

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

**2012/HP/1010**

**BETWEEN:**

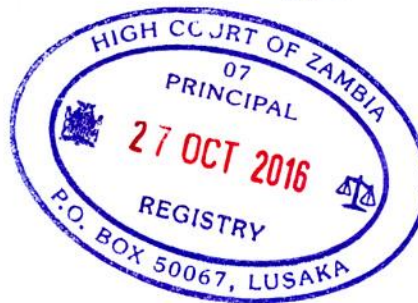
**EDWIN SIKOONGO**

**AND**

**DODDY CHILANDU**

**REBECCA MUSOLO**

**RUTH PHIRI & 20 OTHERS**



**PLAINTIFF**

**1<sup>ST</sup> DEFENDANT**

**2<sup>ND</sup> DEFENDANT**

**3<sup>RD</sup> DEFENDANT**

**CORAM: HONOURABLE JUSTICE MR. MWILA CHITABO, SC**

*For the Plaintiff:*

*Mr. R. Mainza of Messrs R. Mwanza & Co*

*For the Defendant:*

*N/A*

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**R U L I N G**

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**Legislation referred to:**

- 1. Supreme Court Rules of England vol. 1 (1999) Edition of the White Book*

This is an application for leave to issue a writ of possession by the Plaintiff. The legend of the case is that on 29<sup>th</sup> September, 2015 the parties executed a mediation settlement order. The essential

feature of the agreement was that the Defendant was to pay a sum of K640, 000 within 12 months from the date of agreement.

The Defendant reneged on the agreement that necessitated issue of the writ of *fifa* which remained completely unsatisfied because the Defendant had no goods worth seizing thus returned **Nulla bona**.

It is that failure of the writ of *fifa* to satisfy the debt that provoked the present application.

At the hearing, Learned Senior Counsel for the Plaintiff Mr. Mainza revealed that the Defendants Advocates had been duly served with the present application, and supporting affidavit and return notice of hearing as evidenced by an affidavit of service filed on 25<sup>th</sup> October, 2016.

There was no explanation as to the absence of the Learned Counsel for the Defendant. There was also no opposing affidavit. I therefore allowed the Learned Senior Counsel for the Plaintiff to present his application.

The gravamen of Counsels submissions were that the application was anchored under Order 41 Rule 3 of the White Book<sup>1</sup>. It was supported by an affidavit which shows that the writ of *fifa* issued was *nulla bona* as the Defendant had no goods worth seizing vide exhibit "ES5".

He therefore sought leave to issue an order for possession to aid the failed writ of *fifa* to possess a targeted property namely Lot No, 21390/m Chibombo.

He thus enlisted the aid of Order 46 Rule 3 of the White Book<sup>1</sup> as aforesaid.

I have considered the submissions in respect of the application for leave to issue a writ of possession. There is no affidavit in opposition.

The application is well grounded on the premise that the Plaintiff has not been able to satisfy the mediation consent settlement order. The writ of fifa has failed to get the fruits of the Judgment of the settlement order.

In my view, this is a fit and proper case to grant the Plaintiff leave to issue writ of possession in respect of Lot No. 21390/m Chibombo and I so grant the leave.

Costs are for the Plaintiff which are to be taxed in default of agreement.

Leave to appeal to the Court of Appeal is granted.

Dated at Lusaka this <sup>27<sup>th</sup></sup>..... day of October, 2016



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**Mwila Chitabo, SC**  
**Judge**