

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA

2023/HP/0885

(Civil jurisdiction)

BETWEEN:

PETER AUGUSTINE CHILUFYA
AND

COLLINS KANGAI MUNUNGA



PLAINTIFF

DEFENDANT

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

For the Plaintiff: In Person

For the Defendant: No Appearance

JUDGMENT

Cases referred to

1. *Khalid Muhammad vs Attorney General* (1982) Z.R 49(SC)
2. *Wilson Masauso Zulu vs. Avondale Housing Project Ltd* (1982) ZR 172 (SC)
3. *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. The Plaintiff commenced this action by writ of summons and statement of claim dated 24th of May, 2023 seeking the following reliefs:

- (i) *For a declaration that the Plaintiff is a bona fide owner of the property known as 240/37520, Chelstone Lusaka, having duly bought and paid full purchase price for the same.*
- (ii) *For an order directing the Defendant to execute the conveyance relating to the property known as 240/37520, Chelstone Lusaka.*
- (iii) *In the alternative that the Plaintiff, be at liberty to apply for a vesting order directing the Deputy Registrar of the High Court to execute the Deed of Assignment on behalf of the Defendant whose whereabouts are not known.*
- (iv) *Costs and any other reliefs the Court deems fit.*

1.3. The Plaintiff obtained an order for substituted service on the 7th June, 2023 to serve the Defendant via an advert in the daily newspaper. The Originating process was served as well as subsequent court process on the Defendant. The Defendant did not enter appearance or file in any defence against the Plaintiff's claims. I proceeded to set the matter down for trial.

a house, a Certificate for purchase and a receipt from the Lusaka City Council. Reference was made to pages 1,2 and 3 of the Plaintiff's bundle of documents and it was his evidence that the same contained the documents he referred to. It was his further evidence that he conducted a search at Lusaka City Council to verify the Defendant's ownership of the house. That the search indeed confirmed that the Defendant was the registered owner of the property.

2.4 He stated that after being satisfied that the Defendant was the owner, he entered into a contract of sale for the purchase of the property at an agreed sum of K3,500,000.00 (unrebased). He referred to a document at page 4 of his bundle of documents, being the said contract of sale. Further that he made a full payment of the purchase price after which he was given vacant possession of the property.

2.5 He stated that despite having paid the full purchase price, the Defendant has not been able to complete the sale and that his whereabouts are unknown. That all efforts to locate the Defendant have proved futile. That sometime in 2022, he went to Lusaka City

Council to commence the process for change of ownership and he was advised that the process cannot be completed owing to the fact that the property was still in the Defendant's name and that he need to apply for a vesting order.

2.6 At trial, the Plaintiff relied on his witness statement and the bundle of documents filed in support of his case. He testified that he had possession of the property and that he last saw the vendor in 1998 and that he has tried to reach out to the Defendant for him to complete the sale but he has failed to locate him. He prayed that the Court granted him the relief being sought.

3.0 Court's consideration

3.1 I have carefully considered the evidence before me. The unchallenged facts in this case are:

- ✓ That the Plaintiff entered into a contract of sale with the Defendant for the sale of House No. 240/37520, Chelstone Lusaka.
- ✓ That the Plaintiff paid the sum of K 3,500,000.00 (unrebased) as the full purchase price for the property.

- ✓ That the Plaintiff is in possession of the said property.
- ✓ That the Defendant has not effected change of ownership of the property into the Plaintiff's name.

3.2 The issue for my determination is simply whether the Plaintiff is entitled to the reliefs sought. It is common cause that this matter is undefended. However, the Plaintiff is still required to prove his case. As succinctly put by the Supreme Court in the case of **Khalid Muhammad vs Attorney General**¹

“A Plaintiff must prove his case and if he fails to do so the mere failure of the opponents defence does not entitle him to judgment.”

3.3 Further, in the case of **Wilson Masauso Zulu vs. Avondale Housing Project Ltd**² Ngulube DCJ as he was stated that:

“I think it is acceptable that where a Plaintiff alleges that he has been wrongfully or unfairly dismissed as indeed in any other case where he makes any allegations, it is generally for him to prove these allegations a Plaintiff who has failed to prove his case cannot be entitled to judgment whatever may be said of the opponent's case.”

3.4 The Supreme Court reaffirmed this position in the latter case of **Galunia Farms Limited v National Milling Company and National Milling Corporation Ltd³** and concluded:

“We re-affirm that position. The burden to prove any allegation is always on the one who alleges.

3.5 The Plaintiff has demonstrated through the document at page 1 of his supplementary bundle of documents, the existence of the letter of sale. Further he has demonstrated through the documents at pages 1,2,3 and 5 that the registered owner of the property is the Defendant. Further uncontroverted evidence is that he entered into a contract of sale with the Defendant in 1997 and he paid for the property in full and has had possession of the house from that time.

3.7 It is my determination that the Plaintiff has proved the existence of a contract of sale. He has also clearly made effort to change the ownership of the property to his name. Commencing this action therefore is his ultimate effort to have title issued in his name. The exhibited contract of sale and the fact that the Plaintiff has had possession of the house from the time of the

sale go to show that he has a legitimate claim towards 240/37520 Chelstone Lusaka.

3.8 It is for the forgoing that I order the following:

1. I declare that the Plaintiff is the bonafide owner of the property known as 240/37520 Chelstone Lusaka having duly purchased it.
2. I direct that the Defendant proceeds to apply and obtain State's consent to assign and execute an Assignment relating to property known as 240/37520 Chelstone Lusaka to facilitate the transfer of the property into the Plaintiff's name within 45 days from the date of this Judgment.

3.9 I note that the Plaintiff prayed for an order in the alternative that the Deputy Registrar of the High Court be nominated to execute a Deed of Assignment on behalf of the Defendant.

3.10 However, section 14 of the High Act, Cap 27 of the Laws of Zambia 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)

3.11 A proper reading of section 14 above will show that it is only after a Court has given its Judgment or Order which is disregarded by the respondent that it can order that the Deputy Registrar executes an Assignment or any other document relating to the sale transaction on behalf of a party to the contract. Therefore I cannot grant the alternative prayer for a vesting order at this point. The prayer can only be made and granted upon such proof of neglect or refusal to comply with the Judgment of the Court.

3.12 The net effect of my judgment is that the Plaintiff succeeds in his claims except for claim (iii) which relates to the execution of

an assignment by the Deputy Registrar for reasons stated above.

Costs to the Plaintiff to be taxed in default of agreement.

Dated at Lusaka this 28th day of October 2023.


HON. JUSTICE M.D BOWA