

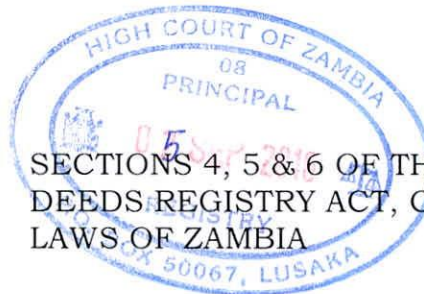
IN THE HIGH COURT FOR ZAMBIA

2008/HP/1260

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(Civil Jurisdiction)



IN THE MATTER OF:

SECTIONS 4, 5 & 6 OF THE LANDS AND
DEEDS REGISTRY ACT, CAP 185 OF THE
LAWS OF ZAMBIA

IN THE MATTER OF:

SUBDIVISION NO. 132 OF FARM NO. 50a,
MAKENI, LUSAKA

AND

IN THE MATTER OF:

AN APPLICATION FOR THE REGISTRATION OF
JUDGMENT OUT OF TIME

B E T W E E N:

KENNY KASHINKA CHILYA SONDOYI

APPLICANT

AND

RHODES MBAMUNYA

1st RESPONDENT

GIDEON ZULU

2nd RESPONDENT

**Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on 5th
September, 2016**

For the Applicant : *Ms. P. Tembo, Mwenye, Mwitwa Advocates*
For the 1st Respondent : *No Appearance*
For the 2nd Respondent : *No Appearance*

R U L I N G

Legislation referred to:

1. Lands and Deeds Registry Act, Chapter 185

In this application, the Applicant seeks leave to register his Judgment out of time. It is supported by an affidavit sworn by **KENNY KASHIKA CHILYA SONDOYI**, who deposes that Judgment was entered in his favour on 15th January, 2014. The deponent states that the Judgment ordered specific performance of the contract relating to subdivision 132 of farm 50a, Makeni Lusaka. Further, the Court ordered the 1st and 2nd Respondent to hand over the Certificate of Title relating to the said farm, to himself or his advocates within 21 days of the date of Judgment.

The affidavit in support discloses that there was a breakdown in communication between the deponent and his advocates. As a result, the deponent avers that he only collected a copy of the Judgment of the Court towards the end of 2014. The deponent also avers that after collecting a copy of the Judgment, he was advised by his Advocates that he could not register the Judgment at the Ministry of Lands, Water and Environmental Protection, because he was out of time. He also states that the thirty days in which, he was required by law to register the Judgment had elapsed.

The affidavit in support discloses that his reason for delay for registering the Judgment was compounded by his late engagement

of Advocates to file the necessary process. He averred that his previous retainer with his Advocates was restricted to the application for specific performance of the contract of sale. The deponent states that in order to register the Judgment, he requires leave from the Court to register his Judgment out of time. He further deposes that if leave is granted, there will be no prejudice to the parties but rather a guarantee of the course of justice.

The matter came up for hearing on 31st August, 2016. Counsel for the Applicant placed reliance on the originating summons and the supporting affidavit filed into Court on 8th January, 2016. Her prayer to the Court was for it to grant the Applicant leave to register the Judgment out of time.

I have seriously considered the affidavit evidence and the oral submissions of Counsel.

This application is made pursuant to sections 4, 5 and 6 of the Lands and Deeds Registry Act. The relevant portions of the said sections are reproduced herebelow:-

"4. (1) Every document purporting to grant, convey or transfer land or any interest in land, or to be a lease or agreement for lease or permit of occupation of land for a longer term than one year, or to create any charge upon land, whether by way of mortgage or otherwise, or which evidences the satisfaction of any

mortgage or charge, and all bills of sale of personal property whereof the grantor remains in apparent possession,must be registered within the times hereinafter specified in the Registry or in a District Registry if eligible for registration in such District Registry.....

(3) Upon application to register any document affecting land required to be registered as aforesaid-

(a) The Registrar may order that any document necessary for deducing the title of the applicant for registration to the land thereby affected or any interest therein (hereinafter referred to as a "document necessary to deduce title"), although it may not be a document required to be registered as aforesaid, shall first be produced or its absence satisfactorily accounted for..... the Registrar may order that the same be first registered under this Part, unless such document necessary to deduce title is void in consequence of non-registration as hereinafter provided, in which case the Registrar shall not register the document tendered for registration unless ordered so to do by the Court.....

5. (1) All bills of sale must be registered within three months of the execution of the same.

(2) All other documents, except probate of a will, required to be registered as aforesaid shall be registered-

(a) in the case of a document executed at the place where it is registered, within thirty days from its date;.....

6. Any document required to be registered as aforesaid and not registered within the time specified in the last preceding section shall be null and void:

Provided that-

(i) the Court may extend the time within which such document must be registered, or authorise its registration after the expiration of such period on such terms as to costs and otherwise as it shall think fit, if satisfied that the failure to register was unavoidable, or that there are any special circumstances which afford ground for giving relief from the results of such failure, and that no injustice will be caused by allowing registration;....."

What I discern from the cited sections of the Lands and Deeds Registry Act, is that the Court can extend time within which to register documents under the Act. However, certain considerations must be taken into account, that is: terms as to costs, if registration was unavoidable, if there is need to consider special circumstances and more importantly, if no injustice will be caused by allowing late registration.

According to the affidavit evidence, the Applicant attributes his failure to timely register the Judgment to the breakdown in communication between himself and his Advocates. He also cites the reason on the restriction of his previous retainer which limited to the application for specific performance of the contract of sale.

In my view the reasons advanced by the Applicant appear plausible, considering that he was legally represented in this matter. I also find that since the Applicant is most affected by the non registration of Judgment, it is in the best interests of justice to permit late registration so that he can enjoy the fruits of his Judgment. In permitting him to do so, I find that there will be no injustice caused to any party.

I accordingly grant the Applicant leave to register his Judgment out of time and make no order on costs.

Leave to appeal is granted.

Delivered at Lusaka this 5th day of September, 2016

.....*M. Kapani*.....
Hon. Mrs. Justice M. Mapani-Kawimbe
HIGH COURT JUDGE