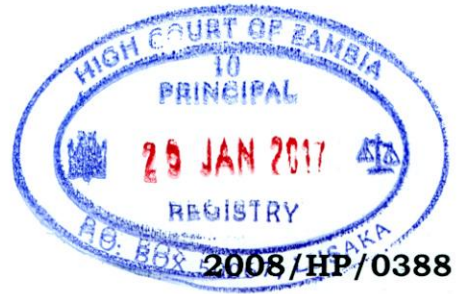


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**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**  
*(Civil Jurisdiction)*

**B E T W E E N:**

OSSIE MANGANI ZULU

**APPLICANT**

**AND**

PASCALINE BWALYA MUSONDA

**CONTEMNOR**

**Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on the  
25<sup>th</sup> January, 2017**

*For the Applicant* : *Dr. O. M. Banda, Messrs O.M. Banda &  
Company*  
*For the Intended Contemnor* : *In Person*

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## **R U L I N G**

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**Legislation Referred To:**

1. *Rules of the Supreme Court (1999) Edition*

This is a motion by the Applicant for an order that Pascaline Bwalya Musonda the Contemnor be committed to prison for contempt of Court. It is filed pursuant to Order 52 Rule 3 of the Rules of the Supreme Court. It is supported by a Statement and Affidavits.

The history of this motion as discerned from the Statement is that on 22<sup>nd</sup> April, 2008, the Applicant commenced litigation to recover the property in dispute. By judgment dated 8<sup>th</sup> April, 2011, the Court declared the Applicant as the lawful owner of the disputed property. Further, the Court awarded the Applicant damages for the structures that were demolished on the property.

On 30<sup>th</sup> May, 2014, the 1<sup>st</sup> Defendant (Lusaka City Council) in the main cause offered the Applicant's property to the Contemnor. The offer to the Contemnor was however, withdrawn on 4<sup>th</sup> September, 2014. Thereafter, the Contemnor was placed on the 1<sup>st</sup> Defendant's land allocation waiting list.

On 5<sup>th</sup> August 2014, a dispute arose between the Applicant and the Contemnor, which was subsequently referred to the officer in charge at Maxwell Sibongo Police Post in Kamwala South, Lusaka.

The Applicant states that when he was summoned to the Police Post he showed the officer in charge and the Contemnor, a copy of the Judgment in *casu* which confirmed his ownership of the property. The Statement discloses that notwithstanding the Court's

Judgment the Contemnor continued developing the Applicant's property by constructing a wall fence and plastering his house on Stand No. 16614/1080, Kamwala South, Lusaka.

**Ossie Mangani Zulu** the Applicant swore an Affidavit where he states that the Court's judgment dated 8<sup>th</sup> April, 2011, delivered in his favour, declared that he is the lawful owner of the disputed property. He also states that the 1<sup>st</sup> Defendant in the main cause offered the Contemnor the Applicant's property, but withdrew the offer on 4<sup>th</sup> September, 2014.

The Affidavit regurgitates the events of the 5<sup>th</sup> August, 2014, as outlined in the Statement regarding the dispute between the Contemnor and the Applicant Further, the Affidavit in Support restates that the Contemnor is developing the Applicant's property, and has constructed a wall fence on the property as well as plastered the Applicant's house. This is shown in the exhibits marked **OMZ3 & OMZ4** respectively of the Affidavit in Support.

The deponent states that the Contemnor who is fully aware of the Court's judgment has continued to disobey it. Further, that if

his application is not granted the Contemnor will continue underrating the Court order with impunity.

**Pascaline Bwalya Musonda** the Contemnor filed an Affidavit in Opposition where she contends that she was allocated the disputed property in 2014, after the Court's Judgment. She claims that she had no prior interest in the property before that date. The Contemnor also contends that although she has never seen the judgment of the Court, she has stopped developing the property.

The Applicant filed an Affidavit in Reply where he insists that the Contemnor is well aware of the Court's judgment, and has had sight of it via the Affidavit of Support of Complaint filed before the Lands Tribunal on 28<sup>th</sup> August, 2014, under cause LAT/85?2014 and served on the Contemnor on 5<sup>th</sup> September, 2014. This shown in the exhibits marked **OMZ1** and **OMZ2** of the Affidavit in Reply.

At the hearing of this motion, the parties relied on the Affidavits filed herein. The Applicant further relied on his Statement.

I have seriously considered this motion together with the contents of the Affidavits filed. The application raises the question whether in the circumstances of this case, I should grant the order to commit the Contemnor to prison for contempt.

Order 52 Rule 3 of the Rules of the Supreme Court sets out thus:

***"(1) When leave has been granted under rule 2 to apply for an order of committal, the application for the order must be made by motion to a Divisional Court and, unless the Court or judge granting leave has otherwise directed, there must be at least 8 clear days between the service of the notice of motion and the day named therein for the hearing.***

***(2) Unless within 14 days after such leave was granted the motion is entered for hearing the leave shall lapse.***

***(3) Subject to paragraph (4) the notice of motion, accompanied by a copy of the statement and affidavit in support of the application for leave under rule 2, must be served personally on the person sought to be committed.***

***(4) Without prejudice to the powers of the Court or judge under Order 65, rule 4, the Court or Judge may dispense with service of the notice of motion under this rule if it or he thinks it just to do so."***

I have carefully examined the Statement and the Affidavits filed in Support by the Applicant. I am satisfied that they meet the requirements of Order 52 Rule 3 of the Rules of the Supreme Court. Further, that the Contemnor was duly served Court process.

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I have also given serious consideration to the Contemnor's Affidavit in Opposition which, in my view amounts to a defence. At this stage of proceedings, I am only required to determine the Applicant's compliance to Order 52 Rule 3 of the Rules of the Supreme Court and not the substantive matter.

Consequently, I hold that the Applicant having met the requirements of Order 52 Rule 3 of the Rules of the Supreme Court, must move the Court within the next fourteen days to hear the contempt proceedings.

Dated this 25<sup>th</sup> day of January, 2017.

*M. Mapani*

M. Mapani-Kawimbe  
**HIGH COURT JUDGE**