

IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA  
(CIVIL JURISDICTION)

2021/HP/1520

IN THE MATTER OF:

ORDER 113 OF THE RULES OF SUPREME  
COURT OF ENGLAND (WHITE BOOK) 1999  
EDITION,

IN THE MATTER OF:

AN APPLICATION FOR SUMMARY  
POSSESSION OF LOT NO. 9459/M SITUATE  
AT LUSAKA IN THE LUSAKA PROVINCE OF  
REPUBLIC OF ZAMBIA

BETWEEN:

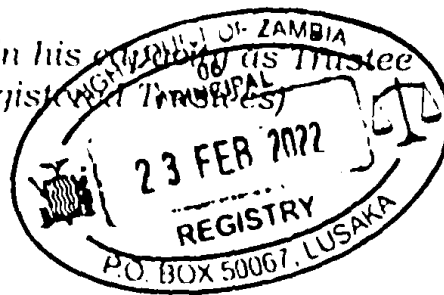
JOESPH MTONGA (*suing in his capacity as Trustee  
of Lonjedzani Community Register*)

APPLICANT

AND

CATHERINE PHIRI  
DELIAH PHIRI  
MALA BANDA  
AND ALL PERSONS UNKNOWN

1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT  
3<sup>RD</sup> RESPONDENT  
4<sup>TH</sup> RESPONDENT



**Before:**

***The Hon. Mr. Justice Charles Zulu.***

For the Applicant:

Ms. M. Marebesa and Dr. O. Kaaba, Legal Aid  
Counsel, Legal Aid Board.

The Respondents:

No appearance

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## J U D G M E N T

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Case referred to:

1. *LiamondChoka v. Chilufya (S.C.Z. Judgment no. 2 of 2002).*

Statutes referred to:

1. *The Rules of the Supreme Court of England (RSC) (White Book, 1999 Edition).*

## **INTRODUCTION**

The Applicant, Joseph Mtonga, in his capacity as a trustee of Lonjedzani Community Registered Trustees (a body corporate under the **Perpetual Succession Act Chapter 186 of the Laws of Zambia**), took out an originating summons, dated December 6, 2021, pursuant to Order 113 **Rules of the Supreme Court (RSC) of England (White Book 1999) Edition**. The object of Order 113 RSC is essentially and solely aimed at giving summary redress to a land owner to repossess his/her land from a person or persons occupying the land without his/her consent or licence. The relief sought by the Applicant was itemized as follows:

- i. an order for summary possession of Plot No. 9459/M situate at Lusaka;***
- ii. an order for eviction of the Respondents who are squatters on Plot No. 9459/M situate at Lusaka;***
- iii. further or other relief as the Court may deem fit; and***
- iv. costs of and incidental to this action.***

The action was scheduled for trial on February 1, 2022, however, on the return date, only the Applicant and his Advocates were present. The Respondents were inexcusably absent. An affidavit of service was deposed to by Mr. Joseph Mtonga, stating that not only did the Respondents merely refuse to receive court process, they emerged with machetes and sticks, and threatened him with murder, leaving him with the option of dropping the documents to the ground. That service of the notice of hearing was only later on made possible in the company of police officers. Having been

satisfied that the Respondents were duly served with notices of hearing, leave to proceed was granted to the Applicant.

**SUMMARY OF THE APPLICANT'S CASE**

The application was supported by an affidavit and skeleton arguments. The application was unopposed.

An affidavit in support of the application was deposed to by Joseph Mtonga, in his capacity as a trustee of Lonjedzani Community Registered Trustees. He deposed that Lonjedzani Community Registered Trustees was a youth scheme project under the auspices of the Catholic Church. He stated that the subject property namely, Lot No. 9459/M Lusaka, having been acquired by the Applicant, from Stanley Kananga in the year 1996, was now the registered property of the Applicant, Lonjedzani Community Registered Trustees. The Certificate of Title dated December 29, 2002, was exhibited, showing the Applicant, Lonjedzani Community Registered Trustees as the registered proprietor of the land in issue.

It was further stated, that at the time the Applicant purchased the land, the status of the first, second and third Respondents was that, they were caretakers of the predecessor in title, Mr. Kananga (the vendor). He added that after the sale transaction, the trio were retained by the Applicant as caretakers. That around 2019, the trio, connived with suspected cadres of the Patriotic Front otherwise herein known as the fourth Defendants, and demarcated the subject land to themselves and commenced construction of houses. He stated that several efforts to stop the Respondents from taking

possession of the land proved futile, and that instead the Respondents resorted to resistance and violence.

### **DETERMINATION**

I have carefully considered the affidavit evidence adduced by the Applicant. The law regarding the application of Order 113 RSC, was enunciated in the case of **Liamond Choka v. Chilufya (S.C.Z. Judgment no. 2 of 2002)** wherein the Supreme Court of Zambia held:

*The editorial introduction provided by the learned authors of the White Book is quite illuminating. See Order 113 R (2) (White Book 1999). Apart from tracing the genesis of the order, the introduction also contains the following extract. The circumstances which the procedure can be used are restricted to cases where the land is occupied by persons who have entered into or remain in possession of the land without the license or consent of the person claiming possession.*

Recourse is had as well to the case of **Saul Kureba v. Ganizani & Attorney General (1995) S.J 5**, the Supreme Court of Zambia in a judgment by Gardner J.S., held:

*We should make it clear that we agreed with the proposition that, in the ordinary way, one purchaser of land who acquires a Certificate of Title has a right to possession against all other persons on the land he has acquired...*

And the inevitable fate of squatters occupying and developing land in violation of the rights or interests of the registered proprietor was aptly put by Commissioner M.M.S.W. Ngulube (as he was then), in

the case of Raphael Ackim Namung'andu v. Lusaka City Council (1978) Z.R. 358 (H.C.) wherein he held:

*Squatters build on their own risk and if the owners of the land withdraw their permission or licence or if they decide to demolish a structure built in the absence of any permission or other lawful relationship, the squatters' losses though very much regrettable are not recoverable in a court of law.*

Reverting to the present case, I am satisfied that the registered proprietor of Lot No. 9459/M Lusaka is Lonjedzani Community Registered Trustees. The Certificate of Title adduced herein conclusively attests to my findings above. And it is distinct that the continued occupation of the land by the Respondents is without consent or licence of the Applicant. Simply put, the Respondents are squatters amenable to ejection. Therefore, the Respondents have no lawful justification to remain in possession of the land.

**CONCLUSION**

In the light of the foregoing, the Applicant is entitled to an order for possession of the subject land, and I so order.

Costs for the Applicant, to be taxed in default of agreement.

**DATED THE 23<sup>RD</sup> DAY OF FEBRUARY, 2022.**



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**THE HON. MR. JUSTICE CHARLES ZULU**