

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

**2022/HP/0217**

**IN THE MATTER OF:      SALE    OF    PROPERTY    NUMBER  
   LUS/22728**

**IN THE MATTER OF:      ORDER 30 RULE 11(b) (f) (i) and (j) OF  
   THE HIGH COURT RULES CHAPTER  
   27 OF THE LAWS OF ZAMBIA.**

**BETWEEN:**

**MUMANA PLEASURE RESORT LIMITED              APPLICANT**

**AND**

**MARTHA MUZONDIWA                                      RESPONDENT**

***Before Honourable Mr. Justice C. Kafunda the 30<sup>th</sup> day of  
September, 2022***

*For the Applicant:      P. Chulu of Kalokoni and Co.*

*For the Respondent: No Appearance*

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## **JUDGMENT**

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**Cases Cited:**

- 1. Rural Development Corporation Ltd V Bank of Credit and  
Commerce Zambia Ltd (1987) ZR 35.***
- 2. Charles Kajimanga V Marmetus Chilemya Appeal No. 50  
of 2014.***

**3. *Hutton v Walting (1947) 2 All E R 641 at 641.***

**4. *Tito v Waddel (No. 2) (1977) Ch. D.P. 106, p. 322.***

**Legislation Referred to:**

**1 *Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia***

**2 *Lands Act, Chapter 184 of the Laws of Zambia***

**3 *High Court Act Chapter 27 of the Laws of Zambia***

The Applicant took out an originating summons for an order of vacant possession in respect of Property No. LUS/22728 Lusaka. The originating summons was accompanied by an affidavit in support and sworn by one Mataa Mukelabai a Director in the Applicant company which claims the following:

1. *A declaration that the Applicant is the lawful owner of Stand No. LUS/22728 Lusaka.*
2. *An Order of possession of Lusaka.*
3. *An Order of eviction evicting the Respondent, their agents, servants and whomsoever from occupying Stand No. LUS/22728 Lusaka.*
4. *Damages for loss of rental income from the date of completion of the conveyance between the Applicant and the Respondent to date.*
5. *Damages for breach of contract.*
6. *Costs.*

7. *Interest on all the amounts found due.*
8. *Any other relief the Court deems fit.*

Paragraphs 4 to 9 of the affidavit in support of the originating summons sets out the main reasons grounding the application as follows:

- 4 *That in or around June, 2021 the Applicant purchased Stand No. LUS/22728 Lusaka from the Respondent at USD 77,093.00. Now produced and shown to me marked "MM1" is a copy of a contract of sale.*
- 5 *That further a deed of Assignment was executed between the parties to conclude the sale of Stand No. LUS/22728 Lusaka to the Applicant. Now produced and shown to me marked "MM2" is a true copy of the said Assignment*
- 6 *That all the statutory steps for the transfer of title to the Applicant were taken thus Ministry of Lands issued a certificate of title in the name of the Applicant on 14<sup>th</sup> December, 2012. Now produced and shown to me marked "MM3" is a true copy of the said certificate of title.*
- 7 *That it was an agreed term in the contract of sale that the Respondent would surrender possession of the property upon completion of the conveyance.*
- 8 *That even though the conveyance was completed, the Respondent has refused to vacate the property.*
- 9 *That I am reliably informed by the Applicant's advocates and believe this to be true that this Honourable Court has power to*

*grant possession of LUS/22728 to the Applicant and evict the Respondent.*

The Applicant filed skeleton arguments in which it was submitted that the matter qualifies to be commenced by way of originating summons pursuant to Order 30 Rule 11 of the High Court Rules Chapter 27 of the Laws of Zambia. Order 30 Rule 11 (b) (c) and (f) provides as follows;

***(b) An application by any person claiming to be interested under a deed, will or other written instrument for the determination of any question of construction arising under the instrument and for a declaration of the rights of the person interested;***

***(c) An application by any person claiming any legal or equitable right, in a case where the determination of the question whether he is entitled to the depends upon a question of construction of a statute, for the determination of such question of construction and for a declaration as to the right claimed***

***(f) Applications connected with the management of property.***

The Applicant relied on the case of **Rural Development Corporation Ltd V Bank of Credit and Commerce Zambia Ltd<sup>(1)</sup>** where the Supreme Court affirmed that **Order 30 rule 11 of the High Court Rules** sets out the business to be disposed of in chambers. That from the reliefs sought, the Applicant's case fell within the ambit of **Order 30 Rule 11**.

The Applicant further cited Section 33 of the Lands and Deeds Registry Act Chapter 185 of the Laws of Zambia which states:

***“A Certificate of Title shall be conclusive as from the date of its issue and upon and after the issue thereof, notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the President or otherwise, which but for Parts III to VII might be held to be paramount or to have priority; the Registered Proprietor of the land comprised in such Certificate shall, except in case of fraud, hold the same subject only to such encumbrances, liens, estates or interests as may be shown by such Certificate of Title and any encumbrances, liens, estates or interests created after the issue of such Certificate as may be notified on the folium of the***

***Register relating to such land but absolutely free from all other encumbrances, liens, estates or interests whatsoever”***

The Applicant submitted that it is their understanding of **Section 33 of the Lands and Deeds Registry Act Chapter 185 of the Laws of Zambia** that a Certificate of Title is conclusive evidence of ownership of the land. In the absence of another party lawfully establishing an interest in the land, the Applicant is entitled to be declared the owner and to be granted all the reliefs attendant to such ownership. The Applicant cited the case of **Charles Kajimanga V Marmetus Chilemya<sup>(2)</sup>** where the Supreme Court held that:

***“A Certificate of Title is conclusive evidence of ownership of the property to which it relates. It can only be nullified if fraud in acquisition is proved.”***

When the matter came up for hearing on 30<sup>th</sup> June, 2022 the Respondent did not attend. An affidavit of service attesting to the service of the originating summons and notice of hearing onto the Respondent was filed. At the hearing, the Applicant relied on the

affidavit in support of the originating summons and skeleton arguments filed in support and prayed that the Court grants the Applicant the reliefs sought.

I have considered the originating summons, affidavit in support and skeleton arguments. According to the record, there was a contract for the sale relating to Stand No. LUS/22728 Lusaka between the Applicant and the Respondent upon which the process to transfer land to the Applicant commenced and a Certificate of Title was granted to the Applicant.

What needs to be considered therefore is whether or not the Applicant is entitled to vacant possession of the said property.

It is clear from the evidence on record that the subject property was lawfully conveyed from the Respondent to the Applicant. The Respondent however, upon being given notice to vacate the property, did not vacate the property, thereby depriving the Applicant access to and possession of the property.

Lawful service of the originating summons was effected on the Respondent and an affidavit of service was filed. The Respondent did not appear to the action nor did she attend the Court to challenge the Applicant's claim of right to the subject property. I



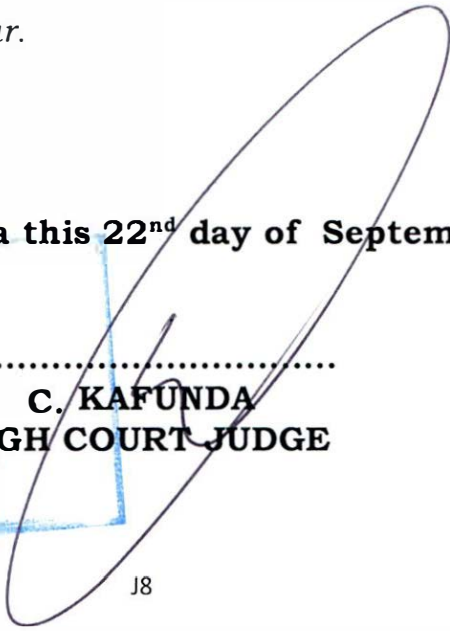
am therefore satisfied, that the Respondent was properly summoned and served with Court process and that she has failed to establish any lawful interest in the subject property.

The Court is satisfied that the Applicant, as legal owner of the subject property, is entitled to possession of the property and the Respondent has a corresponding obligation to yield vacant possession of the property to the Applicant.

This Court in exercise of powers vested in it therefore, grants the Applicant the following reliefs:

1. *An order for vacant possession for Stand No. LUS/22728 Lusaka to the Applicant to enable the Applicant deal with the property.*
2. *An order for eviction of the Respondent from Stand No. LUS/22728 Lusaka.*
3. *Damages for loss of rental income to be assessed by the Deputy Registrar.*
4. *Costs*

**Delivered at Lusaka this 22<sup>nd</sup> day of September, 2022**

  
.....  
**C. KAFUNDA**  
**HIGH COURT JUDGE**  
