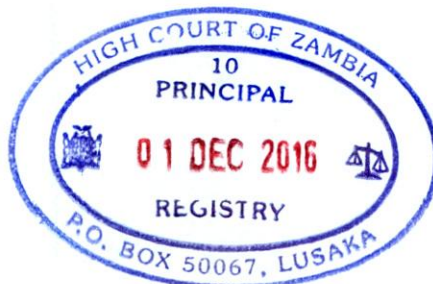


**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2016/HP/2026



B E T W E E N:

ESPINA LABANI CHIKOTI

PLAINTIFF

AND

LOCAL AUTHORITIES SUPERANNUATION FUND

1st DEFENDANT

DERRICK SAKALA

2nd DEFENDANT

Before Hon. Mrs. Justice M. Mapani-Kawimbe in Chambers on 1st December, 2016

For the Plaintiff : Mr. G. M. Kaulungombe, Marshall Chambers
For the Defendant : Mr. L. Phiri, Messrs Chonta, Musaili & Pindani
Advocates

R U L I N G

Case Authorities Referred To:

1. *Kelvin Hang'andu and Company (A firm) v Webby Mulubisha (2008) ZR. 82 (vol.2)*
2. *Development Bank of Zambia and Another v Sunvest Limited & Another (1995 - 1997) ZR. 187*
3. *Mukumbuta Mukumbuta & 4 Others v Mongu Meat Corporation Limited & 3 Others SCZ Judgment No. 8 of 2003*

Legislation And Other Works Referred To:

1. *High Court Act, Chapter 27*

On 20th October, 2016, the Plaintiff filed inter-parte summons for an order of interim injunction pursuant to Order XXVII of the High Court Rules, together with a Supporting Affidavit. The 1st Defendant entered a Conditional Memorandum of Appearance on 3rd November, 2016. On 17th November, 2016 the 1st Defendant filed an Affidavit in Opposition to the Inter-Parte Summons for an Order of Interim Injunction and Skeleton Arguments.

On the same date, the 1st Defendant further filed Summons to Dismiss the Plaintiff's Action for being an Abuse of the Process of the Court and for a Wasted Costs Order. The summons was accompanied by an Affidavit in Support and Skeleton Arguments.

The Summons was given a return date of 25th November, 2016. On that date, Learned Counsel for the 1st Defendant attended Court on time, while Learned Counsel for the Plaintiff arrived ten minutes late. By that time, I had already made an Order to render a Ruling on both applications at the same time. At the hearing, Learned Counsel for the 1st Defendant placed reliance on the Affidavit in Support and Skeleton Arguments filed herein.

Therefore, I will begin by considering the 1st Defendant's application to dismiss the action for being an abuse of the process of the Court and for a wasted costs order.

Mr. Alick Kabwe the Director of Corporate Services in the 1st Defendant Company deposes that the 1st Defendant by Originating Summons dated 2nd October, 2015 in Cause No. 2015/HP/1984 commenced Court process against the Plaintiff under Order 113 of the Rules of the Supreme Court, 1999 Edition. This is shown in the exhibit marked "**AK1**". He also deposes that the Plaintiff herein opposed the Originating Summons through her advocates Marshall Chambers by raising similar claims to the ones under Cause No. 2015/HP/1984, as shown in the exhibit marked "**AK2**".

The Affidavit in Support discloses that this Court delivered a judgement to the effect that the 1st Defendant herein is the legal owner and title holder of the property in dispute. Further, that the Plaintiff is illegally occupying the property and has remained in occupation without the 1st Defendant's consent or permission. This is shown in the exhibit marked "**AK3**".

The Affidavit in Support also discloses that the Plaintiff being dissatisfied with the judgment of this Court filed a Notice of Appeal to the Supreme Court under Cause No. SCZ/8/271/2016, shown in the exhibit marked "**AK4**". The appeal before the Supreme Court was transferred to the Court of Appeal under Cause No. CAZ/08/005/2016. The deponent states that this Court dismissed the Plaintiff's application to stay execution of judgment on 28th September, 2016 in Cause No. 2015/HP/1984 as shown in the exhibit marked "**AK5**".

Further, that the Plaintiff under in that cause renewed her application for stay of execution of this Court's judgment before the Court of Appeal. On 19th October, 2016, the Honourable Mr. Justice D.Y. Sichinga J, of the Court of Appeal dismissed the Plaintiff's application for stay of execution as shown in the exhibit marked "**AK6**".

The deponent avers that on 4th November, 2015, the Plaintiff's advocates took out writ of summons and a statement of claim on 4th November, 2016, regarding the same disputed property on behalf of a Mr. Stanley Tembo (suing in his capacity as Administrator of the

late estate of the late Francis Kabaso. This is shown in the exhibit marked "**AK7**". In that cause, Mr. Stanley Tembo also applied for an injunction, which the 1st Defendant opposed on a point of law.

The deponent further avers that the Plaintiff's claim pursued by her Advocates under this cause amounts to an abuse of the process of the Court and invites a multiplicity of procedures or actions over the same subject matter. Further, that this matter, which has been litigated upon and is subject to an appeal, is frivolous and vexatious. He prayed to the Court to dismiss the action.

The Plaintiff did not file an Affidavit in Opposition.

The 1st Defendant filed Skeleton Arguments which are on record. I shall not reproduce them, suffice to state that I will refer to them in this Ruling.

I have seriously considered this application together with the contents of the Affidavit in Support and Skeleton Arguments. The issue to be determined is whether the action commenced by the

Plaintiff in this Court is frivolous, vexatious and amounts to a multiplicity of actions.

The Originating Summons filed by the 1st Defendant under Cause No. 2015/HP/1984 dated 22nd October, 2015 reads as follows:

"an application by the LOCAL AUTHORITIES SUPERANNUATION FUND for an order that it does recover possession of Sub division 'B' of Sub division No. 49 of Sub division 'E' of Farm No. 609, Chamba Valley, in the City and Province of Lusaka in the Republic of Zambia on the ground that it is entitled by virtue of Certificate of Title No. 55560 to possession and that the persons in occupation are in occupation without licence or consent.

On 20th October, 2016, the Plaintiff took out writ of summons endorsed with the following claims:

- a) A declaration that the plaintiff as sitting tenant and caretaker of property known as F/609/E/49/B Lusaka, was entitled to the right of first refusal when the 1st Defendant decided to dispose off the said property.***
- b) A further declaration that the purported contract of sale between the 1st and 2nd Defendants over the property known as F/609/E/49/B in which the Plaintiff is the sitting tenant caretaker was done in bad faith as the 2nd Defendant was neither sitting tenant nor an employee of the 1st Defendant to have qualified to purchase the property which in any case was neither advertised in any public media.***
- c) An injunction***
- d) Costs.***

In the Originating Summons the Plaintiff's defence extrapolated from the exhibit marked "**AK2**" in the Affidavit in Support, quoting the relevant portions, reads as follows:

- "3. That I am the caretaker of property known as F/609/49/E/B, Chamba Valley, as alluded to in paragraph 8 of the affidavit of Alick Kabwe, the plaintiff's Director of Corporate Services....**
- 4. That I have read the affidavit in support of originating summons for possession of land issued out of this Honourable Court by the Plaintiff and hereby respond as follows:-**
 - i. That I have been in occupation of the said property namely F609/49/E/B, Chamba Valley for about fifteen years.**
 - ii. That the Plaintiff itself has confirmed in its affidavit in support of originating summons for possession of land that it has offered the said Stand F/609/49/E/B to a third party namely Derrick Sakala as evidenced by a copy of the contract of sale produced and exhibited hereto.....**
 - iii. That a further irregularity is that the property itself was not even advertised for sale to members of the public and it therefore becomes a matter of great concern as to how they arrived at a Mr. Derrick Sakala who was never a sitting tenant. It is also a matter worth noting as to how Derrick Sakala got to know that the property was available for sale.**
 - iv. That I therefore beseech this Honourable Court to make a finding that by reason of the plaintiff's own admission that I was a caretaker/sitting tenant of the said property known as F/609/49/E/B I was entitled to right of first refusal before the property was made available to any third party.**

It is quite clear to me that the claims under this cause are substantially the same claims that the Plaintiff raised in her

defence, under Cause No. 2015/HP/1984. I also wish to point out that the Court's judgment in Cause No. 2015/HP/1984 dealt with the Plaintiff's claims. Invariably, one would assume that the Plaintiff was raising new claims under this cause but a critical analysis of the claims reveals that I might lead myself into a danger of making conflicting decisions on the same dispute, if concurrent proceedings are allowed to continue.

In the case of **Kelvin Hang'andu and Company (A firm) v Webby Mulubisha**¹, the Supreme Court held *inter alia* that:

"3. Once a matter is before court in whatever place, if that process is properly before it, the court should be the sole court to adjudicate all issues involved, all interested parties have an obligation to bring all issues in that matter before that particular court. Forum shopping is abuse of process which is unacceptable.

4. The Plaintiff was guilty of abuse of court process and forum shopping. The conduct of the plaintiff was condemned and disapproved of.

This principle of law was followed in the case of **Development Bank of Zambia and Another v Sunvest Limited & Another**², where the Supreme Court held *inter alia* that:

"We also disapprove of parties commencing a multiplicity of procedures and proceedings and indeed a multiplicity of actions over the same subject matter. We also disapprove of the

multiplicity of actions between the same parties involving various issues proposed to be raised in the new action which as we said we disapproved of."

On the basis of the foregoing, the inescapable conclusion I reach is that this action is frivolous, vexatious, an abuse of Court process and amounts to a multiplicity of actions. It has no merit. I accordingly dismiss it.

I have not lost sight of the 1st Defendant's application for an order of wasted costs. Order 40 Rule 6 of the High Court Rules sets out thus:

The cost of every suit or matter and of each particular proceeding therein shall be in the discretion of the Court or a Judge; and the Court or a Judge shall have full power to award and apportion costs, in any manner it or he may deem just, and, in the absence of any express direction by the Court or a Judge, costs shall abide the event of the suit or proceeding."

Learned Counsel for the 1st Defendant quite advisedly referred me to the case of **Mukumbuta Mukumbuta & 4 Others v Mongu Meat Corporation Limited & 3 Others**³, where the Supreme Court held *inter alia* that:

"In view of the fact that the advocates for the respondents deliberately and consciously went forum shopping resulting in the parties being before several High Court Judges, it is the advocates

of the respondents and not the respondents who should be punished in costs."

In my view, the Plaintiff's course of actions may perhaps be a result of her advocates counsel. However, if it turns out that the Plaintiff is insisting on the course of multiplicity of actions, then I find her advocates guilty of the transgression of failing to give her proper counsel. Therefore, I have no hesitation in holding that her advocates must personally bear the costs of this action, for failing to manage the client-advocate relationship, which has resulted into this adverse forum shopping.

In view of the conclusion I have reached, it is otiose for me to consider the Plaintiff's application for an interim injunction.

Before I conclude, I wish to point out that this matter was scheduled for hearing on 25th November, 2016 at 09.40 hours. I sat to hear all chamber applications in Court room 8 in the High Court, as I do not have a permanent chamber. Just before 09.40 hours, I asked my Marshall, Mr. William Bwalya to direct all advocates or litigants who were appearing before me to Court room 8. Only Mr. L. Phiri, the 1st Defendant's advocate appeared on time, while Mr.

G. Kaulungombe appeared at 09.50 hours. By that time, I had already made an order to render a ruling on the both applications at the same time.

Mr. G. Kaulungombe protested my decision charging that he had arrived at Court at about 09.30 hours, but did not know where to locate me. He expressed great displeasure at my Marshall, claiming that he did not inform him of my location.

Mr. Kaulungombe requested me to revisit my ruling so that he could present his oral arguments on the interim injunction. He stated that the application for interim injunction being a very serious matter, entitled his oral arguments to be heard by the Court. I declined to revisit my ruling, but in the interest of justice, allowed Mr. Kaulungombe to file his Skeleton Arguments on the Plaintiff's application by Wednesday 30th November, 2016.

Mr. Kaulungombe, albeit, insisted me to revisit my ruling but with no success. He also expressed disdain towards my Marshall which was rather regrettable. It is a well known fact that I do not have a permanent chamber. However, in order to lessen the

inconvenience to advocates or litigants, I have always made it a point for my Marshall to look for parties, in order to direct them to my whereabouts. Mr. G. Kaulungombe who has appeared before me just like other advocates or litigants is no stranger to this practise. I therefore find his exaggerated protest rather surprising.

In my considered view, one of the greatest hallmarks of advocacy, is courtesy. It should not only extend to the Court, members of the Bar or litigants, but also to the Court's staff, who are very instrumental in ensuring Court operations. It is unfortunate that this Court was subjected to the Mr. Kalungombe's strong affront. No matter how spirited Counsel might be in the pursuit of justice, there is in my firm view, a corresponding obligation for one to stay committed to the principles that are akin to the Legal Profession, that is, sobriety and nobility.

It is therefore important for Counsel to forge ahead with these principles no matter how arduous the situation might be.

Leave to appeal is granted.

Dated this 1st day of December, 2016.

M. Mapani

M. Mapani-Kawimbe
HIGH COURT JUDGE