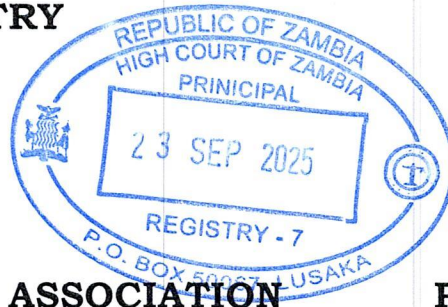


**IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2020 /HP/1206



BETWEEN:

SEVENTH DAY ADVENTIST ASSOCIATION **PLAINTIFF**
IN ZAMBIA (REGISTERED TRUSTEES)

AND

JEREMIAH MUKANKAULWA AND 20 OTHERS **1ST DEFENDANT**
DIDEN TEMBO AND 10 OTHERS **2ND DEFENDANT**

**BEFORE THE HONOURABLE MR. JUSTICE S. V. SILOKA ON
THIS 23RD DAY OF SEPTEMBER, 2025.**

*For the Plaintiff: Mr. R. Chipeta - from Messrs. P. M. Kamanga &
Ng'onga Legal Practitioners*

*For the Defendant: Mr. A. Mushokabanji, from Messrs. Moshia &
Company*

RULING

CASES REFERRED TO:

- 1. Hongling Xing Building Company Limited Vs Zam- Capital Enterprises Limited (2010/HP/439;*
- 2. Liamond Choka Vs Ivor Chilufya (2002) ZR 33;*
- 3. Salomon Vs Salomon and Company (1895-1899) ALL E.R 33;*

4. *Mike Kamusonde Mweemba Vs Kamfwa Obote Kasongo and Zambia State Insurance Corporation Limited (2006) Z.R 101;*
5. *National Milling Company Limited Vs A. Vashee (Suing as Chairman of Zambia National Farmers Union) (2000) Z.R 98; and*
6. *Kidinson Mwandila Vs Yotam Phiri SCZ/ 33/2013.*

LEGISLATION AND OTHER WORKS REFERRED TO:

1. *The High Court Rules Chapter 27 of the Laws of Zambia;*
2. *The Lands (Perpetual Succession) Act Chapter 186 of the Laws of Zambia; and*
3. *The Rules of the Supreme Court of England 1999(White Book) 1965.*

1.0. INTRODUCTION

- 1.1. This application was commenced by the Plaintiff by summons accompanied by an Affidavit in support and skeleton arguments all dated 13th of November 2020.

2.0. PLAINTIFFS AFFIDAVIT EVIDENCE IN SUPPORT

- 2.1. The Affidavit in support was deposed to by Pastor Moses Banda, who deposed that he was the President of East Zambia Field and one of the Registered Trustee for the Plaintiff herein therefore competent to depose to the Affidavit.

- 2.2. The Deponent deposed that on 16th March, 2007 the Plaintiff obtained Judgement in Default of Appearance and Defense against the Defendants to recover the ten Churches which had been taken over by the Defendants without the consent of the Plaintiff.
- 2.3. The Deponent deposed that he is advised by his Advocates that on the 3rd July, 2020 the Court granted the Plaintiff leave to file fresh Application in relation to Possession of Properties since the Default Judgement so obtained in favour of the Plaintiff has never been challenged.
- 2.4. Further, the Deponent deposed that he is advised by Counsel that in view of the Leave granted by the Court, the intent of the Originating Process is to seek an Order that would enable the Plaintiff (the owner of the Properties) take over all its Properties that are occupied by the Defendants and other unknown persons without a license or consent from the Plaintiff.
- 2.5. The Deponent also deposed that with the passage of time, some Defendants have become known while others remain unknown.

2.6. That in the premise the Plaintiff humbly urge this Court to grant it this Application to take Possession of all the Properties that have been occupied by the Defendants and others, without consent from the Plaintiff, namely Stand number 6115, Katopola, Chipata; Stand No 4860 Spring Side Lane, Chipata and Stand Number 1981, Chipata.

2.7. Further that the Defendants will not be prejudiced in any way if this Honourable Court were to grant this Application.

3.0. PLAINTIFF'S SKELETON ARGUMENTS IN SUPPORT

3.1. In support of the Application, Counsel for the Plaintiff submitted that this Application is anchored on **Order 113 Rule 1 (3)(6) and 7 and Order 2 rule 1** of the **Rules** of the **Supreme Court of England 1999 (White Book) 1965 and Order 3 rule 2** of the **High Court Rules Chapter 27** of the **Laws of Zambia**.

3.2. It was Counsel's submission that this Application before Court falls within the ambit of **Section 3 rule 2** of the **High Court Rules Chapter 27** of the **laws of Zambia** which Act grants this Honourable Court the discretion to grant the Order prayed.

3.3. It was Counsel's submission that it is not in dispute that the Plaintiff commenced an action against the Defendants in March

2006 after the Defendants took over the Plaintiffs properties in Eastern Province of Zambia. The Defendants having failed to defend the Matter, the Plaintiff obtained a Judgment in Default of Appearance and Defense dated 16th March, 2007, which had not been challenged to date.

3.4. Counsel submitted that efforts to have the occupiers of the said properties removed has proved futile, hence the need to have the said occupiers, their agents or servants removed from the said properties.

3.5. Counsel drew the Court's attention to the case of **Hongling Xing Building Company Limited Vs Zam- Capital Enterprises Limited**⁽¹⁾ wherein Honourable Dr. P. Matibini SC (Judge) stated as follows with regards the circumstances when **Order 113** of the **Rules** of the **Supreme Court** is applicable:

“Order 113 relates to summary proceedings for possession of land. Typically, Order 113 is resorted in circumstances where land is occupied by persons who have entered into or remained in possession of the land without license or consent of the person claiming possession. This summary procedure is however discouraged where the Plaintiff is aware of

the real dispute with the occupier, as was held in Greater London Council vs Jenkins 91975) 1 WLR 155.”

3.6. Counsel further drew the Courts attention to the case of *Liamond Choka vs Ivor Chilufya*⁽²⁾ where the Court held that:

“The summary procedure under order 113 of the RSC can only be suitable for squatters and others without any genuine claim of right or who have since been transformed into squatters.”

3.7. It was Counsel’s submission that the Defendants did occupy and have been occupying the said Premises of Stand No. 6115 Katopola Chipata, Stand No. 4860 Spring Lane Chipata and Stand No. 1981, Chipata for a long time without consent or license from the Plaintiff and can now be termed transformed squatters. Therefore, making this application suitable to resolve the issue at hand more so that the Judgement in Default of Appearance and Defense has never been challenged.

3.8. It was Counsel’s further submission that the Plaintiff is the rightful owner of the said premises and properties that the Defendants occupy (without license or consent) and **Order 113** will enable the Plaintiff take Possession of its Properties. Further

that an Order for possession of all the afore-said properties would be true justice at this juncture as the Plaintiff is entitled to possession being the true owner of the said premises, as evidenced by the Certificate of Title.

4.0. DEFENDANTS' AFFIDAVIT EVIDENCE IN OPPOSITION

- 4.1. The Affidavit in Opposition was deposed to by Diden Tembo, who deposed that he is the 2nd Defendant in this matter therefore competent to depose to this Affidavit.
- 4.2. The Depoent deposed that he is not in occupation or control of the three properties in contention herein and that the correct position is that the Defendants connection to the Properties in question is that they are members of the Three Angels Message Seventh Day Adventist Church, an organization in occupation and control of the said properties.
- 4.3. Further that the Plaintiff is aware of the fact that Three Angels Message Seventh Day Adventist Church is in occupation and control of the Properties in contention.
- 4.4. The Deponent deposed that he verily believes that Three Angels Message Seventh Day Adventist Church is the holder of Occupancy Licenses for Stand no 6115 Katopola Chipata and

Stand No 4860 Spring Lane Chipata and Stand No. 1981 Chipata.

- 4.5. The Deponent also deposed that he was surprised that he was cited as a Defendant by the Plaintiff when it is fully aware of the fact that the Properties are occupied by the Three Angels Message Seventh Day Adventist Church.

5.0. DEFENDANTS' SKELETON ARGUMENTS IN OPPOSITION

- 5.1. In opposing the Application, Counsel for the 2nd Defendant submitted that the Properties in question being stand No. 6115 Katopola Chipata, Stand No. 4680 Spring Side Lane Chipata and Stand No. 1981 Chipata are not in possession of the Defendants but are currently occupied and controlled by Three Angles Message Seventh Day Adventist Church which is a registered corporate body.
- 5.2. It was Counsel's submission that Three Angles Message Seventh Day Adventist Church is a body corporate clothed with separate legal capacity from its members and trustees.
- 5.3. Counsel drew the Court's attention to the case of **Salomon vs Salomon and Company**⁽³⁾ where in the Court held that:

“Once a company has been incorporated it must be treated like any other independent person with rights and liabilities appropriate to itself, and the motives of those who promote the company (e.g. to enable them to trade with benefits of limited liability) are absolutely irrelevant in discussing with what those rights and liabilities are.”

5.4. Counsel submitted that Three Angles Message Seventh Day Adventist Church being incorporated as a corporate body it has a separate legal personality from its members. Further that it therefore shows that the Defendnats herein where wrongly joined as Parties to this matter.

5.5. Counsel drew the Courts attention to **Order 14 rule 5** of the High Court Rules and the case of **Mike Kamusonde Mweemba Vs Kamfwa Obote Kasongo and Zambia State Insurance Corporation Limited**⁽⁴⁾ where it was held that:

“A court can order a Joinder if it appears to the Court or a judge that all persons who may be entitled to or claim some share of interest in the subject matter of the suit or who may be likely to be affected by the result require to be joined.”

5.6. It was Counsel’s submission that the Defendnats herein are not in occupation of the Properties in question therefore their

inclusion to the Proceedings is improper. Further, Counsel submitted that the rightful Party, the Three Angles Message Seventh Day Adventist Church which has interest in the subject Matter should be joined to the Matter. Further that the Defendnats herein do not fall within the category of persons contemplated under **Order 113** of the **Rules** of the **Supreme Court of England 1999 edition**.

6.0. PLAINTIFF'S AFFIDAVIT EVIDENCE IN REPLY

- 6.1. The Affidavit in reply was deposed to by Pastor Venancio Sakala who deposed that he was the President of East Zambia Field and one of the Registered Trustees for the Plaintiff herein therefore competent to depose to this Affidavit.
- 6.2. The Deponent deposed that he is advised by Counsel that the 2nd Defendant's denial of being in occupation and control of the properties in question is inconsequential to the law suit. Further, that the said Three Angles Message Seventh Day Adventist Church is capable of exculpating itself to the law suit in line with the Originating Summons requirements.
- 6.3. The Deponent also deposed that paragraphs 7 and 8 of the Affidavit in Opposition are a clear admission by the 2nd

Defendant by the letter exhibited and marked “**DT1**” that the said Three Angels Message Seventh Day Adventist Church is occupying the properties in question without the Plaintiffs License or Authority.

- 6.4. Further, the Deponent deposed that the Land records exhibited by the 2nd Defendant for Plots 4860 and 6115 purportedly issued by the Local Authority Chipata Municipal Council are within the peculiar knowledge of the 2nd Defendant and that the Plaintiff are in possession of Certificate of Title for Stand No 1981 and offer letters from the Local Authority for Stand No 6115 and 4860.
- 6.5. It was the Deponent’s deposition that he is advised by Counsel that there is an element of fraud as to how the land Records exhibited by the 2nd Defendants were issued. This is because the Plaintiff was offered Plots No. 4860 and 6115 on the 2nd of March, 2004 and 10th June, 2009 respectively, therefore wonders how Three Angels Message Seventh Day Adventist Church would have Land record cards in their possession dated 19th April, 2013.

- 6.6. The Deponent deposed that the Plaintiff on diverse occasions and in writing sought the audience of the Local Authority to prevail over the illegal occupation of the Three Angels Message Seventh Day Adventist Church on the said plots.
- 6.7. The Deponent also deposed that he is advised by Counsel that the 2nd Defendants and all persons known and unknown have no recourse to Plot No. 1981 Chipata as they have failed to prove ownership therefore whoever is in occupation of this property is a squatter because no consent was granted to them by the legal owner.
- 6.8. Further in reply to paragraph 11 and 12 of the Affidavit in Opposition, he is advised by his Advocate that the 2nd Defendant was rightly cited as he was one of the pioneers of the confusion which led them to break away from the main church stream (the Plaintiff) and led to the formation of Three Angels Message Seventh Day Adventist Church and by exhibiting the Land records on behalf of the purported owner, confirms his knowledge and involvement in the illegal occupation of the Plaintiff's properties.

6.9. The Deponent also deposed that he is advised by his Advocates that this Application is well couched to the extent that there is a note imbedded in the Summons calling upon every persons in occupation of the said three properties to join as defendant or suffer the consequence of the Order of the Court.

7.0. HEARING

7.1. The Matter came up for hearing on the 13th of June, 2024. Counsel for the Plaintiff opted to rely on the documents filed into Court and briefly added that this Application will enable the Plaintiff take possession of the properties currently in possession of the Defendants without consent from the Plaintiff the owner.

7.2. Counsel submitted that the 2nd Defendant had admitted that he is not in possession of the Properties in question but that the Organization Three Angels S.D.A Church is in occupation of the properties in contention. It was Counsel's submission that the said organization is capable of exculpating itself, therefore the exhibits by the 2nd Defendant should be expunged from the Record and suffer the consequences of the decision of the Court.

- 7.3. With regards Plot 1981, Counsel submitted that the Known occupiers have no recourse to this property as they are squatters.
- 7.4. Counsel for the 2nd Defendant also submitted that he would partly rely on the documents filed. Counsel submitted that the exhibits should be expunged from the Record because they should have been made by the organization and not the 2nd Defendant. It was Counsel's submission that they had applied to set aside process as the wrong Parties had been cited but the ruling of the Court was not in their favour.
- 7.5. Further, that **Order 113** of the **Rules** of the **Supreme Court of England 1999 edition**, requires that the Application be made against the occupiers, the 2nd Defendant is not an occupier of any of the Land.
- 7.6. Counsel submitted that it is not in dispute that Stand 1981 Katopola belongs to the Plaintiff however, the Defendants have built structures on the land and therefore have equitable interest. Further, that for **Order 113** of the **Rules** of the **Supreme Court** only applies in circumstances where there is no dispute as to ownership, the 2nd Defendant has however

exhibited occupation licenses showing that the other two properties belong to the Three Angels Message Seventh Day Adventist Church, this shows that there is a dispute which should be resolved at trial as our clients are not squatters.

8.0. ISSUES FOR DETERMINATION

8.1. The following issues have been framed for determination:

- i. Whether or not this application is properly before Court?*
- ii. Whether or not the Plaintiff should be granted the Order of summary possession as prayed?*

9.0. ANALYSIS AND DECISION

9.1. I have considered the Affidavit evidence adduced by both Parties and the competing Skeleton Arguments filed into Court and Counsel's oral submissions at the Hearing.

9.2. I must firstly address the 2nd Defendant's submission that Three Angles Message Seventh Day Adventist Church is a body corporate duly registered in Zambia and therefore clothed with a separate legal capacity, hence has the capacity to sue and be sued. It was Counsel's submission that this Honourable Court

should join Three Angels Message Seventh Day Adventist Church as the rightful party to these proceedings.

9.3. **Order XXX Rule 1** of the **High Court Rules** provides that every Application in Chambers shall be made by summons. The provision of law requires an Application to be made by Summons, therefore the Defendant should have made an Application by Summons for Non-joinder for the Court to pronounce itself.

9.4. Further, the 2nd Defendant submits that Three Angels Message Seventh Day Adventist Church is a Corporate body by virtue of **Section 2** of the **Land (Perpetual Succession) Act Chapter 186** of the **Laws of Zambia**. However, the 2nd Defendant, has not tendered the Certificate of Registration to prove that the Church in question is a corporate body by virtue of the provision above. It is trite that he who alleges must prove. In this regard the 2nd Defendant has not proved how the Three Angels Message Seventh Day Adventist Church is a corporate body.

9.5. Lastly as guided in the case of **National Milling Company Limited Vs A. Vashee (Suing as Chairman of Zambia National Farmers Union)**⁽⁵⁾ wherein it was stated that an

unincorporated entity is not a legal person and therefore, cannot sue or be sued save through its representative, the Plaintiff were on firm ground when they sued the representatives of Three Angels Message Seventh Day Adventist Church.

***i) Whether or not this application is properly
before Court?***

9.6. It is trite that our High Court rules make no provision for summary possession of land, it is the **Rules of the Supreme Court of England 1999 (White Book) 1965 edition** which stipulates under **Order 113** how a person whose land has been occupied by trespassers can obtain an Order for Possession.

9.7. **Section 10 of the High Court Act Chapter 27 of the Laws of Zambia** enables one who wants to apply for summary possession of land under **Order 113** of the **Rules of the Supreme Court of England** this Order provides that:

“The jurisdiction vested in the Court shall, as regards practice and procedure be exercised in the manner provided by this Act and the Criminal procedure Code, or by any other written law, or by such rules, order or

direction of the Court as may be made under this Act, or the said Code or such written law, and in default thereof in substantial conformity with the law and practice for the time being observed in England in the High court of Justice.”

9.8. Therefore, a person wishing to reclaim possession of land from a Squatter may invoke **Order 113** of the **Rules** of the **Supreme Court of England**. Therefore, insofar as the action purports to be an action for the eviction of Squatters it is rightly commenced by Originating Summons in accordance with **Order 113** of the **Rules** of the **Supreme Court of England 1999 (White Book)**.

ii) Whether or not the Plaintiff should be granted the Order of summary possession as prayed?

9.9. **Order 113** of the **Rules** of the **Supreme Court of England 1999 (White Book) 1965** edition provides that:

“Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his license or consent or that of any predecessor in title of his, the

proceedings may be brought by Originating summons in accordance with the provisions of this Order.”

9.10. It is trite law that **Order 113** of the **Rules** of the **Supreme Court of England** provides a summary procedure only suitable for squatters and others without any genuine claim of right or who have since transformed into squatters, this is as per **Liamond Choka Vs Ivor Chilufya** ⁽²⁾.

9.11. A perusal of the facts at hand reveals that the Plaintiff has demonstrated that it is the lawful owner of Stand No. 1981 Chipata and produced a copy of its Certificate of Title No. 36349 in relation to the same piece of land.

9.12. It is trite law that a Certificate of Title is conclusive ownership of Title, this is as per **Section 33** of the **Lands and Deeds Registry Act Chapter 185** of the **laws of Zambia**. A further perusal of the facts and the evidence on Record reveals that the Defendants have failed to produce any evidence to disprove the Plaintiff's position. At the hearing, Counsel for the Defendants even admitted that there is no dispute that Stand No. 1981 Katopola Chipata belongs to the Plaintiff.

9.13. I find that the Plaintiff has proved its case on a balance of probability with regards **Stand No. 1981 Chipata** and the Defendants whether known or unknown have no right to build on this land. Accordingly, I order summary possession of Stand No. 1981 Chipata as prayed by the Plaintiff.

9.14. However, ownership of **Stand No. 6115 Katopola Chipata** and **Stand No. 4860. Spring Side Lane Chipata** is not as clear as Stand No. 9118. This can be seen from the supporting evidence. In support of its case, the Plaintiff has exhibited offer letters and Chipata Municipal Council receipts to prove ownership of the two properties. While the 2nd Defendant on the other hand has produced Occupancy Licenses issued under the same properties by the Chipata Municipal Council. From the foregoing it is clear that there are competing interests both from the Chipata Municipal Council. It is clear that there are contentious issues surrounding this land thus making it unsuitable to be dealt with under **Order 113** of the **White Book**.

9.15.I find comfort in my views above from the Supreme Court in the case of *Kidinson Mwandila Vs Yotam Phiri* ⁽⁶⁾ where the Court had the following to say about **Order 113**:

“Our High Court Rules make no provision for summary possession of land. It is the Rules of the Supreme Court of England (White Book) that stipulate in Order 113 RSC how a person whose land has been occupied by trespassers can obtain an Order for possession from the Court. The procedure is a summary one. It is not designed for contentious claims of ownership, and should not be used in such instances.

The Court went further to state the following at paragraph 81:

Where, therefore it transpires that a person occupying land is also claiming ownership and pointing to what may appear to be a legitimate source of ownership, it is inappropriate to apply for summary possession, as the claims of both parties require interrogations... (emphasis mine)

9.16.The evidence on Record reveals that the Defendant is claiming that the owner of the Lands in question is Three Angels S.D.A

Church while the Plaintiff also claims ownership of the same lands. It is quite clear that the claims by both Parties require interrogations and are not suitable for summary possession application.

9.17. In view of the above, I now return to the issue of whether the claim for summary possession of the other two lands are properly before me? As I have already found above, the issues surrounding the other two pieces of land are contentious and, in any event, the Defendants cannot on the face of it be deemed to be squatters as they possess occupancy licenses. In this vein, issues regarding the two pieces of land do not fall within the ambit of **Order 113** of the **White Book**.

9.18. However, the story does not end here. **Order 113 Rules of the Supreme Court of England 1965** in the explanatory notes at **113/8/14** provides thus:

“ If on the hearing of the summons, it should appear that the claim for the Plaintiff is not within the ambit of this Order or that claims for relief or remedy have been joined with the claim for possession of land which could not or ought not have been so joined or that the supporting affidavit is defective or that for

some other reason the proceedings are irregular, the court may dismiss the summons or give leave to amend to correct any irregularity on such terms as it thinks fit.

Moreover, if the court should hold that there is some issue or question that requires to be tried, or that for some other reason there ought to be a trial...it may give directions as to the further conduct of the proceedings under Order 28 r. 4, or may order the proceedings to continue as if begun by writ under Order 28 r. 8.”

9.19. From the foregoing provisions, it is clear that the Court has the jurisdiction to deem the Matter as commenced by Writ in accordance with **Order 28 rule 4** of the **Rules** of the **Supreme Court of England (White Book)**. This is to allow the contentious matters relating to ownership to be dealt with in a full trial. Further, this is in tandem with the guidance of the Supreme Court in the case of **Kidinson Mwandila Vs Yotam Phiri** ⁽⁶⁾ where the Supreme Court stated thus:

“It is clear that on reading the respondents affidavit, the learned judge perceived the dispute between the parties. This should have prompted her to order the proceedings to continue as if the matter had begun by

writ, in terms of Order 28 RSC. She however did not do so. The end result is that on an application for summary possession, a clear contentious matter was considered, tried and determination of the dispute made. This was a misdirection.”

9.20. In abiding by the guidance of the Supreme Court in the case above, I accordingly deem the matter as commenced by Writ in relation to the two contested pieces of land **Stand No. 6115 Katopola Chipata** and **Stand No. 4860. Spring Side Lane Chipata**. The Affidavits shall act as Pleadings and Leave is hereby granted to the Parties to accordingly amend the documents before Court into clear Pleadings.

10.0. CONCLUSION

10.1. In conclusion, I order summary possession of **Stand No. 1981 Chipata** as prayed by the Plaintiff. I order the Matter deemed as if begun by Writ, with regards **Stand No. 6115 Katopola Chipata** and **Stand No. 4860. Spring Side Lane Chipata** for the reasons stated herein. Leave is hereby granted to the Parties to accordingly amend the documents before Court into clear Pleadings.

10.2. The Matter will come for a Status on the 6th of November, 2025
at 08:30 hours.

DELIVERED AT LUSAKA THIS 23RD DAY OF SEPTEMBER, 2025.



**S. V. SILOKA
HIGH COURT JUDGE**

