

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

2023/HP/0371



BETWEEN:

**ELIZABETH MUSWEMA****PLAINTIFF**

AND

**THOMAS CHAKALEKA****DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 27<sup>th</sup> DAY OF MAY,  
2024**

For the Plaintiff : Ms P. Maluti, Messrs Ituna Partners  
For the Defendant : no appearance

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## **J U D G M E N T**

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### CASES REFERRED TO:

1. *David Howes and 8 others v Betty Butts Carbin (Sued in her capacity as Trustee of the estate of the Daisy Butts) SCZ No 5 of 2012*

### LEGISLATION REFERRED TO:

1. *The Statute of Frauds 1677*
2. *The High Court Act, Chapter 27 of the Laws of Zambia*

### **1. INTRODUCTION**

1.1 The Plaintiff, Elizabeth Muswema, took out these proceedings, by Writ of Summons that was accompanied by a statement of claim and the other documents on 2<sup>nd</sup> March, 2023, against Thomas Chakaleka, seeking:

- i. *An Order that the Registrar of the High Court of Zambia shall execute a duplicate title deed and Deed of*

- Assignment on behalf of Thomas Chakaleka who was the principal vendor of the said property and whose whereabouts are not known and is believed to be dead;*
- ii. An Order that the Applicant is entitled to a vesting Order relating to Stand No 13002 Lusaka situate in Lusaka Province of the Republic of Zambia;*
  - iii. An Order that the Registrar of Lands and Deeds shall effect duplicate title and transfer ownership of the property and shall duly issue a certificate of title into the names of Elizabeth Muswema;*
  - iv. Costs;*
  - v. Any other relief that the Court may deem fit.*

## **2. STATEMENT OF CLAIM**

2.1 Elizabeth Muswema stated that she was the purchaser of the property, known as Stand No 13002 Lusaka, in the Lusaka Province of the Republic of Zambia from Thomas Chakaleka after they entered into an agreement on 14<sup>th</sup> November, 1997. Her averment was that the purchase price was paid in full, and she was given the certificate of title for the property and she later took possession of the property.

2.2 It was stated that Elizabeth Muswema was desirous of completing the transaction and changing ownership of the property from Thomas Chakaleka into her names. However, over time, she had misplaced the certificate of title and Thomas Chakaleka's whereabouts were unknown.

## **3. DEFENCE**

- 3.1 Thomas Chakaleka did not file a defence in this matter. Elizabeth Muswema obtained an Order to serve Thomas Chakaleka, the Court process by way of substituted service by advertisement in the daily newspapers on 24<sup>th</sup> May, 2023. The said advertisement was placed in the Zambia Daily Mail newspaper on 31<sup>st</sup> July, 2023 and 1<sup>st</sup> August, 2023.

#### **4. EVIDENCE AT TRIAL**

- 4.1 Elizabeth Muswema is the only witness who testified at trial.
- PW1-ELIZABETH MUSWEMA**
- 4.2 In her testimony, Elizabeth Muswema produced her witness statement as her evidence. She stated that she had been in possession of the property in issue for Twenty-Seven (27) years. Elizabeth Muswema further in her testimony, reaffirmed that she entered into a contract sale with Thomas Chakaleka for the sale of the property, known as Stand No 13002 Chilenje South, Lusaka on 14<sup>th</sup> November, 1997.
- 4.3 She added that it was a verbal agreement under which she paid the purchase price in full. Elizabeth Muswema also testified that Thomas Chakaleka surrendered the property, and the certificate of title for the said property was given to her. It was also stated that Thomas Chakaleka informed the Legal Director at the Lusaka City Council, by letter dated 14<sup>th</sup> November, 1997, that he had relinquished all his rights to the property, and that a certificate of title could be issued in Elizabeth Muswema's names.
- 4.4 However, over time, Elizabeth Muswema had lost the certificate of title for the property. It was further her

evidence, that she had been looking for Thomas Chakaleka so that he could complete the conveyance, but the same had proved futile.

4.5 That marked the close of Elizabeth Muswema's case.

## **5. DECISION OF THIS COURT**

5.1 I have considered the evidence.

### **FACTS NOT IN DISPUTE**

5.2 It is common cause that Elizabeth Muswema contends that she entered into a contract of sale with Thomas Chakaleka on 14<sup>th</sup> November, 1997, for her to purchase the property known as Stand No 13002 Chilenje South Lusaka.

5.3 It is also not in contention, that Elizabeth Muswema claims that upon the contract of sale being executed, she paid the purchase price in full, and she was given the certificate of title for the property, as well as vacant possession of the property.

5.4 The facts that are further not in dispute, are that Elizabeth Muswema alleges that efforts to trace Thomas Chakaleka, so that he can complete the conveyance of the property have proved futile.

### **ISSUES IN DISPUTE**

5.5 It is in dispute whether Elizabeth Muswema is entitled to the reliefs sought.

### **ANALYSIS**

5.6 In her testimony, Elizabeth Muswema told the Court that she has been in possession of the property, known as Stand No 13002 Chilenje South Lusaka for Twenty-Seven (27) years.

It was also her evidence, that she took possession of the property after she entered into a verbal contract of sale with Thomas Chakaleka, for the purchase of the property on 14<sup>th</sup> November 1997.

- 5.7 Elizabeth Muswema stated that Thomas Chakaleka did however write a letter to the Director Legal Services at the Lusaka City Council on 14<sup>th</sup> November, 1997 advising that he had relinquished ownership of the property to Elizabeth Muswema, and she could change ownership of the property into her names. She also told the Court that she had lost the certificate of title for the property which Thomas Chakaleka gave her.

**ORDER THAT ELIZABETH MUSWEMA IS ENTITLED TO A VESTING ORDER RELATING TO STAND NO 13002 CHILENJE SOUTH LUSAKA**

- 5.8 Elizabeth Muswema claims for an Order that she is entitled to a vesting Order, relating to the property Stand No 13002 Lusaka, as she bought the said property from Thomas Chakaleka. The matter in issue is sale of land. **Section 4 of the Statute of Frauds, 1677** states that:

***“No Action shall be brought upon any contract for the sale or other disposition of land or interest in land unless the agreement upon which such action shall be brought or some Memorandum or Note thereof shall be in writing and signed by the parties to be charged therewith or some other person thereunto by him lawfully authorized.”***

- 5.9 Elizabeth Muswema's testimony was that she entered into an oral agreement with Thomas Chakaleka for the sale of the property. On the face of it, her agreement with Thomas Chakeleka would be void, as it was not evidenced in writing.
- 5.10 In the case of ***David Howes and 8 others v Betty Butts Carbin (Sued in her capacity as Trustee of the estate of the Daisy Butts)*** <sup>(1)</sup>, the Supreme Court held that:

***“It is well settled that the memorandum required by the Statute of Frauds need not be in any particular form and may be constituted by two or more documents which are clearly connected by reasonable inference.***

***For a note or memorandum to satisfy Section 4 of the Statute of Frauds 1677, the agreement itself need not be in writing. A note or memorandum of it is sufficient, provided that it contains all the material terms of the contract, such as names, or adequate identification of the subject matter and the nature of the consideration.”***

- 5.11 Thus, the question that arises in this matter, is whether in absence of an agreement in writing evidence the sale, there is other evidence in writing that points to the transaction? Elizabeth Muswema told the Court on 14<sup>th</sup> November, 1997, Thomas Chakaleka wrote a letter to the Legal Director at the Lusaka City Council, advising that he had relinquished ownership of the property to Elizabeth Muswema, and she could change title for the property into her name.

- 5.12 While Elizabeth Muswema testified as such, she did not in her witness statement, refer to the bundle of documents as evidencing the said letter. This was in breach of **Order 19 Rule 2 (c) of the High Court Rules, as amended by Statutory Instrument No 58 of 2020** which requires a witness, in a witness statement, to refer to the documents in the bundle of documents.
- 5.13 The requirement is to ensure that foundation is laid for the documents, and to prove the facts that are alleged by the witness in the witness statement. However, I note that at page 1 of her bundle of documents, is what is headed as a letter of sale. That document is dated 14<sup>th</sup> November, 1997 and it was authored by Thomas Chakaleka to the Legal Director at Lusaka City Council, advising that he had given Stand No 13002 Chilenje South to Elizabeth Muswema, and he had no further claim to the said property.
- 5.14 Thomas Chakaleka also wrote, asking that Elizabeth Muswema be assisted to change the property into her names.
- 5.15 The letter establishes that Thomas Chakaleka had relinquished Stand No 13002 Chilenje South to Elizabeth Muswema as at 14<sup>th</sup> November, 1997. Thus, this is evidence of an agreement to transfer land that is in writing, as the property was sufficiently identified, as well as the parties to the agreement. Therefore, Elizabeth Muswema has on a balance of probabilities established that she entered into an

agreement with Thomas Chakaleka over Stand No 13002 Chilenje South Lusaka.

5.16 A vesting Order is an Order of the High Court creating or transferring a legal interest in land. Therefore, Elizabeth Muswema having shown that she is entitled to the property known as Stand No 13002 Chilenje South Lusaka, she succeeds on her claim that she is entitled to a vesting Order.

**REGISTRAR OF THE HIGH COURT SHOULD EXECUTE A DUPLICATE TITLE AND DEED OF ASSIGNMENT ON BEHALF OF THOMAS CHAKALEKA THE PRINCIPAL VENDOR**

5.17 Elizabeth Muswema claims for an Order that the Registrar of the High Court should execute the certificate of title and the deed of assignment on behalf of Thomas Chakaleka, the principal vendor, as his whereabouts are unknown, and he is believed to be dead. Other than just alleging that Thomas Chakaleka's whereabouts are unknown, and that he is believed to be dead, Elizabeth Muswema did not adduce any evidence to support her belief or indeed what efforts she had made to locate the said Thomas Chakaleka, and they had proved futile.

5.18 She has however proved that she had an agreement with Thomas Chakaleka for her to have the property, Stand No 13002 Chilenje South, Lusaka. Thus, in Order that the conveyance of that property is completed, Elizabeth Muswema shall advertise the Judgment of this Court in the daily newspapers that enjoy wide circulation in the country,

calling upon Thomas Chakaleka to execute all the documents that are necessary to transfer the property into her name.

5.19 Upon the lapse of Thirty (30) days after the advertisement, and if Thomas Chakeleka would not have come forward to execute the documents, and upon Elizabeth Muswema filing an affidavit of service evidencing advertisement of the Judgment, then pursuant to **Section 14 of the High Court Act Chapter 27 of the Laws of Zambia**, the Registrar of the High Court shall execute all the documents that are necessary for the property to be transferred into Elizabeth Muswema's name.

5.20 That Section provides as follows:

***“14. 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.”*

**ORDER THAT THE REGISTRAR OF LANDS AND DEEDS SHALL ISSUE A DUPLICATE CERTIFICATE OF TITLE AND TRANSFER OWNERSHIP OF STAND NO 13002 CHILENJE SOUTH INTO ELIZABETH MUSWEMA’S NAME**

5.21 I have already directed that upon Elizabeth Muswema advertising the Judgment, and calling upon Thomas Chakaleka to execute all the necessary documents to transfer ownership of the property into her names, and if he does not do so, the Registrar of the High Court shall execute those documents.

5.22 Having made the Order, it follows that the Registrar of Lands and Deeds shall be obliged to issue a certificate of title in Elizabeth Muswema’s name.

## **6. CONCLUSION**

6.1 Elizabeth Muswema having succeeded on her claims, she is awarded costs. Leave to appeal is granted.

**DATED AT LUSAKA THE 27<sup>th</sup> DAY OF MAY, 2024**

*S. Kaunda*  
**S. KAUNDA NEWA**  
**HIGH COURT JUDGE**

