

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

2023/HP/0848



BETWEEN:

**ESTHER CHIPASI
MUSTAPHA KWABENA OSUMAN**

**1ST PETITIONER
2ND PETITIONER**

AND

**ATTORNEY GENERAL
MAUREEN KAKUBO MWANAWASA**

**1ST RESPONDENT
2ND RESPONDENT**

Before:

The Hon. Mr. Justice Charles Zulu.

For the Petitioners: Ms. N. Mbuyi & Mr. K. Siyanga of Paul Norah Advocates.
The 1st Respondent: No Appearance.
For the 2nd Respondent: Mr. D. Jere, of Messrs Dickson Jere & Associates.
For the Intended 3rd Respondent: Mr. S. Lungu, SC., & Mrs C. Mwale, of Messrs Shamwana & Company.

R U L I N G

Case referred to:

- 1. Mike Hamusonde Mweemba v Obote Kasongo, Zambia State Insurance (2006) Z.R. 101.***

Legislation referred to:

- 1. The Rules of the Supreme Court of England and Wales 1965 (White Book, 1999 Edition).***
- 2. The Benefits of Former Presidents Act Chapter 15 of the Laws of Zambia.***

1.0 INTRODUCTION

1.1 This ruling is respect of an application at the instance of Constantine Hangala Chimuka to be joined to the action as the third Respondent. The application was made pursuant to Order 59 rule 13 of the **Rules of the Supreme Court (RSC) of England and Wales 1965 (White Book 1999 Edition)**.

2.0 BACKGROUND

2.1 The Petitioners took out a petition stating that in 2017, the second Respondent, as lessee, sold the property in dispute, namely Lot No. 2402/M Chongwe to the first Petitioner, after the second Respondent allegedly failed to redeem the property from the Petitioners. The Petitioners *inter alia* are seeking for a declaration that the second Respondent is no longer the beneficial owner of the property. And that acts by the first Respondent supposedly frustrating the Petitioners to take possession lack legal backing.

2.2 It was alleged that the first Respondent had deployed armed paramilitary police to prevent the Petitioners from taking possession of the property, and that the first Respondent had placed a caveat on the property.

3.0 AFFIDAVIT EVIDENCE/ARGUMENT

3.1 An affidavit in support was deposed to by Constantine Haangala Chimuka. He stated that he was the Co-Executor together with Mrs. Mwanawasa appointed by the late President Levy Patrick Mwanawasa to administer his estate. He exhibited the grant of

probate dated September 8, 2009. He stated that the reliefs sought by the Petitioners over the subject land pertains to an estate of the late President, Mr. Mwanawasa.

- 3.2 And it was argued by the Applicant's Counsel that, the application was tenable because the Applicant had disclosed sufficient interest. According to Counsel, the property in issue was a residue of the estate of the late President, Mr. Mwanawasa. And that in his Will, by which the Applicant was appointed the Co-Executor, the late gave instructions on how the residue was to be handled.
- 3.3 Mr. Jere representing the second Respondent did not object to the application.
- 3.4 An affidavit in opposition was deposed to by the Petitioners. And it was argued by the Petitioners' Counsel that the application was untenable, because the Applicant did not demonstrate that he had sufficient interest in the matter; having failed to exhibit the Will, appointing him as Co-Executor of the estate in issue.
- 3.5 It was also submitted that the property in issue being amenable to the **Benefits of Former Presidents Act Chapter 15 of the Laws of Zambia**, its devolution was subject to the Act, rather than to the Will under which the Applicant purported to draw his authority. I was urged to dismiss the application.

4.0 DETERMINATION

- 4.1 I have considered the facts and the arguments for and against the application. The rationale for joinder of parties or a party to

the proceedings was unveiled in *Mike Hamusonde Mweemba v Obote Kasongo, Zambia State Insurance (2006) Z.R. 101*, wherein the Supreme Court held:

A court can order a joinder where it appears to the Court or judge that all persons who may be entitled to or claim a share or interest in the subject matter of suit may be likely to be affected by the result to be joined.

4.2 In my determination here, I tread carefully so as to avoid making premature or pre-judgment pronouncements, which are only apt for determination after a full trial. Therefore, the argument as to whether the property in issues was wholly subject to the *Benefits of Former Presidents Act Chapter 15 of the Laws of Zambia*, or solely formed part of the residue of the said Will, is a matter for determination after full trial.

4.3 What is apparent is that, the intended Respondent's alleged interest in the subject property is *prima facie* sufficient to warrant an order for joinder. This will help the Court to effectually and completely determine whether the property accrued to the estate of the Late President, Mr. Mwanawasa, or/and whether it was amenable for transfer as alleged to the Petitioners by the widow to the late President (second Respondent).

5.0 CONCLUSION

5.1 In the light of the foregoing, the application for joinder of Constantine Haangala Chimuka as the third Respondent is allowed. I make no order for costs.

5.2 Leave to appeal is granted.

DATED THE 28TH DAY OF MARCH, 2024.



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THE HON. MR. JUSTICE CHARLES ZULU