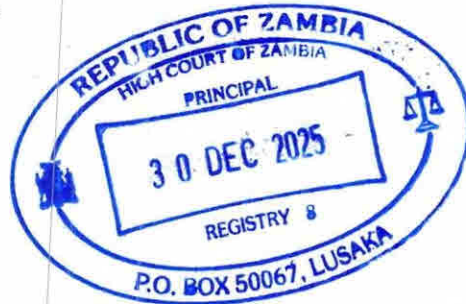


IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)

2022/HP/1499



BETWEEN:

STANLEY CHILANDO MWAPE

PLAINTIFF

AND

SEPISO SIMASIKU MUBITA (Sued in her capacity
as Administratrix of the late Mubita Collins Simasiku)

DEFENDANT

**Before the Honourable Mrs Justice Ruth Chibbabbuka on the 30th day of
December, 2025**

For the Plaintiff:

Mr H. Mulenga, Messrs G.M Legal Practitioners

For the Defendant:

No appearance

JUDGMENT

Cases referred to:

1. *Railways Limited Vs Pauline S. Mundia, Brian Simumba (2008) Z.R 287*
2. *Zambia Revenue Authority Vs Mitalloy Company Limited Appeal No. 10/2020*
3. *Khalid Mohammed Vs Attorney General (1982) Z.R 49*

1.0 Introduction

1.1 The plaintiff issued a Writ of Summons on the 26th September, 2022 claiming the following reliefs:

- (i) A declaration that the plaintiff is the rightful owner of part of the land namely Plot No. L/175567/M measuring approximately 75 meters by 71 meters;

- (ii) An order for specific performance of the contract dated the 10th March, 2015 entered between the plaintiff and the deceased Mr Mubita Collins Simasiku;
- (iii) An order directing the defendant to hand over all documentation pertinent to the completion of the conveyancing process.
- (iv) Damages for breach of contract;
- (v) Costs of and incidental to the action; and
- (vi) Any other relief the court may deem fit.

2.0 The plaintiff's statement of claim

2.1 In his statement of claim, the plaintiff states that he purchased Plot No. L/175567/M Balmoral Area, Lusaka and the defendant is the Administratrix of the estate of the late Mubita Collins Simasiku. By a contract of sale dated 10th March, 2015 the late Mubita Collins Simasiku did sell part of his land namely Plot No. L/17567/M to the plaintiff. The part that was agreed on measures approximately 75 meters by 71 meters at consideration of K10,000.00. This amount was fully paid to the late but before the process of change of ownership could be commenced Mubita Collins Simasiku died.

2.2 The plaintiff approached the defendant on a number of occasions for her to effect the processing of conveyancing for the proposed subdivision measuring 75 meters by 71 meters but the defendant refused or neglected to avail any documentation for the completion of the conveyancing process. As a result of the defendant's actions, the plaintiff has suffered loss and damage and hence the plaintiff's claim.

3.0 The defendant's defence

3.1 The defendant filed a defence on the 13th October, 2022, where she stated that the contract of sale dated 10th March, 2015 does not meet the

standard template that the late Mubita Collins Simasiku would issue to persons whom land was sold to. That persons known to the defendant who know the parcels of land that the late Mubita Collins Simasiku sold, equally indicated that they do not know anything about the transaction between the plaintiff and the late.

- 3.2 The defendant found it difficult to appreciate the copy of the letter showing the sale of the land between the plaintiff and the late as the same is drafted on a small piece of paper from an exercise book thereby falling short of the contract of sale template as issued to Emmanuel Mwale where the plaintiff was a witness of the purchaser. The plaintiff has denied to show the defendant proof of the purchase and as such it has been difficult to facilitate any conveyancing paper work to process to the plaintiff. That the plaintiff is only attempting to take advantage of the death of the late as he was a well-known person to the plaintiff and the plaintiff's claim is aimed at reaping without considering that the purported letter of sale is fake.
- 3.3 Consequently, the plaintiff is not entitled to any relief.

4.0 The plaintiff's reply

- 4.1 In a reply filed into court on the 2nd November, 2022 the plaintiff stated that he would produce evidence at trial to prove his claims. Further that it would be shown that the said agreement was written in the deceased's handwriting in the presence of his wife and hence could not be forged by the plaintiff. That for an agreement to bind a party it need not be written in a standard form or on a standard paper but what binds the parties to it is the endorsement of their signatures. It would be shown that the deceased Mr Mubita, did append his signature to the agreement of sale of part of his property.
- 4.2 The property was fully paid for and the said land was bought for value as evidenced by the agreement written in the deceased's name.

5.0 The plaintiff's witness statement

- 5.1 On the 31st August, 2023 the plaintiff filed a witness statement in which he avers as follows:
On the 10th March, 2015, he engaged Mr Mubita Collins Simasiku, the deceased from whom he purchased a portion measuring 75 meters by 71 meters piece of land from Plot No. L/17567/M of Balmoral Area, Mount Makulu, Chilanga District at the consideration of K10,000.00. The deceased signed an agreement for the sale of land dated 10th March, 2015.
- 5.2 On the 22nd June, 2014 he made a part payment of K2,000.00 for the purchase of a 75 meter by 71 meters portion of Plot No. L/17567/M. That they were to effect the conveyancing process of the aforementioned subdivision and title. They agreed that the consideration for the said portion of land was to be K10,000.00 and the defendant was to transfer ownership of the said land after full payment of the consideration which was paid. The deceased however did not transfer ownership of the land before his untimely demise.
- 5.3 He approached the defendant in her capacity as Administratrix of the deceased for the purpose of effecting the conveyancing process of the aforementioned subdivision and title. The defendant has utterly refused or neglected to avail any documents, that is the title deed, for the 75 meter by 71 meter portion of Plot No. L/17567/M.

6.0 The defendant's witness statements

- 6.1 The defendant did not file into court any witness statements.

7.0 The trial

- 7.1 At the trial of the action only the plaintiff and his counsel were present. This court had issued notices of hearing three times for the trial of the matter and since the neither the defendant nor her counsel were present, the court allowed the plaintiff to proceed with his evidence.

- 7.2 The plaintiff adopted his witness statement as his evidence together with the bundle of documents.
- 7.3 The plaintiff closed his case and counsel for the plaintiff was given up to the 13th August, 2025 to file written submissions into Court, which have not been filed up to date. This judgment as such is based on the evidence before the Court.

8.0 The decision of the Court

- 8.1 On the evidence before me, I find the following fact to be in dispute: Whether the plaintiff purchased the land from Mubita Collins Simasiku.
- 8.2 It is trite law that he who alleges must prove and in civil law that standard is on a balance of probabilities. The Supreme court in the case of **Zambia Railways Limited Vs Pauline S. Mundia, Brian Simumba**¹ held that:

“The old adage is true, that he who asserts claim in a civil trial must prove on a balance of probabilities that the other party is liable.”

- 8.3 The plaintiff in this matter alleges that he purchased a portion of the property known as Plot. No. L/17567/M, Balmoral Area, Lusaka from Mubita Collins Simasiku at a consideration of K10,000.00 which he alleges that he paid in full. To support this, claim the plaintiff filed into court an agreement of sale of the said portion of land, which measures 75 meters by 71 meters. The said letter is only signed by Mubita Collins Simasiku who states that he has sold this portion of land to Stanley C. Mwape at a consideration of K10,000.00 only. It is couched in the following manner:

"AGREEMENT OF SELL OF LAND

I MUBITA COLLINS SIMASIKU BEING 10TH MARCH YEAR OF 2015 HAVE SOLD A PIECE OF LAND (75M X 71M) OUT OF MY PERSONAL PIECE OF LAND OF A TOTAL AREA OF (155.01 X 71.69M) TO A MR STANLEY C. MWAPE NRC NO 191498/44/1. THE AMOUNT RECEIVED (PAID) IS TEN THOUSAND KWACHA ONLY AND I HEREBY ACKNOWLEDGE HAVING RECEIVED THE AMOUNT MYSELF PERSONALLY.

(SIGNED)

MUBITA COLLINS SIMASIKU

10/03/2015 PART OF PLOT NO L/17567/M"

- 8.4 In assessing the said document whilst the same is termed as an agreement of sale it is to be noted that the purported purchaser, being Stanley Chilando Mwape, the plaintiff herein, has not signed the said document. Additionally, there are no witnesses to attest to the said agreement having been made for the sale of the land and the consideration thereof having been given to the deceased by the said plaintiff. The defendant in her defence doubted that this document was written by the deceased. This was because it was written on a small piece of paper from an exercise book and that it is not the contract of sale template that she had seen issued by the deceased to Emmanuel Mwale where the plaintiff was a witness. In an attempt to assail this assertion, the plaintiff included in his bundle of documents another document which is not headed. It is couched in the following terms:

"22/06/2014

AS PART PAYMENT FOR THE PURCHASE OF A 75 METERS X 75 METERS OF A PORTION OF PLOT NO. L/17567/M BELONGING TO MR. MUBITA COLLINS SIMASIKU IN BALMORAL MT MAKULU PLOT AREA

SUM PAID K2,000.00 (TWO THOUSAND KWACHA REBASED ONLY)

PAID BY – SILWA CHALWE MWAPE (SIGNED) 196374/68/1
RECEIVED BY- MUBITA COLLINS SIMASIKU (SIGNED) 149867/83/1
WITNESS (1)-STANLEY CHILANDO MWAPE (SIGNED) 191498/44/1
WITNESS (2)-SOPHIA ZULU (SIGNED) 304688/16/1”

- 8.5 In relation to this second document, the plaintiff in his witness statement at paragraph 4 states that on the 22nd June, 2014 he made a part payment of K2,000.00 for the purchase of a 75 meter by 71 meter portion of Plot No. L/17567/M. In assessing the said document, it is evident that the plaintiff is not telling the truth as it clearly shows that firstly the plaintiff was only a witness to the purported transaction and further that the piece of plot described is a 75 meter by 75 meter and not 75 meter by 71 meter plot. Additionally, the document shows that it is Silas Chalwe Mwape who paid the amount of K2,000.00 to Mubita Collins Simasiku and not the plaintiff. Further the plaintiff alleges that he paid the sum of K2,000.00 to the deceased, but according to this document, this was on the 22nd June, 2014, which is contrary to his own evidence that he entered into an agreement for the sale of the deceased’s land on the 10th March, 2015 and paid the sum of K10,000.00 as consideration of the said piece of land. This contradictory evidence places the plaintiff’s alleged purchase of land in a poor light and the court takes a dim view of the blatant untruthfulness on the plaintiff’s part.
- 8.6 Further in an attempt to assail the defendant’s allegation of doubt that the deceased did indeed write the alleged sale agreement, the plaintiff in his reply indicated that he would call the deceased’s wife to testify to the validity of the said agreement. The plaintiff also went on to state that he had not forged the signature of the deceased which issue the court notes that the defendant herself did not raise. Contrary to his assertion the Court also notes that the plaintiff did not call the deceased’s wife or for that matter any other witness apart from himself, to support his claims.

8.7 On the totality of the evidence before this Court, I find that the plaintiff did not enter into a Contract of Sale with the deceased for the alleged portion of Plot No. L/17567/M Balmoral Area, Lusaka and while the defendant did not call any witnesses or file a witness statement, I agree with the defendant's position that the plaintiff is merely trying to profit from the death of the deceased, as he clearly participated as a witness in some sale of land transactions by the deceased to other persons. To buttress this position, the Supreme Court in the case of **Zambia Revenue Authority Vs Mitalloy Company Limited**² held that:

*“The settled position of the law, which we articulated in **Khalid Mohammed Vs Attorney General**³ namely that a plaintiff cannot automatically succeed where a defence failed, but is obliged to prove his case.....”*

8.8 The upshot of the matter is that the plaintiff having failed to prove his claim on a balance of probabilities, the said cause of action is hereby dismissed with costs to the defendant to be paid forthwith and to be taxed in default of agreement.

Leave to appeal is granted.

Dated the..... day of..... 2025.

30th December
REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
30 DEC 2025
Ruth Chibbabbuka
HIGH COURT JUDGE