

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



**2020/HP/0081**

**IN THE MATTER OF:**

**THE PROPERTY KNOWN AS STAND NO  
802/74/17 CHILENJE SOUTH LUSAKA**

**AND**

**IN THE MATTER OF:**

**AN APPLICATION FOR AN ORDER THAT THE  
COURT PREPARES AND EXECUTES  
CONVEYANCING DOCUMENTS PURSUANT TO  
SECTION 14 OF THE HIGH COURT ACT,  
CHAPTER 27 OF THE LAWS OF ZAMBIA**

**BETWEEN:**

**LENGANJI NALUONDE**

*(Administratrix of the estate of the late Plessed Siluonde)*

**1<sup>st</sup> APPLICANT**

**SUWILANJI NALUONDE**

*(Administratrix of the estate of the late Plessed Siluonde)*

**2<sup>nd</sup> APPLICANT**

**AND**

**KENNETH CHILOMBE**

**RESPONDENT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 16<sup>th</sup> DAY OF MARCH,  
2020**

*For the Applicant : Ms N. Nambao, Mulungushi Chambers*

*For the Respondent : no appearance*

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

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LEGISLATION REFERRED TO:

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

The applicants commenced this action on 16<sup>th</sup> January, 2020 by originating summons claiming;

- 1. An order that the Deputy Registrar of the High Court prepares and executes the necessary documents relating to Stand No 802/7417 Chilenje South, Lusaka from Kenneth Chilombe to Plessed Siluonde for the reasons stated in the affidavit.*

In the affidavit in support of the originating summons which is deposed to by both applicants, they aver that they are the duly appointed Administrators of the estate of the late Plessed Siluonde, which letters of administration are exhibited to the further affidavit in support of the application as exhibit 'S&LN1'.

The deponents further aver that in 1996, the late Plessed Siluonde purchased Stand No 7417 Chilenje South, Lusaka from Kenneth Chilombe, after he obtained a loan from his former employers, BP Zambia Limited. Exhibited as 'S&LN2' to the affidavit is the letter approving the loan. It is also stated that Kenneth Chilombe and the late Plessed Siluonde executed a Deed of Assignment, which is exhibited as 'S&LN3' to the affidavit, but it was not registered at the Lusaka City Council.

The applicants aver that the late Plessed Siluonde redeemed the mortgage as shown on exhibit 'S&LN4', the memorandum from BP Zambia Limited releasing the title deed, and the late Plessed Siluonde was handed over the title deed. It is further deposed that efforts to get in touch with Kenneth Chilombe have proved futile, and this is evidenced by the letters exhibited as 'S&LN6-7' to the affidavit.



It is also stated that the applicants are not in possession of Kenneth Chilombe's national registration card, and that BP Zambia Limited is no longer operational in Zambia, and as such, the applicants have been unable to trace the mortgage documents. The applicants aver that the late Mr Phiri who did the conveyancing for the transaction was ill, and he was hospitalized in India where he died in March, 2019, as shown on exhibit 'S&LN8'. That other than the box number for Kenneth Chilombe, there are no other means of tracing his whereabouts.

At the hearing, Counsel relied on the affidavit that was filed in support of the originating summons, and she also stated that they had obtained an order from the Registrar of the High Court to service the process by way of substituted service. To that effect they had advertised the proceedings on 17<sup>th</sup> and 18<sup>th</sup> February, 2020, and they had filed an affidavit of service on 20<sup>th</sup> February, 2020. Counsel prayed that the application be granted.

I have considered the matter. It was brought pursuant to Section 14 of the **High Court Act, Chapter 27 of the Laws of Zambia**, which 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”.***

In this matter, it can be seen that the Kenneth Chilombe was the vendor of the property known as Subdivision 802 of Stand No 7417, Chilenje South to the late Plessed Siluonde, whose estate is being administered by the two applicants, as shown on exhibit “S&LN1’ to the further affidavit in support of the originating summons, the letters of administration. The sale of the property is evidenced from the deed of transfer exhibited as ‘S&NL8’ to the affidavit in support of the originating summons. That document is undated.

Exhibit ‘S&LN5’ to the affidavit is a certificate of title for the property S/D 802 of Stand 7417, Chilenje South, Lusaka in the names of Eunice Tembo Shakwambwa which was issued on 21<sup>st</sup> December, 1988. In the memorials of that certificate of title it shows that there was a transfer of the property to Kenneth Chilombe on 28<sup>th</sup> November, 1989.

While the deed of transfer was signed between Kenneth Chilombe and the late Plessed Siluonde, it was never registered. It however establishes that there was a sale of the property between the two. The applicants have deposed that they have been unable to contact Kenneth Chilombe so that he can execute the deed of assignment to transfer the ownership of the property into the late Plessed Siluonde’s names.

They advertised the proceedings, but Kenneth Chilombe has not responded to the same. They now apply for a vesting order, which is a court order passing legal title in lieu of a legal conveyance. I accordingly direct that the respondent, Kenneth Chilombe, shall within forty five (45) days from today execute the deed of assignment and all other documents



necessary to transfer ownership of the property known as Stand No 802/7417 Chilenje South, Lusaka into the names of the applicants, who are the administrators of the estate of the late Plessed Siluonde.

To this end, the judgment of the court directing Kenneth Chilombe to execute the said documents shall be advertised in the daily newspapers that enjoy wide circulation forthwith. If after the elapse of the forty five (45) days, and the said Kenneth Chilombe would not have executed the documents, and on an affidavit of service being filed to show proof of service of the judgment, the Registrar of the High Court shall execute the documents. I make no order as to costs.

**DATED AT LUSAKA THE 16<sup>th</sup> DAY OF MARCH, 2020**

*Kaunda*  
**S. KAUNDA NEWA**  
**HIGH COURT JUDGE**