

R1

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



2017/HP/0804

IN THE MATTER OF:

**ORDER 113 RULE 1 OF THE WHITE BOOK
1999**

AND IN THE MATTER OF:

**AN APPLICATION FOR POSSESSION OF LOT
LUNDA/1374279, EASTERN PROVINCE OF THE
REPUBLIC OF ZAMBIA**

B E T W E E N :

RICHARD ZGAMBO

APPLICANT

AND

CHARLES PHIRI MANDA

1ST RESPONDENT

BENSON ZYAMBO

2ND RESPONDENT

JOHN ZIMBA

3RD RESPONDENT

PITILOS NKHOMA

4TH RESPONDENT

JOHN NILONGO

5TH RESPONDENT

ESAI NYIRENDA

6TH RESPONDENT

WILFRED MANDA

7TH RESPONDENT

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

For the Applicant : *Ms. N. Mbuyi, Messrs Ituna partners*
For the Respondent : *Mr. G. Mhango S.C, Messrs Ganje Mhango &
Company*

R U L I N G

Legislation Referred To:

1. *High Court Act, Chapter 27*

By Originating Summons, the Applicant seeks the following reliefs:

- i. *An Order for possession of all that property known as Lot No. Lunda/1374279, Lundazi (hereinafter "the property") in the Eastern Province of the Republic of Zambia for all those areas that have been illegally occupied by the Respondents herein and the unknown squatters.*
- ii. *An Order to demolish all structures wrongfully and illegally erected on the property by the Respondents.*
- iii. *An Order of costs of and incidental to this application; and*
- iv. *Any other relief the Court may deem fit.*

It is supported by an Affidavit sworn by **Richard Zgambo** who states that he is the beneficial owner of Lot Lunda/1374279 in the Eastern Province as shown in the exhibit marked "**RZ1.**" That the Respondents are illegally on his property and he has on several occasions asked them to vacate his land but they have not complied but have threatened to end his life using witchcraft. The deponent avers that he is unable to develop his property. He seeks an order of the Court to grant him possession of his property and to demolish all structures illegally erected thereon. He avers that if he is not granted the orders sought, the Respondents will continue to occupy his property and deprive him quiet enjoyment.

The Respondents jointly filed an Affidavit in Opposition and state that they are residents of Mudombotoka Village, Chief Mphamba, Lundazi, Eastern Province. They aver that they only became aware of the Applicant's Certificate of Title No. 26358 and are surprised that he has title over customary land, which their descendants occupied around 1922. Further, that there are residential structures erected on the land, burial sites of their descendants, farming and grazing land as well as other community structures such as the Matuli Community Cooperative, Papilo Catholic Church and a Government school named Kazinda Primary School.

That the Matuli Community Coperative houses a maize shed, while Papilo Catholic Church and Kazinda Primary School benefit about 16 villages namely, Chiswa, Chizomba, Kamuzunguzeni, Musekeladala, Chimutengo, Zakochela, Chituba, Manyala, Tapiseni, Kavindula, Chizunga, Daila, Malewa, Papilo, Longwe and Mudombotoka as well as other villages. This is shown in the exhibit marked "**WM2.**" The Respondents further aver that their village has been in existence since 1954 after it was authorized by Chief

Bandawe Wajitundila Nyirenda and way before the Applicant was born.

The Respondents state that the Applicant fraudulently obtained title because the land is customary and is occupied by various groupings to which no traditional authority can be employed to consent or authorize an individual to obtain a title as intimated by the Applicant. The Respondents aver that they wrote a letter to the Commissioner of Lands to enquire how title was issued to the Applicant as shown in the exhibit marked "**WM1.**"

The Respondents filed a further Affidavit in Opposition where they state that Modombotoka village was formed by the then Senior Chief Magodi and approved by then District Commissioner on the 19th July, 1954 as shown in the exhibits collectively marked "**WM1.**" The Respondents aver that the Applicant's title was erroneously issued because their village has not been degazetted and its occupants cannot be evicted.

The Applicant filed an Affidavit in Reply, where he states that he is the Village Headman of Mudombotoka village. That the 2nd and 4th

Respondents, Induna, Mr. Chizonga Nyirenda and the Chief's messenger were present when officers from the Agricultural Department verified the beacons of his property so as to produce a site plan. The deponent states that he holds the land in trust for the entire Zgambo family. Further that his parents were the owners of the land and Chief Mphamba granted his family the property after the Respondents caused confusion over its occupancy.

The deponent avers that the structures mentioned by the Respondents are not within the portion that is on title, and are still under customary land which is unsurveyed. That Matuli Community Cooperative is not part of the land which is on his title. The deponent further avers that he legally obtained title to his land and is in possession of documentation proving his ownership of Lot No. Lunda/1374279, Eastern Province.

The deponent further states that he is in possession of an approved site plan labeled "*Proposed Small Holding for Mr Richard Zgambo*" in the exhibit marked "**RZ2**." That a letter dated 28th May, 2011 in his possession shows the submission of the GPS coordinates

for the surveyed small holder plot, which is Lot Lunda/1374279 shown in the exhibit marked "**RZ3.**"

The deponent also states that he holds an Invitation to Treat from Ministry of Lands dated 5th April, 2016 outlining all the expenses incurred to secure his property shown in the exhibit marked "**RZ4.**" That he is also in receipt of an offer letter from the Ministry of Lands dated 6th April, 2016 shown in the exhibit marked "**RZ5.**"

At the hearing, both Learned Counsel relied on the Affidavits filed herein and the Skeleton Arguments, for which I am indebted. I shall not reproduce them for reasons that will become apparent in this Ruling. In my considered view, the lengthy Affidavits filed herein disclose serious contention regarding the real owner of the property, its size and location. There are allegations that there are villages, a Church and Cooperative Society on the land. Thus, I am of the opinion that I cannot dispose of this matter on the basis of affidavit evidence and require to hear oral evidence from witnesses. Even if GPS maps have been submitted, I find that they are of very little assistance, and cannot help me in determining the dispute between the parties.

I will therefore deem this matter to have commenced by way of Writ. The Applicant (now Plaintiff) must file a Writ of Summons and Statement of Claim within ten days from the date of this Ruling. The Respondents (now Defendants) must settle a Defence ten days from the date of receipt of originating process. A reply if any should be filed within seven days from the date of receipt of the Defence. The Plaintiff can thereafter summon the Court for directions in the usual format.

I make no order as to costs.

Dated this 7th day of November, 2017.



M. Mapani-Kawimbe
HIGH COURT JUDGE