

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

2023/HP/0154

**IN THE MATTER OF:** SECTION 81 and 82 OF THE LANDS AND  
DEEDS REGISTRY ACT, CHAPTER 185 OF  
THE LAWS OF ZAMBIA.

**BETWEEN:**

**ALBERT TEMBO**

AND

**HILDAH MUWELE**

**Before:**

For the Applicant:

The Respondent:



**APPLICANT**

**RESPONDENT**

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

Mr. A. Siwila, of Messrs Mambwe, Siwila,  
Lisimba Advocates.

No Appearance.

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

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Case referred to:

- 1. Sobek Lodges Limited v. Wildlife Authority 2008/HP/668 (unreported).**

Legislation referred to:

- 1. The Lands and Deeds Registry Act Chapter 185 of the Laws of Zambia.**

### **1.0 INTRODUCTION**

1.1 This judgment is respect of an application by way of originating summons for an order to remove the caveat placed

against the Applicant's property, namely, Subdivision No. 1306 of Subdivision 'F' of Farm No. 33a Lusaka. The Applicant sought the following relief:

***(i) an order that the caveat placed on Subdivision No. 1306 of Subdivision 'F' of Farm No. 33a Lusaka should be removed.***

1.2 The Applicant was unable to locate the where-about of the Respondent in order to effect personal service. As such, the Applicant opted to service court process via substituted service. The Applicant placed an advertisement in the Zambia Daily Mail dated April 10, 2024, advising the Respondent of the return date, April 19, 2024. The Respondent is, therefore, deemed to have been duly served with court process.

## **2.0 HEARING**

2.1 On the date scheduled for hearing, April 19, 2024, only the Applicant was in attendance, the Respondent was inexcusably absent, and no affidavit in opposition to the originating summons was filed. And leave to proceed was granted to the Applicant.

## **3.0 THE APPLICANT'S AFFIDAVIT EVIDENCE AND ARGUMENTS**

3.1 An affidavit in support of the originating summons was deposed to by Albert Tembo. He stated that he was the registered proprietor of Subdivision No. 1306 of Subdivision 'F' of Farm No. 33a Lusaka. He exhibited his Certificate of Title dated April 17, 2009. He stated that in October 2021, when he sought to sell his property, he discovered that it was

encumbered by a caveat dated December 22, 2017, placed by the Respondent. He stated that the Respondent was claiming an interest in the property, as the widow to the late Dr. Albert Tembo. He said Dr. Albert Tembo was not related to him.

3.2 And the Applicant's Counsel argued that the Respondent had no reasonable cause to place the said caveat. And I was urged to allow the application.

#### **4.0 DETERMINATION**

4.1 I am content that the registered proprietor of the subject land is the Applicant. And on December 12 2017, the Respondent placed a caveat purporting to have an interest in the property as the widow to Dr. Albert Tembo. In an application of this sort, the burden of showing cause why a caveat should not be removed lies with the caveator (Respondent). In **Sobek Lodges Limited v Wildlife Authority 2008/HP/ 668** (unreported) the Court held:

***Although the originating proceedings in an application for the removal of a caveat is at the instance of an applicant, section 81 of the Lands and Deeds Registry Act, places the burden of showing cause why a caveat should not be removed on the respondent.***

4.1 The Respondent having failed or neglected to enter appearance to defend the caveat, the application for removal of the caveat is bound to succeed. In any event, the Applicant graciously assumed the evidential burden to demonstrate that there is no justification whatsoever for the caveat to perpetually remain in force, and continue to deny the Applicant every right accruing

by virtue of the Applicant being the beneficial owner of the said property.

**5.0 CONCLUSION**

5.1 In the light of the foregoing, it is hereby directed and ordered that the Office of the Registrar of Lands and Deeds cause to be removed the said caveat placed on Subdivision No. 1306 of Subdivision 'F' of Farm No. 33a Lusaka by the Respondent.

5.2 Costs shall follow the event to be taxed in default of agreement.

**DATED THE 23<sup>RD</sup> DAY OF APRIL, 2024.**



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