

IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA

772  
2023/HP/0885

(Civil jurisdiction)

BETWEEN:

GEORGE CHOLA CHILUFYA

AND

BEAUTY HACHINGALA



PLAINTIFF

DEFENDANT

***Before the Hon. Mr. Justice M.D. Bowa on 23<sup>rd</sup> of October, 2023***

*For the Plaintiff: In Person*

*For the Defendant: No Appearance*

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## JUDGMENT

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### **Cases referred to**

1. *Khalid Muhammad vs Attorney General (1982) Z.R 49(SC)*
2. *Wilson Masauso Zulu vs. Avondale Housing Project Ltd (1982) ZR 172 (SC)*
3. *Galunia Farms Limited v National Milling Company and National Milling Corporation Ltd (2004) Z.R. 1*

### **Legislation referred to:**

1. *Lands and Deeds Registry Act, Cap 185 of the Laws of Zambia*

#### **1.1. Background**

- 1.2. The Plaintiff commenced this action by writ of summons and statement of claim dated 11<sup>th</sup> of May, 2023 seeking the following reliefs:

*(i) An order directing the Defendant to execute conveyance documents relating to property known as Plot No. LN29436/69 Lusaka.*

*(ii) In the alternative that the Plaintiff, be at liberty to apply for a vesting order directing the Deputy Registrar of the High Court to execute the Deed of Assignment on behalf of the Defendant who has since 17<sup>th</sup> March, 2017 been the principal vendor of the said property.*

*(iii) Any other reliefs the Court deems fit.*

1.3. The Plaintiff obtained an order for substituted service on the 20<sup>th</sup> of June, 2023 to serve the Defendant via an advert in the daily newspaper. The originating process was served as well as subsequent court process on the Defendant. The Defendant did not enter appearance or file in any defence against the Plaintiff's claims. I proceeded to set the matter down for trial.

1.4. At the time the matter was coming up for trial the Defendant had still not complied with the Court's directions in readiness for trial and as such I proceeded to

hear the matter in line with Order 35 Rule 3 of the High Rules, Cap 27 of the laws of Zambia, which provides that:

***“If the plaintiff appears, and the defendant does not appear or sufficiently excuse his absence, or neglects to answer when duly called, the Court may, upon proof of service of notice of trial, proceed to hear the cause and give judgment on the evidence adduced by the plaintiff, or may postpone the hearing of the cause and direct notice of such postponement to be given to the defendant”***

## **2.0 Evidence**

2.1. The Plaintiff's case

2.2. The Plaintiff filed into Court a witness statement in support of his case dated the 4<sup>th</sup> September, 2023. He stated that he entered into a contract of sale with the Defendant sometime in October, 2017, for the sale of property known as Plot No. 29436/69, Lusaka. That the agreed purchase price was ZMW 60, 000.00 which he paid in full.

2.3 Further that after payment of the purchase price, he was given the offer letter by the Defendant. That he attempted to change the ownership of the property into his name at the Ministry of Lands but that he was informed that the original owner needed to

facilitate the said change. He stated that he tried to contact the Defendant from her last known address but that all efforts to locate her have proven futile.

2.5 At trial, the Plaintiff relied on his witness statement and bundle of documents filed in support of his case. He testified that he had paid the entire purchase price and that he had possession of the property on which he has built flats. Further that the Defendant gave him a copy of her National Registration Card, contract of sale and assignment but that he cannot locate her for her to complete the sale.

### **3.0 Court's consideration**

3.1 I have carefully considered the evidence before me. The unchallenged facts in this case are:

- ✓ That the Plaintiff entered into a contract of sale with the Defendant for the sale of property known as Plot No. LN29436/69 Lusaka.
- ✓ That the Plaintiff paid the sum of ZMW 60, 000.00 as the full purchase price for the property.

- ✓ That the Plaintiff is in possession of the said property.
- ✓ That the Defendant has not effected change of ownership of the property into the Plaintiff's name.

3.2 The issue for my determination is simply whether the Plaintiff is entitled to the reliefs sought. It is common cause that this matter is undefended. However, the Plaintiff is still required to prove his case. As succinctly put by the Supreme Court in the case of **Khalid Muhammad vs Attorney General**<sup>1</sup>

*“A Plaintiff must prove his case and if he fails to do so the mere failure of the opponents defence does not entitle him to judgment.”*

3.3 Further, in the case of **Wilson Masauso Zulu vs. Avondale Housing Project Ltd**<sup>2</sup> Ngulube DCJ as he was stated that:

*“I think it is acceptable that where a Plaintiff alleges that he has been wrongfully or unfairly dismissed as indeed in any other case where he makes any allegations, it is generally for him to prove these allegations a Plaintiff who has failed to prove his case cannot be entitled to judgment whatever may be said of the opponent's case.”*

3.4 The Supreme Court reaffirmed this position in the latter case of **Galunia Farms Limited v National Milling Company and National Milling Corporation Ltd<sup>3</sup>** and concluded:

*“We re-affirm that position. The burden to prove any allegation is always on the one who alleges.*

3.5 The Plaintiff has demonstrated through the document at page 2-7 of his bundle of documents, the existence of the contract sale and assignment. Further he has demonstrated through the documents at pages 8 and 9 being the Defendant’s offer letter from Ministry of Lands and her national registration card that the Defendant is the registered owner of the property. He has further demonstrated that he entered into a contract of sale with the Defendant in 2017 and that he has had possession of the property from that time.

3.6 It is my determination that the Plaintiff has proved the existence of a contract of sale, an Assignment, a letter of offer from the Ministry of Lands to the Defendant and the Defendant’s national registration card. All this demonstrates that the Plaintiff entered into an agreement for sale of the property in

dispute. Further he has demonstrated that the said sale and assignment were executed by the Defendant and that he has made an effort to change the ownership of the property to his name. Commencing this action represents one such effort to have title in his name and the fact that he has possession of the property from the time of the sale goes to show that he has a legitimate claim towards Plot No. LN29436/69 Lusaka.

3.8 It is for the forgoing that I order the following:

1. I declare that the Plaintiff is the lawful owner of the property known as Plot No. LN29436/69 Lusaka having duly purchased it from the Defendant.
2. I direct that the Defendant proceeds to apply and obtain State's consent to assign relating to property known as Plot No. LN29436/69 Lusaka to facilitate the transfer of the property into the Plaintiff's name within 30 days from the date of this Judgment and duly complete the conveyance of the property into the Plaintiff's name.

3.9 I note that the Plaintiff prayed for an order in the alternative that the Deputy Registrar of the High Court be nominated to execute a Deed of Assignment on behalf of the Defendant.

3.10 However, section 14 of the High Act, Cap 27 of the Laws of Zambia provides that:

***“Where any person neglects or refuses to comply with a judgment or order directing him to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the Court may, on such terms and conditions, if any, as may be just, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the Court may nominate for that purpose, and a conveyance, contract, document or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it. (emphasis added)***

3.11 A proper read of section 14 above will show that it is only after a Court has given its Judgment or Order which is disregarded by a respondent that the Court can order that the Deputy Registrar executes an Assignment or any other document



relating to the sale transaction on behalf of a party to the contract. The prayer can only be made and granted upon such proof of neglect or refusal to comply with the Judgment of the Court. The prayer in the alternative cannot therefore be considered at this point.

3.12 The net effect of my judgment is that the Plaintiff succeeds in his claims except for claim (ii) which relates to the execution of an assignment and specifically in this case, the State's consent to assign by the Deputy Registrar for reasons stated above.

Costs to the Plaintiff to be taxed in default of agreement.

Dated at Lusaka this <sup>23<sup>rd</sup></sup>.....day of <sup>October</sup>.....2023.



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**HON. JUSTICE M.D BOWA**