

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

2007/HP/0264
2008/HP/0529



BETWEEN:

**ELIZABETH CATHERINE COOK
HOWARD COOKE
PETER ANDRIES SWANEPOEL
HUGO WILLEM JACOBS**

**1ST PLAINTIFF
2ND PLAINTIFF
3RD PLAINTIFF
4TH PLAINTIFF**

AND

**ATTORNEY GENERAL
KAFUE DISTRICT COUNCIL
OSICK CHILEAMBO AND 358 OTHERS**

**1ST DEFENDANT
2ND DEFENDANT
3RD DEFENDANT**

***Before The Hon. Justice M. D. Bowa in Chambers on 4th April
2024***

*For the Plaintiff: Mr. K.R Malipenga
For the Defendant N/A*

RULING

Cases referred to

1. *Hangling Xing Xing Building Company Limited v Zam Capital Enterprises Limited (2011) vol 2 ZR 105,*
2. *Masters limited and Another vs Investrust Bank PLC Appeal No 74 of 2014,*
3. *Nyampala Safaris (Z) Limited and 4 others v Zambia Wildlife Authority and 6 others SCZ/8/179/2003.*
4. *Trevor Limpic v Rachael Mawere & 2 Others, SCZ Appeal No. 121/2006.*

The Plaintiffs apply for leave to issue a writ of possession by exparte summons dated 24th January 2024. The application was supported

by an affidavit of even date sworn by Elizabeth Catherine Cooke the 1st Plaintiff herein. Also filed into court was a list of authorities and skeleton arguments dated 24th January 2024. The application is brought pursuant to Order 45 rule 3 sub rule 5 of the Rules of the Supreme Court of England 1999 edition. Authorities referred to in support of the application include **Hangling Xing Xing Building Company Limited v Zam Capital Enterprises Limited¹ Masters limited and Another vs Investrust Bank PLC²** and **Nyampala Safaris (Z) Limited and 4 others v Zambia Wildlife Authority and 6 others³**

For ease of reference order 45 rule 3 (1) provides inter alia that:

“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.....”

Order 45 rule 3 (2) and (3) goes on to state.

“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.

(3) Such leave shall not be granted unless it is shown.

(a) That every person in actual possession of the whole or any part of the land 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.....”

In the affidavit in support of the application, the Plaintiffs reveal that judgment in their favour was entered by the High Court on 1st of November 2019 ordering that they recover vacant possession of all that piece of land relating to Farm 1958/A, Farm 1958/B, Farm 1958/C exhibited “**ECCI**”. That the Defendants sought to appeal against that judgment that culminated in a consent judgment exhibited “**ECC2**.” By that consent that Defendants were granted 90 days within which to vacate the portions of the land they occupied.

The Plaintiff’s further contend that following the expiry of the 90 days that the Defendants were to vacate as per consent judgment, 25 of the 300 plus Defendants disassociated themselves from the consent Judgment and applied to the Court of Appeal to stay that consent judgment. Since the delivery of the ruling of the court exhibited “**ECC3**,” none of the 3rd Defendants being the ones that did not contest the consent judgment have complied with the judgments and have continued to develop the portions illegally occupied.

In the skeleton arguments and oral submissions augmented before the court, the Plaintiffs contend through counsel that they were unable to execute the earlier writ issued by court beyond the 12-month window hence abandoning their application filed earlier on the 21st November 2023 for renewal of the writ.

I have considered the facts and the law referred to above. I am satisfied that the application is properly before me. It is not in dispute that there was a judgment of the court in which an order for vacant possession was granted. The content of the consent judgment as regards the 300 plus Defendants that did not contest it therefore, remains enforceable as confirmed by the Court of Appeal in paragraphs 5.14 and 5.15 of its ruling dated 3rd of July 2020.

I have no doubt that all the parties are aware of the judgment of the Court and the consent judgments that were entered into. Therefore no question of failed notification arises as contemplated in Order 45 (3) (a) of the RSC. There is as such nothing to preclude the court from granting leave to issue the writ of possession sought. The only issue for me is the inclusion in the filed order of the prayer for demolition of the property. This was not part of the prayers sought in the main

action nor was it an order pronounced by the trial court or even the Court of Appeal when the consent judgment was settled. It is of course trite that a party without title builds at his own risk and property may be liable to demolition without compensation from the right owner. The case of **Trevor Limpic v Rachael Mawere and 2 Others**⁴ settles that principle.

However, this is not a relief that is contemplated in order 45 and as mentioned earlier, was not included as a prayer in the matter before the High Court. I would in the circumstances grant leave to the Plaintiffs to issue a writ of possession affecting the 300 plus Defendants with the exception of the main Appellant and 25 others that were granted a stay of execution by the Court of Appeal. The order to this effect to be filed by the Plaintiffs for the court's endorsement accordingly.

Dated at Lusaka the ^{4th}.....day of ^{April}.....2024



HON. JUSTICE M.D. BOWA
JUDGE.