

IN THE HIGH COURT FOR ZAMBIA

2023/HP/390

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(Civil jurisdiction)

IN THE MATTER OF: AN APPLICATION FOR AN ORDER TO EXECUTE
CONVEYANCE
IN THE MATTER OF: SECTION 14 OF THE HIGH COURT ACT, CHAPTER 27
OF THE LAWS OF ZAMBIA
IN THE MATTER OF: SUBDIVISION L OF SUBDIVISION NO.151 OF FARM
NO. 737 SITUATE IN LUSAKA IN THE LUSAKA
PROVINCE OF THE REPUBLIC OF ZAMBIA.

BETWEEN:

BETHEL MINISTRIES TRUSTEES

PLAINTIFF

AND

CHARITY KAPONA

DEFENDANT

Before the Hon. Mr. Justice M.D. Bowa on 23rd of October 2023

For the Plaintiff: Mr. Z Sampa & Miss L Hall of Simeza Sangwa and Associates

For the Defendant: No Appearance

JUDGMENT

Cases referred to

1. *Chola Chakonta and Agness Chakonta vs. Administrator of the Estate of Patrick Malay* 2015/HP/2447
2. *Khalid Muhammad vs Attorney General* (1982) Z.R 49(SC)
3. *Wilson Masauso Zulu vs. Avondale Housing Project Ltd* (1982) ZR 172 (SC)
4. *Galunia Farms Limited v National Milling Company and National Milling Corporation Ltd* (2004) Z.R. 1

Legislation referred to:

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

1.1. Background

- 1.2. This action was commenced by way of Originating Summons and supporting affidavit dated 7th March, 2023 seeking an order that the Registrar of the High Court be appointed to execute the Assignment and all other documents necessary to complete the sale of Subdivision L of Subdivision No. 151 of Farm No. 737, Lusaka to the Plaintiff.
- 1.3. The affidavit in support was deposed to by Matakala Lungu Mataya, the registered Trustee of the Plaintiff. He averred that by a Judgment of the Lands Tribunal dated 1st August 2014, in the matter of Charity Kapona vs Bethel Church Ministries and 2 others under cause LAT/53/2013 , the Tribunal declared that the Defendant in the present matter Charity Kapona validly sold Subdivision L of Subdivision No. 151 of Farm 737 Lusaka to the Plaintiff. A copy of the Judgment was exhibited as “**MM1**”.
- 1.4. That the Judgment directed that the Defendant executes a contract of sale and Deed of Assignment in favour of Bethel Church Ministries and further register the transaction with the Ministry of Lands. Further that on the 28th of July, 2022,

the Judgment was registered on the land register of the property as per printout exhibited **“MM2”**.

- 1.5. It was averred that the Plaintiff has made all efforts to have the Defendant execute the contract of sale and Deed of Assignment but that the Defendant has been elusive. The deponent believed based on the advice of the Plaintiff's Advocates that in order to complete the conveyance, it has become necessary that an order be made appointing the Registrar of the High Court to execute the Deed of Assignment on behalf of the Defendant.
- 1.6. The Defendant filed into Court an affidavit in opposition on the 17th of March, 2023. It was her position that she has not been elusive and that the Plaintiff knows her address. Further that she disputes having sold the entire property but only a part of it measuring 15m x 15m.
- 1.7. She averred that the Judgment of the Tribunal was stayed pending the revisiting of the contract of sale by both parties to reflect such partial sale. A copy of the Order was exhibited as **“CKL1”**. It was her position that she is still waiting on the Plaintiff to come forward to settle the matter and amend the

agreement to enable the Plaintiff obtain a Certificate of Title on the part where they built a structure.

- 1.8. The Plaintiff filed an affidavit in reply dated 16th of June, 2023, deposed to by Matakala Lungu Mataya. It was averred that contrary to the position stated by the Defendant, the Defendant actually sold the entire property known as subdivision L of Subdivision No. 151 of Farm No. 737 not just a portion of it. Further that the issue relating to the sale was subject of litigation before the Lands Tribunal and thus not the subject of further debate.
- 1.9. Further that the Judgment directed that the Defendant executes a contract of sale and Assignment in favour of the Plaintiff. That there has been no appeal against the said Judgment. That the Defendant elusive behavior is apparent in her refusal to execute the assignment
- 1.10. It was averred that the Defendant relies on an order for stay of execution dated 8th September, 2014 to claim that the Tribunal ordered the parties to stay the execution of the Judgment pending the amendment of the letter of sale.

However that a perusal of the said order for stay of execution shows that the interpretation of the order is erroneous. He believed based on the advice of his advocates that in order to complete the conveyance in accordance with the Judgment of the Lands Tribunal, it is necessary that an order be granted for the Court to appoint the Registrar of the High Court to execute the contract of sale and Assignment on behalf of the Defendant.

2. 0. **Skeleton Arguments**

2.1 The Plaintiff placed reliance on section 14 of the High Court Act, Cap 27 of the laws of Zambia making provision for the Court's power to appoint a person to execute documents relating to a conveyance of property where the person so required fails or neglects to do so. Further reliance was placed on the case of ***Chola Chakonta and Agness Chakonta vs. Administrator of the Estate of Patrick Malay¹*** in which this Court laid down the requirements that a Plaintiff seeking an order under Section 14 of the High Court Act, must satisfy. Notably, that there must first be a prior Judgment or order. That the Court can only invoke its

power under the provision where any person has neglected or refused to comply with that prior judgment or order directing him to execute any conveyance document.

2.3 It was submitted that the Plaintiff has met the requirements under section 14 of the High Court Act and that the Court ought to grant it the order sought.

2.4 The Defendant filed skeleton arguments on the 17th of March, 2023. It was submitted as not in dispute that there is a Judgment delivered by the Lands Tribunal which she contended was stayed. It was argued that the Defendant was readily available to engage the Plaintiff to amend the contract of sale pending the execution of the Assignment in favour of the Plaintiff.

2.5 At the hearing the Defendant was not in attendance and Counsel for the Plaintiff confirmed that the Defendant was served with court process and a notice of hearing. He referred the Court to an affidavit of service filed to that effect. I as such proceeded to hear the matter in line with

Order 35 Rule 3 of the High Rules, Cap 27 of the laws of Zambia, which provides that:

“If the plaintiff appears, and the defendant does not appear or sufficiently excuse his absence, or neglects to answer when duly called, the Court may, upon proof of service of notice of trial, proceed to hear the cause and give judgment on the evidence adduced by the plaintiff, or may postpone the hearing of the cause and direct notice of such postponement to be given to the defendant”

3.0 Court’s consideration

3.1 I have carefully considered the evidence before me. The issue for my determination is simply whether the Plaintiff is entitled to the reliefs sought. Before a Court can grant the reliefs prayed for by the Plaintiff, the Court ought to satisfy itself that the Plaintiff has met the requirements under Section 14 of the High Act, Cap 27 of the Laws of Zambia which provides that:

“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. (emphasis added)

- 3.2 A proper read of section 14 above will quickly reveal that it is only after a Court has handed down a Judgment or Order that is willfully disregarded by the Defendant, that the Court considering an application for a vesting order can direct that the Deputy Registrar executes an Assignment or any other document relating to the sale transaction on behalf of a party to the contract.
- 3.3 A perusal of the affidavit in support, in particular exhibit “MM1” shows that there was a Judgment delivered by the Lands Tribunal which the Court held that the Defendant validly sold the entire property in dispute to the Plaintiff and not just a portion of it which was paid for in full.
- 3.4 I am further satisfied that the Plaintiff being a registered trust is capable of owning land in terms of the Land (Perpetual

Succession Act Cap 186 of the Laws of Zambia. Confirmation of such registration was exhibited '**MM3**' in the affidavit in support of the Originating Summons.

3.5 I find not disputed the fact that the Defendant has not complied with the Judgment of the court. The Plaintiff thus argues that it has duly satisfied the requirements of section 14 of the High Court Act and is entitled to an order that the Deputy Registrar executes an Assignment or any other document relating to the sale transaction on behalf of the Defendant.

3.6 However, the affidavit in opposition reveals that the Defendant obtained an order to stay of execution of the said Judgment. The order is reproduced below for ease of reference

IN THE LAND TRIBUNAL

LAT/75/2014

HOLDEN AT LUSAKA

BETWEEN:

CHARITY KAPONA

COMPLAINANT

AND

3.5 The above order is clear in its terms. The order clearly stayed execution of the Judgment of the Lands Tribunal in issue. There is no order discharging the stay or application on file to set it aside. This indeed was not the contention of the Plaintiff. Therefore, unless and until the order is set aside, it remains in force and binding on all the parties. It is for this reason that I cannot possibly grant the Plaintiff's prayer for the orders sought. The Plaintiff's application is therefore dismissed with costs to be taxed in default of agreement.

Dated at Lusaka this ^{28th}.....day of ^{October}.....2023.



HON. JUSTICE M.D BOWA