

IN THE HIGH COURT OF ZAMBIA  
AT THE PRINCIPAL REGISTRY  
AT LUSAKA



2017/HPF/0036

(Civil Jurisdiction)

IN THE MATTER OF: ORDER 3 RULE 2 AS READ TOGETHER WITH ORDER  
30 RULE 11 (B) AND (J) OF THE HIGH COURT  
RULES, CHAPTER 27

IN THE MATTER OF: AN ORDER GRANTING THE DEPUTY REGISTRAR OF  
THE HIGH COURT VESTED WITH AUTHORITY TO  
SIGN THE ASSIGNMENT ON BEHALF OF THE LATE  
CLETUS CHIYEMBA MAKINA OR HIS PERSONAL  
REPRESENTATIVE LUCIA MAKINA RELATING TO  
SUBDIVISION A OF LOT 5454/M, LIVINGSTONE

BETWEEN:

**PEGGIE ZULU**

(Suing as Administrator of the Estate  
of the late James Zulu)

Applicant

AND

**LUCIA KAMANGA MAKINA**

**WALTER MUNUNGA KANGAI**

1<sup>st</sup> Respondent

2<sup>nd</sup> Respondent

**Before the Hon. Mrs. Justice N.A. Sharpe-Phiri on the 7<sup>th</sup> September 2017**

For the Applicant: Mr. B.C. Mutale and Mr. E. Banda of Messrs BCM  
Legal Practitioners

For the Respondents: No appearance

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## J U D G M E N T

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Authority:

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

Peggie Zulu commenced this action by Originating Summons on 2 August 2017 against Lucia Kamanga Makina and Walter Mununga Kangai, suing in her capacity as Administrator of the estate of the late James Zulu.

The action was brought pursuant to **Sections 14 of the High Court Act and Order 30 of the High Court Rules, Chapter 27 of the Laws of Zambia** seeking an Order that the High Court be vested with authority to sign the assignment on behalf of the late Cletus Chinyemba Makina relating to Subdivision A of Lot 5454/M, Livingstone and costs.

In support of the action, the Applicant filed an affidavit on the 2 August 2017. Her evidence was to the effect that on the 22 January 2015 an action was commenced in the High Court for Zambia at Lusaka for a declaration that Subdivision A of Lot 5454/M, Livingstone belonged to the Applicant and for an order for the cancellation of the Certificate of title issued to the 2<sup>nd</sup> Respondent. The Applicant contended further that judgment in default of defence and appearance was entered on the 24 June 2015 in her favour. However, she has been unable to trace the Respondents to effect transfer of the property into her name prompting her to commence this action for an Order that the Deputy Registrar be ordered to execute the Deed of Assignment in order to effect transfer of the property. She concluded by imploring the Court to grant a Vesting Order for execution of the Deed of Assignment by the Deputy Registrar of the High Court.

The matter came up for hearing before me on the 21 August 2017.

Counsel for the Applicant was before Court but the Respondents were absent. There being no proof of service of the Court process on the Respondents, the matter was adjourned to the 4 September 2017. The Court directed the Applicant's Counsel to effect service of process upon the Respondents.

The matter was heard before me on 4 September 2017. Counsels for the Applicant, Mr. B.C Mutale and Mr. E Banda of Messrs BCM Legal Practitioners were in attendance. The Respondents were absent. Mr. Mutale notified the Court that the Court process was duly served on the Respondents by substituted service by way of advertisement in the Daily Mail newspaper on the 1<sup>st</sup> and 2<sup>nd</sup> September 2017. This was evidenced by the advertisement produced as 'DM1' in the affidavit of service of 4 September 2017.

Being satisfied that the Respondents were duly served with the process, I allowed Counsel for the Applicant to proceed with the application.

In support of the action for the Applicant, Mr. Mutale relied on the affidavit in support of the Originating Summons and urged the Court to grant the reliefs claimed.

I have considered the evidence in the affidavit in support and the submissions made by Counsel for the Applicant. The issue for my determination is whether to grant a Vesting Order to the Applicant.



**Section 14 of the High Court Act, Chapter 27 of the Laws of Zambia** under which the Applicant has brought this action, states as follows:

***'Where a 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.'***

The preceding Section empowers a Court to nominate another person to execute instruments, where there has been neglect or refusal to comply with a Judgment or Order of the Court. For this section to be invoked, there must be neglect or failure by a party to comply with a Judgment or Order issued by a Court of competent jurisdiction.

In the present case, the affidavit in support reveals that on 24 June 2017, judgment was entered in favour of the Applicant whereby it was adjudged that the Applicant is the proprietor of the property known as Subdivision A of Lot 5454/M, Livingstone. It was further adjudged that the Certificate of title issued to the 2<sup>nd</sup> Respondent herein, be cancelled.

The Applicant contends that in spite of this the Respondents have neglected to comply with the judgment of the High Court for Zambia under cause number 2014/HP/0638. I am satisfied that since the Respondents have indeed neglected to

In accordance with the provisions of **Section 14 of the High Court Act**, where there has been neglect or refusal to comply with a Judgment or Order, the Court is empowered to invoke the provisions of the said Act and grant a vesting order. Accordingly, I find that the Applicant is entitled to a Vesting Order relating to the property known as Subdivision A of Lot 5454/M, Livingstone. I therefore Order that the Deputy Registrar of the High Court shall execute a Deed of Assignment for and on behalf of the Respondents in favour of the Applicant herein.

I also Order that the Registrar of Lands and Deeds shall effect transfer of ownership of the Subdivision A of Lot 5454/M, Livingstone into the name of the Applicant and issue a certificate of title in her name.

I order that the Respondents to bear the costs of this action.

**Delivered at Lusaka this 7<sup>th</sup> day of September 2017**

  
**N.A Sharpe-Phiri**  
**HIGH COURT JUDGE**