

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



BETWEEN:

LACKSON SAKALA

PLAINTIFF

AND

NAOMI LUTANGU

1st DEFENDANT

THE ATTORNEY GENERAL

2nd DEFENDANT

Before the Hon. Mr. Justice E. M. Sikazwe in Chambers.

<i>For the Plaintiff</i>	:	<i>Mr. L Eyaa - Messrs K.B.F & Partners</i>
<i>For the 1st Defendant</i>	:	<i>Mr L Mudenda – Messrs Tembo Sakala & Company</i>
<i>For the 2nd Defenadt</i>	:	<i>None</i>

RULING

LEGISLATION REFERRED TO:

1. Order 35 rule 6 of the High Court Rules of Cap 27 of the Laws of Zambia

By Writ of Summons the Plaintiff came to Court to claim for the following:

- i. *a declaration that the Plaintiff is the rightful legal owner of a property known as of L3078/M situate in Roma Ward 7 area in Lusaka;*
- ii. *revocation of certificate of title No. 91307 relating to L3078/M issued to the 1st Defendant herein as the same was issued irregularly;*
- iii. *damages for the wrongful demolishing of the Plaintiff's house effected by the bailiffs under the 1st Defendant's instructions;*
- iv. *damages for pain and suffering;*
- v. *any other relief the Court may deem fit;*
- vi. *interest; and*
- vii. *costs.*

The matter on 2nd March 2015 was struck out the cause list for want of prosecution under Order 35 r 1 of the Rules of the High Court.

Further the Court stated that there was nothing more to determine, the issue having been fully decided and determined by my brother Hon. Judge A J Nyangulu under cause No. **1992/HP/1270** dated 26th April, 1995.

This information came to this Court after it had been revealed by the 1st Defendant's Advocate that the matter was Res Judicata as stated above. In the first limb of my Order dismissing the Action, It was because of the none attendance of the Plaintiff. The 1st Defendant was granted permission to serve the Plaintiff under substituted service in the Local Newspapers and was done on dates 13th November, 2014 to 14th November 2014.

Further the 1st Defendant again advertised in the local Newspaper from 12th March, 2015 to 13th March, 2015, to the effect that the matter has been dismissed for none attendance of the Plaintiff on 23rd February, 2015.

On 26th July 2016 the Plaintiff's new Advocates filed into Court a Notice of Appointment of Advocates as well as a Notice to proceed the matter within 30 days. After 30 days had elapsed the Plaintiff's Advocates filed in Summon to set aside the Order dated 23rd February 2015 pursuant to Order 35 Rule 5 of the Rules of the High Court Cap 27 of the Laws of Zambia as he was not aware of the proceedings whilst waiting for his Advocate to communicate to him a new date for trial. An Affidavit to support the application was also filed in on 30th August, 2016. The main reason the Plaintiff put up was under paragraph 9 that he had travelled to the village believing that his then lawyers would attend on his behalf, but instead his Advocates had filed in an Order of withdraw as his Advocates on 27th August, 2013. Under paragraph 10 he stated that his none attendance on the material day was not deliberate as he had gone to an area where the paper in which the advert appeared has less circulation.

Finally that he has been advised by his lawyers that this Honourable Court has jurisdiction to set aside the said Order so that the matter should be put on the active cause list and determined on its merit.

I have considered the reasons put up in an Affidavit by the Plaintiff as to why he did not attend to the matter when it came up on 23rd February, 2015. One thing to note is that his first Advocates withdrew their representation way back on 27th August, 2013. It took the Plaintiff two (2) years and eleven (11) months to engage his new Advocates to come to Court and register their Notice of Appointment as well as Notice to proceed the matter within thirty days on 26th

July 2016, not even complying to the Order XXXV Rule 6 of the High Court Chapter 27 of the Laws of Zambia. This delay to have this matter placed back on active cause list cannot be entertained by this Court. For whatever reason can be given by the Plaintiff, the inordinate delay is just too excessive. The Plaintiff did not diligently pursue his matter which was before the Court. After all it was him who came to Court to seek redress. When Courts set up dates to hear the matters on the dates and times indicated it must be observed seriously by the litigants. If any of the litigants is unable to attend Court on the scheduled date and time, the Courts should be informed in good time and the matter will be given another day and time of hearing the matter. Failure to that, the matter will be struck out the cause list and given time in which to restore it and if not the matter will be dismissed. This is exactly what happened in this matter and the matter was dismissed.

On the question of Res Judicata which this Court based as another reason of throwing out the matter is that, it should be noted that the matter before Honourable Justice A. J Nyangulu under cause number **1992/HP/1270** was in respect of plot Nos. 3078/M and 3079/M Chamba Valley in the Lusaka Province of the Republic of Zambia. It is immaterial if the Plaintiff was not a party in this matter where the Defendants were six of them. The Judgement of Judge Nyangulu was to do with the two plots mentioned above and I have also noted that the Plaintiff's plot he is trying to claim is Plot No. 3078/M situate according to him in Roma Ward 7 area in Lusaka which plot No. is the same as that in cause 1992/HP/1270. The Plaintiff has failed to prove to this Court that the Plots which were determined in cause number **1992/HP/1270** in Chamba Valley Lusaka and Plot No. 3078/M is not the same as the one under this Court. The only reason given to distance himself from the effect of Judge Nyangulu's Judgement is that the person named or alias named "*GAMATETE SAKALA*" the 5th Respondent is not him the Plaintiff. However, the bottom line the Court has taken is whether the two causes of actions are to do with the

same plot No. 3078/M in Chamba Valley Lusaka, which has so far been proved by this Court and therefore the Judgement of Judge A. J. Nyangulu still stands as he so found.

The application of 1st Defendant's Preliminary issue raised on a point of law succeeds and this Court has no jurisdiction to hear this matter. The matter is dismissed with costs to the 1st Defendant, to be agreed and in default thereof, to be taxed.

Appeal is granted.

Delivered in chambers this **10th** day of **April, 2017**.



.....
E. M. SIKAZWE
JUDGE