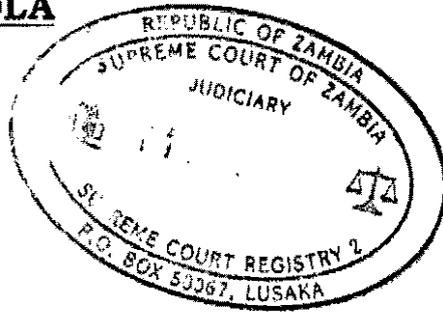


IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT NDOLA
(Civil Jurisdiction)

APPEAL NO.85/2016



BETWEEN:

DESMOND BANDA AND 12 OTHERS

APPELLANTS

AND

PHESTINA CHISUWA

RESPONDENT

Coram: Hamaundu, Malila and Kaoma, JJS

On 5th March, 2018 and 11th March, 2018

For the appellant : In person (represented by Desmond Banda)

For the Respondents: Messrs Tembo, Ngulube & Associates (Not Present)

JUDGMENT

HAMAUNDU, JS, delivered the judgment of the Court.

Case referred to:

BP (Z) Plc v Interland Motors Ltd (2001) ZR 37

Rule referred to:

Rules of the Supreme Court (White Book), O.113

The appellants appeal against a decision of a judge in chambers by which their action was dismissed for being a duplicity of actions.

The background to this appeal is this:

The respondent is owner of land known as Lot 11556/M Lusaka. The appellants are said by the respondent to be squatters on her land. On 19th June, 2013, the respondent commenced an action under **O.113** of the **Rules of the Supreme Court** (*White Book*) against one John Ng'andwe and all other persons in occupation of her land without licence. The action was under cause number 2013/HP/0858. Neither John Ng'andwe nor any of the persons alleged to be squatters defended the action. The court proceeded to hear the application and granted summary judgment for vacant possession of the land.

When the judgment was executed, the appellants came to court and instituted a separate action against the respondent, which is this action. They claimed that they had not been served with the earlier action; and that the land which they occupied was outside the land comprised in Lot 11556/M. The respondent applied before the Deputy Registrar for dismissal of this action on

the ground that it amounted to duplicity of actions and an abuse of court process. The Deputy Registrar agreed with the respondent and dismissed the action.

The appellants appealed to a judge in chambers. The judge also found that the appellants' action was a duplicity of actions. In his judgment, the learned judge made some statements concerning this case and the earlier case by the respondent. The statements created the impression that the judge was, also, deciding this case on the merits by reference to the decision in the earlier case. We consider the statements unfortunate. Unsurprisingly, the appellants' solitary ground of appeal to this court is on those statements. They contend that the learned judge decided in favour of the respondent by relying on the proceedings in the earlier cause number 2013/HP/0858.

In their heads of argument, which they relied on at the hearing, the appellants have set out the statements that have aggrieved them and argued that they were wrong because the application was about whether or not this action is a duplicity of the respondent's earlier action; and not about the merits of the appellants' case.

We did not receive any arguments from the respondent, whether written or oral.

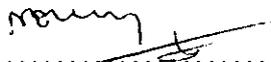
Unfortunate as the statements may be, it is clear from the judgment, though, that the learned judge dismissed the appeal on the ground that this action is a duplicity of actions. In **BP (Z) Plc v Interland Motors Ltd⁽¹⁾**, we said that one of the reasons why multiplicity of actions are discouraged is because a party might end up obtaining conflicting decisions from the court, which would bring the administration of justice into disrepute. We shall briefly endeavor to explain to the appellants why their action is a duplicity and is likely to bring the administration of justice in disrepute.

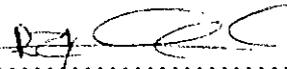
The appellants were aware, through the execution process, that their eviction from the land was due to a judgment in the earlier action by the respondent. Since the appellants claim that they were not served with process in that action, their recourse should have been to apply to set aside that judgment. And since they claim that the land which they occupy is outside Lot 11556/M, they, after setting aside the judgment, should then have put forward that contention to the court. This would then have enabled the court to see that the dispute was not suitable for resolution

under **O.113** of the **Rules of the Supreme Court** (*White Book*), but for resolution by way of trial. The court in cause number 2013/HP/0858, rightly or wrongly, did find that the appellants were squatters on the respondent's land, and therefore, did make an order that they be evicted from there. The absurdity of the appellants commencing a different action is that the judgment in the earlier case remains unchallenged, and can still be executed. So, even if the appellants were to obtain a judgment in their favour in this new action, the judgment in the earlier case will still be enforceable against them; meaning that they will still continue being evicted. Then, obviously, the parties will have two judgments that are in conflict with each other. So, indeed, this action is duplicity. We dismiss this appeal. We make no order as to costs since the respondent did not defend the appeal.

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 E. M. Hamaundu
SUPREME COURT JUDGE

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 M. Malila
SUPREME COURT JUDGE

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 R. M. C. Kaoma
SUPREME COURT JUDGE