGH COURT JUDGE