

IN THE HIGH COURT FOR ZAMBIA 2016/HP/2022
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)



IN THE MATTER OF : **ORDER 113 OF THE RULES OF
THE SUPREME COURT (WHITE BOOK)
1999 EDITION**

IN THE MATTER OF : **PLOT NO. 32 OF SUBDIVISION R
OF FARM N1/1938 IN LUSAKA WEST**

AND

IN THE MATTER OF : **AN ORDER FOR VACANT POSSESSION
OF PLOT NO. 32 OF SUBDIVISION R
OF FARM N1/1938**

B E T W E E N:

JEAN MASIALETI

APPLICANT

AND

FABIAN KAMIMBE

RESPONDENT

**Before Hon. Mrs. Justice M. Mapani-Kawimbe in Chambers on
the 21st February, 2017**

For the Applicant : *Mr. M. Bwalya, Messrs Ellis & Co*
For the Respondent : *No Appearance*

J U D G M E N T

Legislation Referred To:

1. *Rules of the Supreme Court (1999) Edition*
2. *Lands and Deeds Registry Act Chapter 185*
3. *Lands Act, Chapter 184*

The Applicant commenced this action by way of Originating Summons pursuant to Order 113 of the Rules of the Supreme Court for vacant possession of Plot No. 32 of Sub Division 'R' of Farm N1/1938.

An Affidavit was filed in support and sworn by **Jean Masialeti** who states that on or about 31st July, 2009, she entered into a contract with BNM Estates Limited for the purchase of Plot No. 32 of Subdivision R of Farm N1/1938 (the property) in Lusaka West, as shown in the exhibit marked "**JM1**".

The deponent also states that on 8th May, 2009 and 2nd June, 2009, she paid ZMW 900.00 (rebased) and ZMW 7,000.00 (rebased) towards the purchase of the property, as shown in the exhibits marked "**JM2**" and "**JM3**".

The deponent further, states that on 10th December 2010, she made a another payment of K2,000.00 (rebased) towards the purchase of the property as shown on the exhibit marked **"JM4"**.

Consequently, she proceeded to build a house on the property up to the window level. The deponent avers that sometime in October 2016, she discovered that the Respondent had built her house up to roof level. Further, that all efforts to remove the Respondent from her property and to stop the illegal construction proved futile.

The Respondent was duly served with Court process by the Applicant on 10th November, 2016, but refused to acknowledge receipt. Further, an Affidavit of Service was filed into Court by the Applicant on 10th November, 2016, showing proof of service. I was fully convinced that the Respondent was well aware of the hearing given that his wife appeared before Court at the hearing. I thus, proceeded to hear the matter in accordance with Order XXXV Rule 3 of the High Court Rules.

At the hearing, Learned Counsel for the Applicant relied on the Affidavit in Support. He prayed to the Court to grant the Applicant the reliefs sought as the Respondent had no title to the property and could not justify his interest. Counsel also prayed to the Court to evict the Respondent from the Applicant's property and for an order of possession.

The Respondent did not file an Affidavit in Opposition.

I have seriously considered the application and the Affidavit filed in Support.

Order 113 of the Rules of the Supreme Court, provides thus:-

"Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this Order".

In my considered view, Order 113 empowers a Court to eject a person who has occupied land without licence or consent of the owner. Such person for the purposes of Order is held to be a squatter or trespasser without a claim or right.

In the present case, I find that there is no dispute that the Applicant has a valid certificate of title for the property. This resonates with section 33 of the Lands and Deeds Registry Act, which provides that a certificate of title is conclusive proof of ownership of property. Thus, a claim of adverse possession cannot be sustained against a title holder.

Section 9 of the Lands Act provides that:

- "(1) A person shall not without lawful authority occupy or continue to occupy vacant land.***
(2) Any person who occupies land in contravention of subsection (1) is liable to be evicted".

I am therefore satisfied that the Respondent is illegally on the Applicant's farm and has remained in occupation without her licence or consent. He is thus liable to eviction in terms of section 9 of the Lands Act.

Accordingly, I grant the Applicant an order for vacant possession of Plot No. 32 of Sub division 'R' of Farm N1/1938 as the legal owner. I order the eviction of the Respondent on the property forthwith without further recourse to Court.

I award costs to the Applicant to be taxed in default of agreement.

Dated this 21st day of February, 2017.

M. Mapani
M. Mapani-Kawimbe
HIGH COURT JUDGE