

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

2023/HP/0076

BETWEEN:

SAMSON CHOKWIRO

PLAINTIFF

AND

TINAIRI DOREEN CHOKWIRO
SHORAI CHOKWIRO
LOVENESS CHOKWIRO
SALUZAI CHOKWIRO

1ST DEFENDANT
2ND DEFENDANT
3RD DEFENDANT
4TH DEFENDANT



Before the Honourable Ms. Justice S. Chocho, in Chambers.

For the Plaintiff : Mr. F. Mwauluka, Messrs Legal Aid Board
For the 1st to 4th Defendants: Mr. D. Kalima, Messrs D Kalima And Company

EX TEMPORE RULING

Cases referred to:

- i) *ANZ Grindlays Bank (z) Limited V Kaoma*
- ii) *Musakanya V Attorney General*
- iii) *Amber Louise Guest Milan Tribonic V Beatrice Mulako & Attorney General*
2010/HP/0344

UPON Hearing Counsel for the Plaintiff and Defendant. UPON Reading the affidavits, skeleton arguments and list of authorities filed by the parties herein. I must state that I am grateful for the detailed Affidavits and Skeleton Arguments filed.

It is clear from the record that the Parties do not dispute that a matter was previously commenced by the Plaintiff herein against one Moses Chokwiro in his capacity as Administrator of the Estate of the Jakama D. Chokwiro (2018/HP/F169). It is also undisputed that the Consent Judgment entered under the cause 2018/HP/F169 distributed the estate among the Plaintiff, Defendants and other beneficiaries. The said Consent Judgment was and has not been appealed against.

I note from the Plaintiff's affidavit in opposition that he believes that the bar in dispute is sitting on the 1 acre awarded to him, his siblings and his mother in the said Consent Judgment. This in fact is the main claim of his writ and statement of claim dated 20th January, 2023.

I have considered all the authorities relied on by the parties. I am of the considered opinion that in fact the current action is estopped by res judicata. The claims of the Plaintiff are misguided and are re-litigation of the claims already settled in cause 2018/HP/F169.

It is my considered opinion that the Plaintiff's claims are best suited as an application for the enforcement of the Consent Judgment under cause 2018/HP/F169.

The Plaintiff cannot commence a new case to enforce his rights under a Consent Judgment before another Court. The law on res judicata is well settled in cases of **ANZ GRINDLAYS BANK (Z) LIMITED V KAOMA¹**, and **MUSAKANYA V ATTORNEY GENERAL²**.

In the case of **AMBER LOUISE GUEST MILAN TRIBONIC V BEATRICE MULAKO & ATTORNEY GENERAL 2010/HP/0344³** Justice Dr. Patrick Matibini (as he then was) held inter alia.


R3

“In order for a plea of res judicata to succeed it must be demonstrated that a judgment should have earlier on been pronounced between the parties.”

In casu, the parties were duly allocated pieces of land on the estate by Consent Judgment and it follows that any dispute arising from such distribution should be settled in the first action.

1. From the forgoing I hereby order that the Defendant's application has merit. The application is duly granted.
2. The Plaintiff's action is hereby dismissed on point of law. It is an abuse of court process.
3. Costs are hereby granted to the Defendants, to be taxed in default of agreement.

Dated the 13th May, 2024



**SITUMBEKO CHOCHO
HIGH COURT JUDGE**

