

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

2012/HP/1147

**ELIAS TEMBO
AND
EDNAH MPANDE SAKALA
THE ATTORNEY GENERAL
LUSAKA CITY COUNCIL**



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

Before: The Hon. Mr. Justice Matthew Zulu.

For the Plaintiff: Mr. R. Mainza, Messrs Mainza and Co.
For the 1st Defendant: Mr. D. Sichombo, Messrs Daniel
Sichombo Legal Practitioners.
For the 2nd Defendant: Ms. D. M. Mwewa, Principal State
Advocate, Attorney General's Chambers.
For the 3RD Defendant: Mrs. Y. Muwowo, Lusaka City Council
Advocate.

RULING

Cases referred to:

- 1. Payne v. British Time Recorder Co [1921] 2 K.B.1.***
- 2. Mukumbuta Mukumbuta Sam & Others v. Nkwilimba Choobana & Other (SCZ/08/2003).***

Legislation referred to:

- 1. The High Court Rules Chapter 27 of the Laws of Zambia.***
- 2. The Rules of the Supreme Court of England and Wales 1965 (White Book, 1999 Edition).***

1.0. INTRODUCTION

1.1. This ruling is in respect of an application dated June 5, 2019 by the third Defendant, the Lusaka City Council, for consolidation of actions, the Application was taken out pursuant to Order III rule 5 of the **High Court Rules Chapter 27 of the Laws of Zambia.**

2.0 BACKGROUND

2.1 a brief background to this application is that the Plaintiff, Elias Tembo, took out a writ of summons and statement of claim dated October 1, 2012 as amended on October 29, 2014, against the Defendants, Edna Mpande Sakala, the Attorney General and the Lusaka City Council. The Plaintiff sought the following reliefs:

- i. ***A declaration that the Plaintiff is the legal owner of Stand No. 24595, Libala South, Lusaka and that his offer letter subsists.***
- ii. ***An order compelling the Commissioner of Lands and registrar of Lands and Deeds to issue the Plaintiff with a Lease and Certificate of Title in respect of Stand No. 24595, Libala South, Lusaka;***
- iii. ***A declaratory [order] that the Plaintiff pursuant to Clause (4) of the offer letter legally constructed dwelling structure at the subject stand and that has since legally spent in excess of K400,000.00;***
- iv. ***A declaration that the dwelling structure constructed on Stand No. 24595, Libala South Lusaka by the Plaintiff is legal and that the same is not amenable to demolition;***
- v. ***A declaration that the offer letter and Certificate of Title issued to the 1st Defendant by the***

Commissioner of Lands and Registrar of Lands and Deeds respectively are null and void ab initio on account of fraud errors and mistakes committed by the said Commissioner of Lands and Registrar of Lands and Deeds and the part of the 1st Defendant;

- vi. Damages for unnecessary inconvenience occasioned on to the Plaintiff by the Defendants;***
- vii. Costs; and***
- viii. Any other relief the court may deem fit.***

1.2. The first Defendant entered appearance and Defense on October 15, 2012 as amended on November 20, 2017, wherein she denied the Plaintiff's allegations. And alleged that contrary to the Plaintiff's allegation, the Plaintiff was never offered any property. That in fact, it was she who was successfully offered the same following her application.

1.3. The first Defendant counter-claimed against the Plaintiff, alleging that she was the legal owner of the property in question and that the Plaintiff was a deliberate trespasser, who knew full well that he did not possess any legal authority of occupation, possession nor ownership. She averred that upon discovering the Plaintiff's trespass on her land, she reported the matter to the relevant authorities in order to curb the Plaintiff's trespass. The first Defendant sought the following reliefs against the Plaintiff:

- i. A declaration that the first Defendant is the registered proprietor of Stand No. 24595, Libala South, Lusaka in possession of a valid Certificate of Title***

“MB1””. And that some of the listed matters were yet to commence trial before several judges, while as some that had proceeded to trial and concluded and were on appeal by the Plaintiff. A list of matter since concluded and on appeal was exhibited marked “MB2”.

- 3.2 It was further deposed that a perusal of the statements of and claim of the above revealed that the claims by the Plaintiff against the Defendants, were similar with little to no variations, that is, series of land transactions and/ or dealings including purported applications for planning permission in and around Libala South and Chilenje South, Lusaka.
- 3.3 That in the interest of justice it was imperative that all the matters that have not commenced trial listed under exhibit “MB2”, be heard by a single Judge to avoid multiplicity.
- 3.4 the first Defendant filed an affidavit in support of the third Defendant’s application deposed to by Linda Mukonde, the Plaintiff’s Advocate. She deposed that she totally supported the application for consolidation of the two other matters taken out by Messrs DM Sichombo and 26 other matters which were similar would not prejudice her client. That a consolidation would allow the hearing of the same witnesses from the second and third Defendant once and for all, as such this would eliminate the possibility of

conflicting rulings, reduce expense, costs and would permit efficiency in the administration of justice.

3.5 An Affidavit in support of the third Defendant's application was also filed by the second Defendant deposed to by Anderson Nkhuwa, a Lands and Deeds Officer in the employ of the second Defendant. The gist of his deposition was that the third Defendant's application in support of consolidation of actions was admitted and supported. He added that in all the listed cases taken out at the instance of the Plaintiff, the Plaintiff sought to rely on similar and sometimes same documents. And that despite these letters belonging to alleged different individuals they all bore the same date, same address and same date stamp. And that this has been the Plaintiff's pattern of operating as a litigant. Copies of the said letters were exhibited collectively marked "ET2".

3.6 That it was imperative that these matters be consolidated so that the issue could be determined once and for all. And that as the Plaintiff will be accorded the opportunity to be heard on all the matters, he would not suffer any prejudice.

3.7 An affidavit in opposition was deposed to by the Plaintiff, Elias Tembo. The gist of his opposition to the application was that some of the matters listed in exhibit "MB1", of the third Defendant's Bundle of Document were not taken out

at his instance. And that there was no judgment that has since been delivered that has a detrimental effect to the present action.

3.8 That contrary to the third Defendant's position, a judgment that was delivered under Cause No. 2013/HP/0677 and went on appeal to the Court of Appeal under Cause No. CAZ/ 8/C4/2017, in a judgment dated February 1, 2018, the Court of Appeal held in favour of the Plaintiff.

3.9 It was further deposed that all the matters before the courts of law were distinct and related to totally different properties. And that the only ones that related to the same property were those commenced by Daniel Muyoba, whereof the Court of Appeal declared that the Plaintiff herein was the rightful owner.

3.10 It was deposed further that, in some of these Causes of Action, the Plaintiff was a Defendant being represented by different law firms. And that trial in the present action had since commenced however, that it was the first Defendant who was a major obstacle to the conclusion of the matter. That the suggested consolidation had the potential to compound and delay the disposal of these matters.

4.0 **THE PARTIES'S SKELETON ARGUMENTS FOR AND AGAINST THE APPLICATION**

4.1 The parties filed their respective arguments for and against the application. I will not labor to reproduce the said arguments seriatim, suffice to state that I will consider the same in my determination.

5.0 DETERMINATION

5.1 I have carefully considered the affidavit evidence adduced and the skeleton arguments for and against the application. As to what the Court ought to consider in an application of this sort, Order 4 rule 9(1) of the RSC is substantially instructive, and the same provides:

1. Where two or more causes or matters are pending in the same Division and it appears to the Court -

(a) that some common question of law or fact arises in both or all of them, or

(b) that the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions, or

(c) that for some other reason it is desirable to make an order under this paragraph
the Court may order those causes or matters to be consolidated on such terms as it thinks just or may order them to be tried at the same time or one immediately after another or may order any of them to be stayed until after the determination of any other of them.

5.2 The rationale for consolidation of actions was well articulated in the English case of ***Payne v. British Time Recorder Co [1921] 2 K.B. 1*** at p16, wherein the House of Lords stated:

The main purpose of consolidation is to serve costs and time and therefore it will not usually be ordered unless there is some common question of law or fact bearing sufficient importance in proportion to the rest of the subject matter of the action to render it desirable that the whole matter should be disposed of at the same time.

5.3 The above principle was reaffirmed by our Supreme Court in the case of ***Mukumbuta Mukumbuta Sam & Others v. Nkwilimba Choobana & Other (SCZ/08/2003).***

5.4 The question for determination is whether an order for consolidation is proper and fitting under the present circumstances. From the background provided, it is clear that the present cause of action maybe similar to the other causes of actions thus, Causes Nos.; 2012/HP/1147, (Elias Tembo v Ednah Mphande Sakala, Attorney General and Lusaka City Council), 2005/HP/0844-Henry Sichembe v Elias Tembo, John Longwe and Others, 2006/HP/980 -Victor Zimba v Elias Tembo, Lusaka city Council and Commissioner of Lands, 2016/HP/ 874- Elias Tembo v Lusaka City Council, 2009/HP/ 874- Elias Tembo v Sisiku Mutete, 2009/HP/ 0006, Elias Tembo V Lusaka City Council, 2018/HP/527, 2011/HP/527 Elias Tembo v Kabwe Griffins & Lusaka City Council, Elias Tembo v Joseph Zulu and Lusaka City Council, 2011/HP/ 1396 Elias Tembo v Elizabeth Simwanza, and 20110/HP/ 1402- Elias Tembo v Elizabeth Simwanza, Vivian Chipi and Lusaka City Council.

5.5 However, as rightly argued by the Plaintiff even though these causes of action may have similar facts and or documentary evidence, each cause of action relates to different properties, and has different parties, and the matters thereof are at different stages, with some having commenced trial.

5.6 Moreover, apart from the second and third Defendants who may have same legal representation there is no consensus as to whether the other Plaintiffs/ Defendants in the other causes of actions will be represented by the same firm.

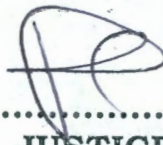
5.7 It is my considered opinion that this is not a proper case in which to order a consolidation of actions.

6.0 CONCLUSION

6.1 In the light of the forgoing, the application for consolidation is denied and is hereby dismissed. And I make no order as to costs

6.2 Leave to appeal is granted

DATED THE..... DAY OF MAY 2024.



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THE HON. MR. JUSTICE MATTHEW ZULU