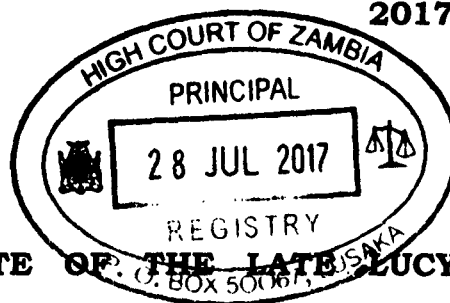


**IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)



2017/HP/0455

**IN THE MATTER OF: THE ESTATE OF THE LATE LUCY MUBANGA
CHANDA**

AND

**IN THE MATTER OF: AN APPLICATION UNDER ORDER 30 RULE 12(1) OF
THE HIGH COURT RULES, CHAPTER 27 OF THE
LAWS OF ZAMBIA**

AND

**IN THE MATTER OF: SUB DIVISION No 116 OF SUBDIVISION A OF FARM
841, COPPERBELT PROVINCE**

BETWEEN:

COLLINS CHANDA

*(suing as administrator of the estate of
the late Lucy Mubanga Chanda)*

APPLICANT

AND

NJALAMIMBA HOPE SALOMIE KANYANTA

RESPONDENT

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 28th DAY OF JULY,
2017**

For the Applicant : Mr S.K.Simwanza, Lungu Simwanza and Company

For the Respondent : No appearance

J U D G M E N T

LEGISLATION REFERRED TO:

- 1. The High Court Act, Chapter 27 of the Laws of Zambia**

The Applicant commenced this action by way originating summons claiming;

- i. *That the Respondent be compelled to complete the conveyance of Sub division No 116 of Subdivision A of Farm 841, Copperbelt Province.*
- ii. *Alternatively that the Registrar of the High Court be ordered to complete the conveyance of subdivision No 116 of Subdivision A of Farm 841 Copperbelt Province on behalf of the Respondent.*
- iii. *Any other relief that the court may deem fit.*
- iv. *Costs.*

Counsel at the hearing relied on the affidavit filed in support of the application, especially paragraphs 4-9 of the said affidavit, and stated that the Applicant had demonstrated that he had failed to locate the Respondent in order that she could complete the conveyance of subdivision No 116 of subdivision A of Farm 841, Copperbelt Province. That therefore the Registrar of the High Court should be ordered to complete the conveyance of the property.

The Respondent did not file an affidavit in opposition to the originating summons, or appear at the hearing, despite having been served process by substituted service by way of advertisement in the daily newspapers.

I have considered the matter. The gist of the affidavit in support as deposed to in paragraph 4 is that the Applicant is the son and administrator of the estate of the late Lucy Mubanga Chanda, and exhibited as 'CC1' is the order of appointment as administrator.

In paragraph 5 of the affidavit it is stated that before her demise the late Lucy Mubanga had purchased a house known as subdivision No 116 of subdivision A of Farm 841, Copperbelt, Province as evidenced on the contract of sale exhibited as 'CC2'. It is further deposed in paragraph 6 of

the affidavit that when the Applicant assumed the role of administrator of the estate, he had noticed that the certificate of title relating to the said piece of land was still in the names of the Respondent.

That he has made a diligent search for the said Respondent but cannot find her, and that he has been in possession of the property since the demise of his late mother. He prays that the Registrar of the High Court be appointed to complete the conveyance of the property, as the estate of the late Lucy Mubanga Chanda will suffer injustice, as the beneficiaries will not be able to deal with the property as they wish.

Exhibit 'CC1' on the affidavit in support of the application is an oath of administrator issued from the Probate Registry of the High Court sworn by the Applicant in this matter, as administrator of the estate of the late Lucy Mubanga Chanda, who died on 22nd April, 2015 in Kitwe. Exhibit 'CC2' on the said affidavit is a contract of sale for House No 16, 12th Avenue Nkana West, being part of Farm 841 Copperbelt, between Hope Njalamimba as vendor, and Lucy Mubanga as purchaser, dated 21st May, 2008, at a cost of ZMW250, 000.00.

The certificate of title attached to the contract of sale in the names of Hope Salomie Kanyanta Njalamimba describes the property as subdivision 116 of subdivision A of Farm 841 Copperbelt Province. The affidavit evidence shows that the Respondent did convey the property to the Applicant's late mother, and as the Applicant deposes that the said Respondent cannot be found, should an order be made directing the Registrar of the High Court to execute all the documents necessary to complete the conveyance?

The application was brought pursuant to Order 30 Rule 12 (f) of the High Court Rules, Chapter 27 of the Laws of Zambia. It provides that;

“12.The executors or administrators of a deceased person or any of them and the trustees under any deed or instrument or any of them, and any person claiming to be interested under the trust of any deed or instrument in the relief sought as creditor, devisee, legatee, next of kin, or heir-at-law of a deceased person or as cestui que trust or as claiming by assignment or otherwise under any such creditor or other person as aforesaid may take out an originating summons for such relief of the nature or kind following, as may be specified in the summons and as the circumstances may require, that is to say, the determination, without an administration by the Court of the estate or trust, of any of the following questions or matters so far as the same arise in the course of the administration or performance of such estate or trust:

(f) the approval of any sale, purchase, compromise, or other transaction;”

This provision states the mode of commencement of actions by administrators with regard to the estate. Section 14 of the High Court on the other hand empowers the court to order execution of documents in certain circumstances. It states that;

“14.Where any person neglects or refuses to comply with a judgment or order directing him to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the Court may, on such terms and conditions, if any, as may be just, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the Court may nominate for that purpose, and a conveyance, contract,

document or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it.

As already seen the contention by the Applicant is that the Respondent cannot be found and therefore documents to complete the conveyance so that ownership of the property sold to his late mother can be changed, has failed. It can therefore be said that the Respondent has neglected to complete the conveyance, and on that basis I order that as the Respondent cannot be found, the Registrar of the High Court shall execute all the documents necessary to complete the conveyance of the property known as subdivision 116 of subdivision A of Farm 841 Copperbelt Province on behalf of the Respondent. I make no order as to costs.

DATED THE 28th DAY OF JULY, 2017

S. Kaunda

**S. KAUNDA NEWA
HIGH COURT JUDGE**