

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

2018/HP/1795

BETWEEN:

ELLY KAKUSULO

APPLICANT

AND

**PROS ON CASH TRADING LIMITED
ISAAC NG'AMBI**

**1ST RESPONDENT
2ND RESPONDENT**

BEFORE THE HONOURABLE MRS. JUSTICE M. C. KOMBE

For the Applicant : *In - person.*

For the 1st Respondent : *Ms. Musonda Nkole – Messrs. Anna
Mwitwa Legal Practitioners.*

For the 2nd Respondent: *No - appearance.*

R U L I N G

Cases referred to:

- 1. Zambia Revenue Authority v. Jayesh Shah (2001) Z.R 61.**

Legislation and other material referred to:

- 1. Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia**
- 2. High Court Act, Chapter 27 of the Laws of Zambia**

1. INTRODUCTION

1.1 This is a Ruling on an application for an order to compel the 1st Respondent to release Certificate of Title No. 108532 relating to property No. LUS/7414/CL/2 to the Applicant pursuant to section 11(1) and (2) of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia.

2. AFFIDAVIT EVIDENCE

2.2 The application is supported by an affidavit deposed to by **ELLY KAKUSULO** the Applicant herein. He deposed that the judgment debt of K63,000.00 plus interest had been paid in full in line with the order of judgment exhibited and marked **“EK1”**.

2.3 That the 1st Respondent had assigned the property to themselves while the matter was active in the court of law and without leave of court. A copy of the Land Register was exhibited and marked **“EK2”**. That they had proceeded to register the judgment with the Ministry of Lands and Natural Resources by the Order of this Court.

2.4 He deposed that his prayer was that the Court grants the order that the 1st Respondent releases Certificate of Title No. 198532 relating to property LUS/7414/CL/2 to him as the Respondents would not in any way be prejudiced.

3. HEARING

- 3.1 At the hearing of the application, the Applicant relied on the affidavit and the skeleton arguments filed in support of the application.
- 3.2 In the skeleton arguments, the Applicant referred the Court to section 11(1) and (2) of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia and submitted that this Court had the inherent jurisdiction to grant the Applicant the order for the release of the Certificate of Title as it was in the interest of justice to do so.
- 3.3 In his oral submissions, the Applicant reiterated his arguments and added that he had complied with the judgment of this Court dated 31st January, 2023 by settling the full amount plus interest of K335,585.98 and he had taken over possession of the property. It was his submission that after registration of the judgment at Ministry of Lands, he discovered that the 1st Respondent had assigned the property to itself while the matter was in Court as evidenced by entry No.11 of exhibit "EK2."
- 3.4 The Applicant argued that the 1st Respondent had also failed to hand over the Certificate of Title relating to the property even after the judgment debt had been settled.

3.5 In opposing the application, learned counsel for the 1st Respondent, Ms. Nkole, did not file any affidavit in opposition and did not object to the application.

3.6 In response to a question posed by the Court why the Certificate of title had not been surrendered, counsel submitted that the Respondents had not given them the reason but indicated that they would proceed to surrender the Certificate of Title.

4. **DECISION**

4.1 By this application, I have to determine whether the Applicant is entitled to an order for the release of Certificate of Title No. 108532 relating to property No. LUS/7414/CL/2 by the 1st Respondent.

4.2 The Applicant has anchored this application on **section 11 of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia** which provides that:

“(1) Where any person alleges that any error or omission has been made in a Register or that any entry or omission therein has been made or procured by fraud or mistake, the Registrar shall, if he shall consider such allegation satisfactorily proved, correct such error, omission or entry as aforesaid.

(2) Any person aggrieved by any entry or omission made in a Register after application to the Registrar under subsection (1) may apply to the Lands Tribunal, Court or Judge for an order that the Register may be rectified, and the Lands Tribunal, Court or Judge may either refuse such application with or without costs to be paid by the applicant or it may, if satisfied of the justice of the case, make an order for the rectification of the Register in such manner as it shall direct.”

4.3 Section 11(1) authorises the Registrar to make correction relating to errors or entries alleged to have been made or procured by fraud or mistake. Sub section 2 allows a person aggrieved by any entry or omission made in a Register to apply to the Lands Tribunal or the Court for an order to rectify the Register.

4.4 The gist of the Applicant’s argument is that he has complied with the judgment of this Court dated 31st January, 2023 by settling the outstanding balance of K63,000.00 plus interest and he had taken over possession of the property. That whilst the matter was still in Court, the 1st Respondent assigned the property to itself without leave of court and has now failed to hand over the Certificate of Title relating to the property. It is for this reason that he seeks an order to compel

the 1st Respondent to surrender the Certificate of Title No. 108532 relating to property No. LUS/7414/CL/2.

4.5 The Respondent on the other hand has not advanced any reasons why the Certificate of Title has not been surrendered and has not objected to the application.

4.6 I must hasten to add that section 11 of the Lands and Deeds Registry Act which the Applicant has relied on in making this application provides for rectification of errors or omissions made on entries in the Register. The summons filed however only refer to an order for the release of the Certificate of Title even though the affidavit evidence and the arguments advanced allude to both rectifications of the land register and release of the Certificate of Title.

4.7 Be that as it may, I have considered this application with regard to **section 13** of the **High Court Act, Chapter 27 of the Laws of Zambia** and reproduce the portion I find relevant which provides that:

“In every civil cause or matter which shall come in dependence in the Court, law and equity shall be administered concurrently, and the Court, in the exercise of the jurisdiction vested in it, shall have the power to grant, and shall grant, either

absolutely or on such reasonable terms and conditions as shall seem just, all such remedies or reliefs whatsoever, interlocutory or final, to which any of the parties thereto may appear to be entitled...”

4.8 It is clear that the Court in the exercise of its jurisdiction has the power to grant either absolutely or on such reasonable terms and conditions as shall seem just, all remedies or reliefs to which any party may appear to be entitled.

4.9 The Court is also enjoined to determine cases on their substance and merit as espoused in the case of **Zambia Revenue Authority v. Jayesh Shah** ⁽¹⁾.

5.0 **ORDER**

5.1 I am satisfied from the evidence on record and I find that the 1st Respondent has no just cause to assign the property to itself as the judgment debt was fully settled by the Applicant.

5.2 The net effect of this finding is that this is an appropriate case warranting an order for the rectification of the Register and surrender of the Certificate of Title.

5.3 In sum, I find merit in this application and order that the Register be rectified accordingly and the 1st Respondent is ordered to surrender the Certificate of Title No. 108532

relating to property No. LUS/7414/CL/2 to the Applicant
forthwith. I award costs of this application to the Applicant.

DELIVERED AT LUSAKA THIS 10TH DAY OF JUNE, 2024.

M.C. Kombe

**M.C. KOMBE
JUDGE**

10 JUN 2024

M.C. KOMBE, J
P.O. BOX 50067, LUSAKA