

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



IN THE MATTER OF:

**ORDER 113 RULE 1 OF THE RULES
OF THE SUPREME COURT 1999**

AND IN THE MATTER OF:

**AN APPLICATION FOR SUMMARY
POSSESSION OF FARM NO. 445a
MACHA MISSION**

BETWEEN:

BRETHREN IN CHRIST

PLAINTIFF

AND

**SAMSON MUCHIMBA AND OTHERS
PERSONS UNKNOWN**

1ST DEFENDANTS

GIDEON MULEYA AND OTHERS

2ND DEFENDANT/INTERVENERS

**BEFORE THE HON. MRS JUSTICE S. M WANJELANI IN CHAMBERS ON
THE 10TH DAY OF APRIL, 2018**

For the Plaintiff: Mr. C. Sianondo, Messrs Malambo and Company

For the Defendant: Mr. H. Chizu, Messrs. Chanda Chizu & Associates

JUDGMENT

Case referred to:

1. *Lumanyando and Others v Chamuka & Others (1988 – 1989) ZR 1994*
2. *Namung'andu v Lusaka City Council (1978) ZR 35*
3. *Peter Militis v Wilson Kafuko Chiwala (2009) ZR 34.*
4. *Chikuta V Chipata Rural Council (1974) ZR*
5. *Newplast Industries V Commissioner of Lands(2001)ZR 51*

6. *Kariba North Bank V Zambia State Insurance Corporation Limited*(1980)ZR 94
7. *Anderson Kambela Mazoka and Others Vs Patrick Levy Mwanawasa, Electoral Commission of Zambia and Attorney General* (2005) Z.R. 138 (S.C.)
10. *National Milling Company Limited V. A. Vashee* (2000) ZR 98

Legislation referred to:

1. *High Court Act Cap 27 of the Laws of Zambia*
2. *The Lands (Conversion of Titles) Act No. 20 of 1975*
3. *The Lands Act, Cap 184 of the Laws of Zambia*
4. *Arbitration Act No. 19 of 2000*
5. *Supreme Court Rules*

The Plaintiff commenced this action on 10th September, 2007 by way of Originating summons pursuant to **Order 113 Rule 1** of the **Supreme Court Rules**, claiming that it was entitled to possession of Farm No.445a, Macha Mission and seeking for the determination of the following questions:

1. *That the Defendants are squatting on the Plaintiff's land and therefore liable to be evicted;*
2. *An Order that the Defendants be evicted from the land forthwith; and*
3. *Costs*

On 26th October, 2007, a Judgment in Default was entered in favour of the Plaintiff and on 4th March, 2008, the Plaintiff was granted Leave to issue the Writ of Possession with the Praecipe Writ of Possession being issued on 7th March, 2008. The Writ of Possession was renewed on 4th March, 2010, but an Ex-parte Order to Stay Execution was granted on 28th September, 2010 pursuant

to an application by **Gideon Muleya**, as an Intervener. Additional Parties were joined to the proceedings on 5th October, 2011 and the Judgment in Default as well as the Writ of Possession were set aside and the matter ordered to proceed to trial.

When the matter came up for a Status Conference before this Court on 5th October, 2016, Counsel for the Plaintiff sought leave that the matter proceeds as though commenced by Writ of Summons in view of the contentious matters that had arisen and Counsel for the Defendants agreed. When the matter came up for trial on 9th May, 2007, both Counsel agreed that the various Affidavits should stand as pleadings and in this vein the matter proceeded to trial. The Plaintiff called one witness while the Defendants called four witnesses.

PW1 was **Thuma Hamukangandu**, the Chief Executive Officer of the Plaintiff Church. He testified that according to what his father, who was born in Macha, in January 1914, told him, the Macha Mission Land was given to the Brethren in Christ Church (BICC) by Chief Macha through the Northern Rhodesian Government and there were no natives when the land was allocated. He added that as a Member of the Church he took an interest to learn more about the matter and learnt that the Church had Sikalongo, Macha, Nalubamba and Gundu farms and that in relation to Macha, Headman Sibajane told him that at the time the land was given to the Church, there was no one living there and the Chief could not have displaced them.

In his further testimony, PW1 informed that in the 1990's people who were workers started settling on the property without an agreement and some of them included Evangelists for the Church such as Kalaluka. He added that he also learnt that the Church land had graveyards as the people who came from distant places to access the medical services had no means to repatriate the deceased family members hence the Church allocated some land for the graveyards.

He further stated that Samson Muchimba, was a Headmaster at the Mission and when he retired, he did not want to go back to where he had come from and the Mission allowed him to stay on the Mission land and when he died, he was buried at the same graveyard within the Mission land.

With regard to exhibit marked "**RMM**" attached to the Affidavit dated 8th October, 2010, PW1 stated that it was a document giving BICC entitlement to the land and it was issued in 1931.

In responding to the Defendant's Affidavit in opposition, PW1 informed the Court that Mulako and Kalaluka villages were outside the Mission land, adding that he grew up in Sikufweba village in Chief Macha which was a boundary to the Mission land.

In his continued testimony PW1 informed the Court that he had interaction with the Defendants when the Bailiffs went to evict the latter and that prior to that they had a meeting with the squatters to leave the land. He added that Mr. Gideon Muleya was allowed some time as he had a lot of investments but instead the latter,

