

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

2022/HP/0092



BETWEEN:

YELLOW BRICK ESTATE AND

PROPERTIES LIMITED

PLAINTIFF

AND

WILLIARD MELELE

DEFENDANT

BEFORE THE HONOURABLE MRS. JUSTICE M.C. KOMBE

For the Plaintiff: Mr. M. Mulele – Messrs. G.M. Legal Practitioners

For the Defendant: No-appearance

R U L I N G

Cases referred to:

- 1. LC and DK Limited & Angel Poultry Limited v. Lovemore Chikuni Chinyama (Appeal No.270 of 2020).**
- 2. Hongling Xing Xing Building Company Limited v. Zamcapital Enterprises Limited (2011) 2 Z.R 105.**

Legislation and other material referred to;

- 1. The Rules of the Supreme Court of England (White Book) 1999 Edition.**

1. INTRODUCTION

This is a ruling on the Plaintiff's application for an Order for leave to issue a writ of possession in respect of House No. 100/160, Kanyama Improvement Area, Lusaka. The application is made pursuant to Order 45 rule 3 of the Rules of the Supreme Court of England 1999 Edition and is supported by an affidavit deposed to by **COLLINS KAPUNGWE KABALI**, the Director of the Plaintiff Company herein.

2. AFFIDAVIT EVIDENCE

He deposed that by Consent Order signed by this Court on 1st December, 2022 the Defendant undertook to pay the Plaintiff the sum of ZMW 125,000.00 as well as costs of ZMW 30,000.00 by 10th October, 2022. In default, the Plaintiff would be at liberty to convey House No. 100/160, Kanyama Improvement Area, Lusaka into its name.

The Defendant had not made any payments towards the undertakings in the Consent Order, thus entitling the Plaintiff to take possession of House No.110/Block 160 Kanyama Improvement Area, Lusaka.

Thus, he sought the Court's indulgence for an Order for leave to issue a writ of possession in respect of House No. 110/Block 160 Kanyama Improvement Area, Lusaka.

3. HEARING

At the hearing of the application, learned counsel for the Plaintiff, Mr. M. Mulele relied on the affidavit and the skeleton arguments filed in support of the application.

In the skeleton arguments, counsel referred to Order 45 rule 3 of the Rules of the Supreme Court of England which provides that:

“(1) Subject to the provisions of these rules, a judgment or order for the giving of possession of land may be enforced by one or more of the following means, that is to say—

(a) writ of possession;

(2) A writ of possession to enforce a judgment or order for the giving of possession of any land shall not be issued without the leave of the Court except where the judgment or order was given or made in a mortgage action to which Order 88 applies.”

It was submitted that the rule made it mandatory that every writ of possession must be issued with leave of court. Mr. Mulele submitted that the parties entered into a consent judgment in which the

Defendant undertook to pay the judgment debt by 10th October, 2022, but defaulted by failing to make any payment.

It was argued that in default of the terms therein, the Plaintiff had the right to take possession and exercise the power of sale. That given the default, there was no other way of recovery of the amount owed but for the Plaintiff to take possession in line with the consent judgment.

Mr. Mulele also submitted that the Plaintiff had advanced sufficient reasons to be granted an order for leave to issue a writ of possession in respect of House No.110/Block 160, Kanyama Improvement Area, Lusaka.

4. DECISION OF THIS COURT

By this application, I have been called upon to determine whether the Plaintiff is entitled to an order for leave to issue a writ of possession in respect of House No.110/Block 160, Kanyama Improvement Area, Lusaka.

The application is anchored on **Order 45 rule 3 of the Rules of the Supreme Court of England** which provides that:

“(1) Subject to the provisions of these rules, a judgment or order for the giving of possession of land may be enforced by one or more of the following means, that is to say—

It is further imperative to note that leave of court shall not be granted to issue a writ of possession unless it is shown that every person in actual possession of the whole or any part of the land has received such notice of the proceedings as appears to the Court sufficient to enable him to apply to the Court for any relief to which he may be entitled.

The parties herein entered into a consent judgment filed into Court on 12th August, 2022 and signed by this Court on 1st December, 2022. The Defendant undertook to pay the Plaintiff the sum of ZMW 125,000.00 as well as costs of ZMW 30,000.00 by 10th October, 2022 and in default the Plaintiff would be at liberty to convey House No. 100/160, Kanyama Improvement Area, Lusaka into its name and refund the Defendant the sums paid to the Plaintiff less mesne profits at a monthly rate of ZMW2,000.00.

It is clear from the evidence on record that there is in existence a consent judgment giving the Plaintiff possession of House No.100/160, Kanyama Improvement Area, Lusaka, which warrants the grant of an order for leave to issue a writ of possession.

I am persuaded in my view by the case of **Hongling Xing Xing Building Company Limited v. Zamcapital Enterprises Limited**⁽²⁾ where Matibini J, as he then was held that the grant of leave to issue

a writ of possession presupposes in the first place the existence of an order of judgment giving possession of land.

The Defendant was not before Court at the hearing of the application despite being served with the notice of hearing. No reasons were advanced for his non-attendance and I formed the view that he deliberately stayed away from Court.

I therefore find that the Defendant had sufficient notice of these proceedings to enable him to apply to the Court for any relief to which he may be entitled.

In view of the foregoing, I find that the Plaintiff has satisfied the pre-conditions to be fulfilled before an order for leave to issue a writ of possession can be granted.

In a nutshell, I find merit in the Plaintiff's application and accordingly grant leave to issue a writ of possession in respect of House No.110/Block 160, Kanyama Improvement Area, Lusaka.

DELIVERED AT LUSAKA THIS 22ND DAY OF APRIL, 2024


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M.C. KOMBE
JUDGE

