

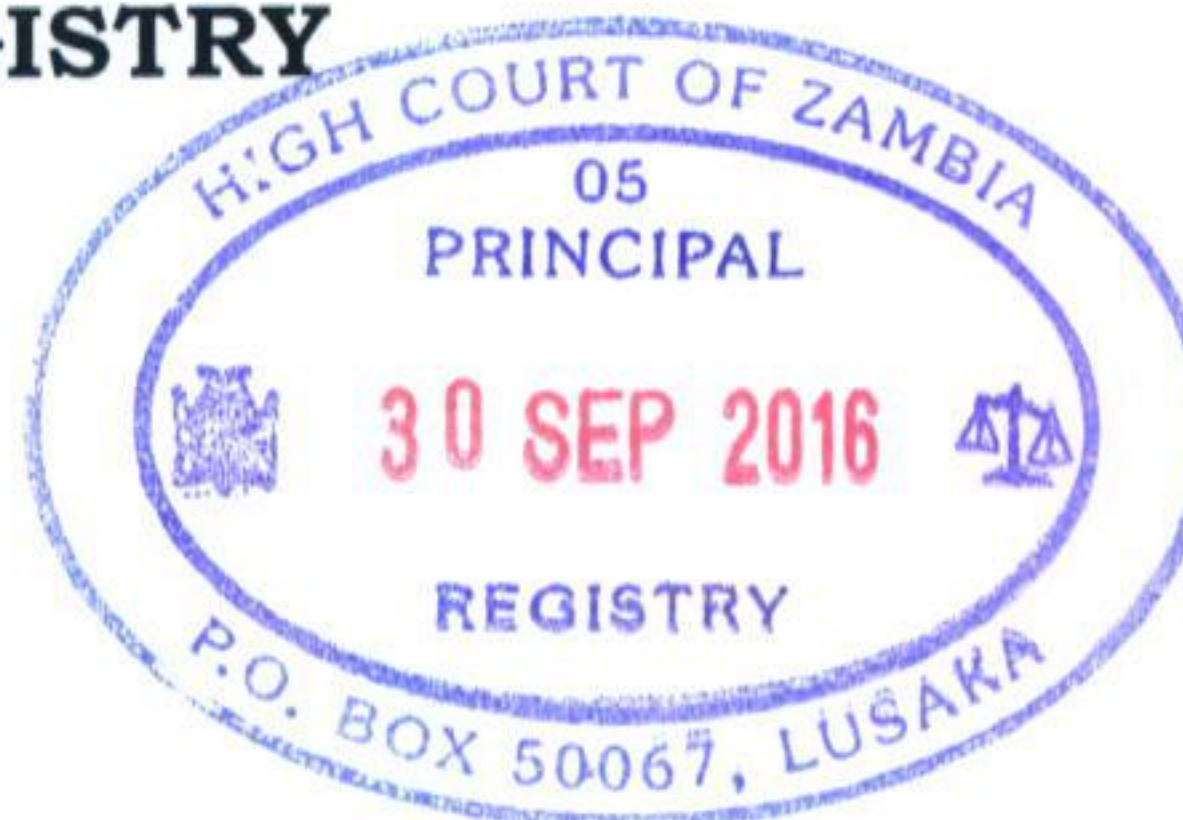
IN THE HIGH COURT FOR ZAMBIA

2016/HP/0472

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(Civil Jurisdiction)



B E T W E E N :

JOHN CHIZEMBE

PLAINTIFF

AND

ALEXANDER NGANDU
IBRAHIM PHIRI
MR. MALASHA
ATTORNEY GENERAL
LUSAKA CITY COUNCIL
CHARLES DINDIWE

1ST DEFENDANT
2ND DEFENDANT
3RD DEFENDANT
4TH DEFENDANT
5TH DEFENDANT
INTENDED 6TH DEFENDANT

Before Honorable Mrs. Justice M. Mapani-Kawimbe on 30th September, 2016

For the Plaintiff : *Mr. J. Chibalabala, Messrs John Chibalabala Advocates*
For the 1st Defendant : *No Appearance*
For the 2nd Defendant : *In Person*
For the 3rd Defendant : *No Appearance*
For the 6th Intended Defendant : *In Person*

R U L I N G

Case Authorities Referred To:

1. *Abel Mulenga and Others Vs Mabvuto Adam Avuta Chikumbi and Others The Attonery General (2006) Z.R. 33*

2. *Eureka Construction Limited Vs Attorney General, Consolidated Lighting Zambia Limited (Proposed Intervening Party) (2008) Z.R. 64 Vol. 2 (S.C.)*
3. *Wilson Masauso Zulu Vs Avondale Housing Project Limited (1982) Z.R. 172 (S.C.)*

LEGISLATION AND OTHER WORKS REFERRED TO:

1. *High Court Act, Chapter 27*

This is the Intended 4th Defendant now intended 6th Defendant's application for non-joinder pursuant to Order XIV Rule 5 of the High Court Act. It is supported by an affidavit sworn by **Charles Dindiwe** dated 18th August, 2016. He states that he is the registered owner of stand no. 37570, Lusaka as shown in the exhibit marked "**CD1**". He also states that he applied to the Lusaka City Council for an extension of his property and paid all the dues. He avers that his application was rejected by the Lusaka City Council for the reason that the land he was interested in was reserved for a road.

The deponent also avers that the Lusaka City Council demolished the boundary wall fence on the property he had applied for. That after his application was rejected he was surprised to see that some persons had started building houses on the land that was reserved for a road. The deponent contends that he is likely to be affected by the decision of the Court because he is similarly circumstanced as the 1st and 3rd Defendants who are his

neighbours. On that basis he argues that he should be joined as a party to these proceedings.

The Plaintiff filed an affidavit in opposition dated 21st September, 2016. It was deposed to by **John Chizembe**. He states that Stand no. 38753 is not located on any part of the road reserve as shown on the sketch map of 2014, in the exhibit marked "**JC1**". Further, that the Lusaka City Council created his property, Stand no. 38753 in 2014 and that he was issued a certificate of title on 9th May, 2016 as shown in the exhibit marked "**JC2**". He also stated that the intended 4th Defendant's (now 6th) property does not adjoin or share any boundary with the Plaintiff. That he is a total stranger to this action.

The intended 6th Defendant filed an affidavit in reply on 27th September, 2016. It was sworn by **Charles Dindiwe** who reaffirmed that he was the registered owner of stand no. 37560. He also averred that his property does not share a boundary with the Plaintiff's property, having made his application for extension of his property in 2012, way before the Plaintiff.

The deponent contended that his intention to join the proceedings was based on the fact that the Lusaka City Council had rejected his application and that of the 1st, 2nd and 3rd Defendants to extend their property boundaries. The deponent averred that the rejection in all cases was based on the claim that the extensions

would interfere with the road reserve. Further, that the title deeds were issued by the Lusaka City Council to the Plaintiff and the other new owners were irregularly done. The deponent also states that the site plan in this matter was drawn as an afterthought and was meant to deny the Defendants an opportunity to extend their properties.

At the hearing on 28th September, 2016, Learned Counsel for the Plaintiff told the Court that the parties would rely on their affidavit evidence.

I have seriously considered the intended 6th Defendant's application together with the affidavits filed in support and against the application.

Order XIV Rule 5 of the High Court Act provides *inter alia* that:
".....(5) If it shall appear to the Court or a Judge, at or before the hearing of a suit, that all the persons who may be entitled to, or claim some share or interest in, the subject-matter of the suit, or who may be likely to be affected by the result, have not been made parties, the Court or a Judge may adjourn the hearing of the suit to a future day, to be fixed by the Court or a Judge, and direct that such persons shall be made either plaintiffs or defendants in the suit, as the case may be....."

In my view the Order implies that in an application for joinder, a party must demonstrate that it possesses sufficient interest in the subject-matter of a suit or is likely to be affected by the result.

In the case of ***Abel Mulenga and Others Vs Mabvuto Adan Avuta Chikumbi and Others The Attorney General (2006) Z.R. 33*** ⁽¹⁾, the Supreme Court held *inter alia* that:

"..... In order for the appellants to be joined as parties in the action, the appellants ought to have shown that they have an interest in the subject matter of the action. The mere fact that the appellants may have been affected by the decision of the court below does not clothe them with sufficient interest or locus standi entitling them to be joined in the dispute....."

Similarly in the case of ***Eureka Construction Limited Vs Attorney General, Consolidated Lighting Zambia Limited (Proposed Intervening Party) (2008) Z.R. 64 Vol. 2 (S.C.)*** ⁽²⁾ the Supreme Court held *inter alia* that:

"..... In a proper case, a court can join a party to the proceedings when both the plaintiff and defendant have closed their cases and before judgment has been delivered by invoking Order 14 rule 5....."

The intended 6th Defendant contends in his affidavit evidence that the Lusaka City Council rejected his application to extend his property, which would have interfered with the road reserve. The said Council issued title deeds to the Plaintiff and other new owners

on the said road reserve. The intended 6th Defendant avers that the issue was irregular. The Plaintiff on the other hand argues that his property is not on a road reserve and that he has title for it. He also argues that he does not share a boundary with the intended 6th Defendant's property.

In my view it is quite clear that the intended 6th Defendant who claims to be similarly circumstanced as the 1st and 3rd Defendants has an interest in this matter. Therefore, he must be given an opportunity to tell his side of the story. I am not persuaded that the affidavit evidence in opposition is enough to dismiss the intended 6th Defendant's claim of interest in this action.

Therefore, on the strength of the authorities cited, I order that the intended 6th Defendant be joined as a party to these proceedings forthwith. This is the only way that all affected parties *in casu* will be able to resolve this matter. I find inspiration in the case of **Wilson Masauso Zulu Vs Avondale Housing Project Limited** where the Supreme Court held that:

"A trial court has a duty to adjudicate upon every aspect of the suit between the parties so that every matter in controversy is determined in finality."

That being the position at law, I accordingly order the joinder of the intended 6th Defendant to these proceedings forthwith. I make no order as to costs.

Leave to appeal is granted.

Dated this 30th day of September, 2016.

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