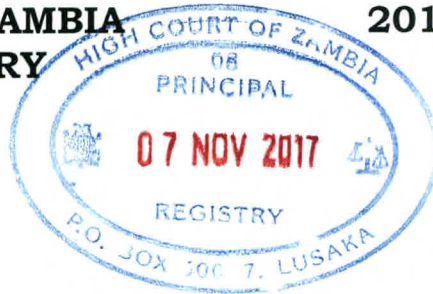


**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)



2017/HP/0354

B E T W E E N :

BIDWELL SIAME
LOMAZI BANDA

**1ST PLAINTIFF
2ND PLAINTIFF**

AND

REGINA CHIPITAMBILI

DEFENDANT

**Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on the 7th
day of November, 2017**

For the Plaintiffs : Mrs. M. Mushipe, Messrs Mushipe & Associates
For the Defendant : Mr. D. Kasote, Messrs Chifumu Banda & Associates

R U L I N G

Legislation Referred To:

- 1. High Court Act, Chapter 27*
- 2. Rules of the Supreme Court, 1999 Edition*

This matter was scheduled for continued trial on 29th September, 2017. However, Learned Counsel for the Plaintiffs who had just been retained sought the Court's indulgence to join the Commissioner of Lands, Surveyor General and the Zambia Police

through the Attorney General. It was her view that their joinder would assist the Court in arriving at a just decision. Counsel relied on Order 14 Rule 5(1) of High Court Rules, which empowers a Court to join any person to proceedings, whether by application or at the instance of the Court.

Counsel further relied on Order 18 of the High Court Rules and Order 20 of the Rules of the Supreme Court, which allow amendments to proceedings at any time before delivery of judgment. Counsel submitted that the Zambia Police demolished the Plaintiffs' structures without a Court order. She also submitted that it is only the Commissioner of Lands or Surveyor-General who can ascertain the extent of the land in controversy. If these proceedings are allowed to close, they will prejudice the Plaintiffs.

Counsel added that a perusal of the evidence revealed that there were no documents produced to show that the Ministry of Lands ascertained the boundaries in this matter. The evidence of the private surveyor could not be taken to be full proof. Counsel submitted that even though the proceedings had reached an advantaged stage, an appropriate order could be made in the

interest of justice to join the Attorney-General. She went on to state that if the application was granted, the witnesses could be recalled to testify.

In response, Learned Counsel for the Defendant opposed the Plaintiffs' application stating that they were previously represented by the Legal Aid Board. He added that the Plaintiffs hauled the Defendant to Court and should have known their position before they closed their case. Counsel further submitted that the Defendant was almost closing her case with her last witness. Thus, it would be unjust for the Plaintiffs to reopen their case in order to prove it. He dismissed the assertion that the Defendant had disobeyed the Court's order of interim injunction as she had kept away from the land. He stated that the private surveyor was called by the Defendant as her witness and he was a registered surveyor. Thus, whatever he did was accepted by the Surveyor-General.

In rejoinder, Learned Counsel for the Plaintiffs submitted that the only way the Court could arrive at a just decision was to allow the Plaintiffs' application. She argued that opposing Counsel was barred from testifying on the allegations of contempt of Court.

I refused to grant the Plaintiffs' application for joinder and now give my reasons in writing.

I have anxiously considered the application before me. The issue raised is whether I can allow the Plaintiffs to join the Attorney-General and to grant them leave to issue contempt proceedings. The Plaintiffs desire the Attorney-General to be joined to the proceedings because they contend that their properties were illegally destroyed by the Zambia Police and without an order of the Court. Further, the Surveyor-General did not carry out a survey in that area. Thus, the survey conducted by the private surveyor is not reliable.

The Plaintiffs' claims are for:

1. *A declaration that the Plaintiffs are beneficial owners of all that piece of land known as Lot No. 6284/M.*
2. *An injunction restraining the Defendant from:*
 - (i) *Entering and remaining on Lot No. 6284/M, Lusaka Zambia.*
 - (ii) *Interfering with the Plaintiffs' peaceful enjoyment of Lot No. 6284/M, Lusaka, Zambia.*
 - (iii) *Carrying on of any further developments, construction of any building or buildings.*
 - (iv) *Selling any piece of land on Lot No. 6284/M, Lusaka Zambia.*
 - (v) *Demarcating and allocating land on Lot No. 6284/M, Lusaka Zambia.*

3. *Compensation for loss of the demolished four properties at a total value of K560,000.00.*
4. *Costs of the action should be borne by the Defendants*
5. *Any other reliefs that the Court may deem fit.*

None of the reliefs sought point to any transgression by the intended parties to be joined. The claim for demolition of the Plaintiffs' property is principally targeted at the Defendant. In my view, the joinder of the Attorney-General is an after-thought and after the Plaintiffs have had the occasion to listen to the Defendant's Defence. If I do allow the joinder, then I will be allowing the Plaintiffs an opportunity to improve their case, which is not in the interest of justice. I therefore, decline to grant the application.

As regards the application for contempt of Court, the provisions of Order 52 of the Rules of the Supreme Court are self-providing. I cannot be indulged to grant leave to issue contempt of proceedings when the requirements of that Order have not been met.

I accordingly dismiss the Plaintiffs' application for being frivolous and misconceived. Costs are awarded to the Defendant to be taxed in default of agreement.

Dated this 7th day of November, 2017.


M. Mapani-Kawimbe
HIGH COURT JUDGE