

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

2015/HPC/0327

B E T W E E N :

ELECTORAL COMMISSION OF ZAMBIA

APPLICANT

AND

JOE DARLINGTON SIKAZWE
ANNIE SIKAZWE

RESPONDENT
1ST INTENDED INTERVENER

Before the Honourable Justice B.G. Lungu on the 15th day of September, 2016 in Chambers.

For the Intended Intervener: Mr E Khosa, Messrs Nganga Yalenga & Associates

RULING

Cases

1. *The Attorney General v. Aboubacar Tall and Zambia Airways Corporation Ltd, (1995-1997) Z.R. 54;*
2. *Eureka Construction Limited v. Attorney General, Consolidated Lighting Zambia Limited (Proposed Intervening Party) (2008) Z.R. 64 Vol. 2 ; (S.C.Z. JUDGMENT NO. 37 of 2008)*

Legislation

1. *Order XIV Rule 5(1), High Court Rules, Chapter 27 of the Laws of Zambia*

This is an application on the part of the 1st Intended Intervener for an Order that she be joined to these proceedings on the grounds set out in the Affidavit in Support filed on 4th March 2016.

When the matter came up for hearing on 14th September, 2016, neither the Applicant nor the Respondent were in attendance, and no Affidavit in Opposition was on record. The application was therefore not opposed.

The Affidavit in Support was sworn by Annie Sikazwe, the Intended Intervener. In her Affidavit, the deponent attested that the Applicant commenced this mortgage action, in which a Judgment was entered on 25th November 2015, in favour of the Applicant.

She further deposed that the property that is subject to the Judgment, Stand 821, Lusaka, was the property of her late husband. Certificate of Title No. L2630 in respect of Stand No. 821, Lusaka, referred to as exhibit "**AS1**" is registered in the name of Joe Darlington Sikazwe.

Exhibit "**AS2**", the Death Certificate referred to in the Affidavit in Support reveals that one Joel Sikazwe died in July, 2000. The deponent deposed that she was appointed executor of her late husband's estate, as evidenced by exhibit "**AS3**", the Order of Appointment of Administrator dated 3rd November, 2000. The Order of Appointment refers to the deceased as Joel Darlington Mwamba Sikazwe.

The deponent further attested that the Applicant never brought it to her attention that proceedings had been commenced, notwithstanding the fact that the Respondent predeceased the commencement of the proceedings and that she was in possession and occupation of the subject premises prior to the commencement of the matter.

The gist of the legal argument submitted in support of the application is that under Order 88 Rule 5(4) and (8) of the White Book, an Applicant who claims delivery or possession must give particulars of every person who is known to be in possession of the mortgaged property in order to protect the rights of third parties.

It essence, it was argued that the Intended Intervener, being an executrix and person in possession of the property is an interested party who ought to have been privy to the proceedings.

I have carefully considered the facts and law presented on behalf of the Intended intervener. I have also studied the record and interpose a few glaring facts: Firstly, that on 4th November 2015, one Joe Darlington Sikazwe filed an Affidavit in Opposition to the Originating Summons, wherein he deposed that he was the Respondent in this case; secondly, that the said Respondent was in attendance at the hearing of the Originating Summons on 18th November, 2015; thirdly, that the Death Certificate and Order of Appointment of Administrator exhibited by the 1st Intended Intervener reveal that the deceased was one Joel Sikazwe; and fourthly, that the Certificate of Title for stand No. 821 is registered in the name of Joe Darlington Sikazwe.

These observations strongly suggest that Joe and Joel Sikazwe are different individuals, more so that the record shows that the loan for which the property was offered as security was obtained by the Respondent, Joe, in 2011, well after the demise of the said Joel Sikazwe. The interest of the 1st Intended Intervener is therefore questionable.

Notwithstanding the miasma surrounding the 1st Intervener's interest, I consider that the significant and pivotal question that

needs to be addressed by this Court is, at what stage of the proceedings can this Court join an interested party.

The law on Non-joinder is found in Order 14 of the High Court Rules. Rule 5(1) in part reads as follows:

“If it shall appear to the court or 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 judge may adjourn the hearing of the suit to a future day, to be fixed by the court or judge, and direct that such person shall be made either plaintiffs or defendants in the suit, as the case may be....”

The Supreme Court had occasion to consider the interpretation of Order 14.r 5 in the case of ***The Attorney General v. Aboubacar Tall and Zambia Airways Corporation Ltd¹***, where they expounded was as follows:

“It follows therefore that in a proper case the 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.”

On the basis of their interpretation in the ***Tall*** case, the Supreme Court reiterated their position in the 2008 case of ***Eureka Construction Limited v. Attorney General, Consolidated Lighting Zambia Limited (Proposed Intervening Party)²***, where it was held as follows:

“ 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.

Not only is this still good law, it is also law that this Court is obliged to apply, by *stare decisis*, in the manner articulated by the Supreme Court.

In casu, the 1st Intended Intervener applied to be joined in March 2016, after Judgment was entered in November 2016. In view of the Supreme Court's interpretation of Order 14 rule 5 (1) of the High Court Rules, the Intended Intervener in the instant case has come too late in the day. The application for joinder in the High Court is, therefore, dismissed.

Each party shall bear its own costs

Leave to appeal is granted.

Dated this 28th day of February, 2017


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Judge B. G. Lungu