

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

2018/HP/1907



BETWEEN:

GETRUDE BWALYA MPOROKOSO (Suing as  
*Administratrix of the Estate of the Late Richard Kalinda*) 1<sup>ST</sup> PLAINTIFF  
GINA BUUMBA KALINDA (Suing as *Administratrix* 2<sup>ND</sup> PLAINTIFF  
*of the Estate of the Late Richard Kalinda*)  
TANYA CHILUFYA KALINDA (Suing as 3<sup>RD</sup> PLAINTIFF  
*Administratrix of the Estate of the Late Richard Kalinda*)

AND

SAM SINKALA 1<sup>ST</sup> DEFENDANT  
GRACE CHINYANTA MULENGA 2<sup>ND</sup> DEFENDANT

*Before Hon. Mrs. Justice C. Chinyanwa Zulu in Chambers*

*For the Plaintiffs: Mrs. F Munchinja & Ms Chifwembe – John Chibalabala Legal Practitioner*  
*For the Defendant: No Appearance*

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## JUDGEMENT

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### LEGISLATION AND OTHER MATERIAL REFERRED TO:

1. *The High Court Rules, Chapter 27 of the Laws of Zambia*
2. *The Land and Deeds Registry Act, Chapter 185 of the Laws of Zambia.*

### 1.0 INTRODUCTION

1.1 The Plaintiffs, Getrude Bwalya Mporokoso, Gina Buumba Kalinda and Tanya Chilufya Kalinda commenced this action by writ of summons and

statement of claim on 1<sup>st</sup> November, 2018. The Plaintiffs later sought leave of the court to amend the said pleadings which leave this Court granted on 9<sup>th</sup> July 2019. The Plaintiff filed the amended statement of claim on 19<sup>th</sup> July 2019 seeking the following reliefs:-

- i. **An Order Vesting the Registrar of the High Court power to sign whatever documents are to be signed by the Defendants in the conveyance of the said properties to the Estate of the Late Richard Kalinda;**
- ii. **An Order for registration of the Grant of Probate or Letters of Administration issued to the Plaintiffs in the Estate of the Late Richard Kalinda on the 6<sup>th</sup> December, 2016 at the Lands and Deeds Registry out of time.**
- iii. **Costs of and incidental to this action;**
- iv. **Any other relief the Court may deem fit.**

## **2.0 STATEMENT OF CLAIM**

2.1 In the statement of claim it was stated that **Getrude Bwalya Mporokoso**, the 1<sup>st</sup> Plaintiff, **Gina Buumba Kalinda**, the 2<sup>nd</sup> Plaintiff and **Tanya Chilufya Kalinda**, the 3<sup>rd</sup> Plaintiff herein are all Personal Representatives of the Estate of the Late Richard Kalinda. That the 1<sup>st</sup> Defendant, whose whereabouts are unknown to the Plaintiffs, is and was at all material times the seller of Stand No. 5678/M held on Certificate No. 87841, to the Late Richard Kalinda. Similarly, the 2<sup>nd</sup> Defendant, whose whereabouts are unknown to the Plaintiffs, is and was at all material times the seller of Stand No. 5677/M held on Certificate No. 86494 to the Late Richard Kalinda.

2.2 That, on 21<sup>st</sup> August, 1994, the Late Richard Kalinda bought Lot No. 5678/M from the 1<sup>st</sup> Defendant which property is held on Certificate

Title No. 87841 by the said 1<sup>st</sup> Defendant. subsequently, sometime in the year 1994, the Late Richard Kalinda bought another piece of land adjacent to the piece of land mentioned above from the 2<sup>nd</sup> Defendant which land is known as Lot No. 5677/M and held on Certificate of Title No. 86494 by the said 2<sup>nd</sup> Defendant. That upon acquiring the aforesaid properties in the year 1994, the Late Richard Kalinda took possession of the said pieces of land which he developed by building a house and several other structures thereon. In addition, the Late Richard Kalinda was given the Certificates of Title relating to the said pieces of land by the Defendants for him to change ownership of the subject pieces of land to himself. That the deceased began the process of conversion of the said pieces of land to himself by obtaining Consent to assign and paying the Property Transfer Tax and other fees payable in respect of the conveyance, however, he died on 24<sup>th</sup> July, 2016 before completing the conveyancing process. The late Richard Kalinda was resident of the subject properties and was actually buried thereon after his death.

- 2.3 Following the death of the Late Richard Kalinda, the Plaintiffs herein were appointed as Administrators for his estate to administer both the movable and immovable properties of his estate. That the Plaintiffs herein are in possession of the original Certificates of Title relating to Lot No. 5678/M and Lot No. 5677/M Lusaka which are still in the names of the Defendants herein. The Plaintiffs have, however failed to convey the properties to the estate on account that the Defendants are not available to execute the assignments and other relative documents in the conveyance process.

2.4 That by Consent Judgment entered into by the Plaintiffs herein and the beneficiaries of the Estate of the Late Richard Kalinda under Cause No. 2017/HP/0243, all the beneficiaries of the Estate of the deceased agreed to share the two properties left by the deceased being Lot No. 5678/M and Lot No. 5677/M Lusaka. Furthermore, that the two (2) properties have been sold by the beneficiaries acting through the Plaintiffs. However, the Certificates of Title in respect of the said properties are still in the names of the Defendants, and as such, the Personal Representatives of the Estate of the late Richard Kalinda have failed to transfer Title to the purchasers of the land as the Late Richard Kalinda is not the registered title holder of the subject land. That the Personal Representatives of the Late Richard Kalinda now desire to convey the properties herein from the Defendants to the Estate of the Late Richard Kalinda but have been constrained by their inability to locate the Defendants who are required to sign the Assignments and other relevant documents in the conveyance process. Furthermore, that several efforts to locate the Defendants have proved futile as the Defendants have relocated from their previous known addresses.

### 3.0 TRIAL

3.1 When the matter came up for trial Counsel for the Plaintiff informed this Court that, the Defendants had been served the originating process and the Notice of Hearing via substituted service by advert in the Daily Mail Newspaper on three (3) different occasions, the last dates being 9<sup>th</sup> and 12<sup>th</sup> August, 2019. That an Affidavit of service to that effect had been filed into Court. Having been satisfied that the Defendants were duly served the Notice of Hearing, the Court proceeded to hear the Plaintiffs.

- 3.2 **PW1** was Getrude **Bwalya Mporokoso**, the 1<sup>st</sup> Plaintiff in this matter whose evidence was, in addition to reiterating what is already on record, that she wanted this Court to assist her have the two (2) Title Deeds registered in the Administrators' names. Further, that she together with the other Plaintiffs, obtained an order of appointment as Administrators of the deceased Richard Kalinda's estate on 6<sup>th</sup> December, 2016 but didn't register the letter of appointment at Ministry of Lands. As a result, she was requesting the Court to grant them leave to register the said letter of appointment at Ministry of Lands out of time. The said Letter of Administration is on page 28 of the Plaintiff's bundle of documents.
- 3.3 **PW2** was **Gina Kalinda**, the 2<sup>nd</sup> Plaintiff in the matter at hand. I shall, however, not reflect her evidence in Court as the same constitutes a reiteration of what is already on record.

#### 4.0 DECISION

- 4.1 The Applicants brought this action seeking an order vesting the Registrar of the High Court power to sign whatever documents are to be signed by the Defendants in the conveyance of the properties known as Lot No. 5678/M and Lot No. 5677/M Lusaka to the estate of the late Richard Kalinda. The Plaintiffs are also seeking an Order for registration of the Letter of Administration issued to them in the Estate of the Late Richard Kalinda on 6<sup>th</sup> December, 2016 at the Lands and Deeds Registry out of time.
- 4.2 Vesting orders are granted pursuant to Section 14 of the High Court Act, Chapter 27 of the Laws of Zambia. The said Section is couched as follows:-

*“ 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.”*

4.3 This Section thus empowers a Court to nominate a person to execute a conveyance, contract or other document where a Judgment or order has been made against a person and that person neglects or refuses to comply with such order of the Court. There are thus, two prerequisite conditions to invoking the provisions of Section 14 of the High Court Act, that:-

- 1. There must be a judgment or order of a court requiring a person to carry out a certain act and**
- 2. There being failure by such person to do so.**

4.4 A perusal of the Plaintiffs' bundle of documents shows that there is no Judgment or order directing the defendants herein to transfer the respective properties to the Late Richard Kalinda or any of his legal representatives nor is there any indication of refusal on their part to comply with such Judgment or order of Court.

4.5 As stated above, it is only where there has been a Judgment of the Court compelling a person to execute documents and failure or refusal to do so by the person so directed, that a Court is empowered under this section to order the conveyance or contract to be executed by such other person for that purpose.

- 4.6 There being no Judgment or order directing the herein defendants Sam Sakala and Grace Chinyanta Mulenga, the purported owners of the properties known as Lot No. 5678/M and Lot No. 5677/M Lusaka respectively, I find that this Court has no jurisdiction to invoke the provisions of Section 14 of the High Court Act as the facts of this case do not support the circumstances under which such provision can be utilized.
- 4.7 The application for a vesting order is therefore misconceived and I dismiss it accordingly.
- 4.8 The Plaintiffs further sought for an Order for registration of the Letters of Administration issued to the Plaintiffs in the Estate of the Late Richard Kalinda on the 6<sup>th</sup> December, 2016 at the Lands and Deeds Registry out of time. Letters of administration ought to be registered at the Lands and Deeds Registry as required by **Section 4 of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia**. However, **Section 5(3) of the Lands and Deeds Act** provides that the said registration ought to be done within twelve months of the grant thereof. **Section 6**, however, gives this Court powers to extend time within which the registration can be done. It provides as follows:

*6. Any document required to be registered as aforesaid and not registered within the time specified in the last preceding section shall be null and void:*

*Provided that-*

*(i) the Court may extend the time within which such document must be registered, or authorise its registration after the expiration of such period on such terms as to costs and otherwise as it shall think fit, if satisfied that the failure to register was unavoidable, or that there are any special*

circumstances which afford ground for giving relief from the results of such failure, and that no injustice will be caused by allowing registration (underline for emphasis only)

4.9 No reasons have been given by the Plaintiffs for their failure to register the Letters of administration at the Ministry of Lands and Deeds Registry in time. However, in line with Order III Rule 2 of the **High Court Rules, Chapter 27 of the Laws of Zambia**, I, in the interest of justice grant the Plaintiffs the Order for registration of the Letters of Administration issued to them to administer the Estate of the Late Richard Kalinda on the 6<sup>th</sup> December, 2016, at the Lands and Deeds Registry out of time. The said Letters must be so registered within thirty (30) days from the date of this judgment.

4.10 Considering all the facts of this matter, I shall make no order as to costs.

**Leave to appeal is granted.**

**Delivered at Lusaka this 28<sup>th</sup> day of June, 2024**



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C. Chinyanwa Zulu  
**JUDGE**