

**IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**

(Civil Jurisdiction)

BETWEEN:

PHILLIMON NJOBVU

AND

JOJO DECOQUE *(As Administrator of the Estate
of the Late FAUSTIN ALBERT DECOQUE*

2023/HP/1944



PLAINTIFF

DEFENDANT

**Before the Honourable Lady Justice S. Chocho, in Chambers on the 12th day
of May, 2025.**

For the Plaintiff (s):

*Mr. E. Kamundi of Messrs Charles Nhari
Advocates.*

For the Defendant (s):

No Appearance.

JUDGMENT

Cases referred to:

- 1. Match Corporation Limited Vs. Edward Choolwe and Another
Appeal No. 75 of 2002.***
- 2. Gideon Mundanda Vs. Timothy Mulwani and Agricultural
Finance Company Limited and S. S. S. Mwiinga (1987) ZR 29 S.C.***
- 3. Khalid Mohamed V. Attorney General (1982) ZR 49.***
- 4. Ackim Chirwa, Levy Joseph Ngoma and U Fuel (Z) Limited Vs. Mini
Mart Development Corporation Limited CAZ Appeal No. 68 of
2021.***

1. INTRODUCTION

1.1. This Judgment is in respect of the Plaintiff's claim as against the Defendant. The record will show the Plaintiff claims as follows:

- i. An order for specific performance of the agreement for sale of six (6) hectares of the property known as Subdivision A of Subdivision No. 2 of Farm No. 417, Ndola situate in the Copperbelt Province;
- ii. An order for Interim injunction restraining the Defendant by himself, his servants, his agents whosoever from attempting to sell and selling, attempting to lease or leasing, threatening to interfere with and interfering with the Plaintiff's quiet enjoyment of, threatening to build and building on, six (6) hectares of the property known as Subdivision A of Subdivision No. 2 of Farm No. 417, Ndola situate in the Copperbelt Province sold by the Late Faustin Albert Decoque to the Plaintiff;
- iii. Any other relief the Court may deem fit; and
- iv. Costs.

1.2. The Defendant did not enter appearance nor file Defence in this matter.

1.3. The Plaintiff was granted an Interim Injunction on November 7th, 2023 restraining the Defendant from selling, leasing the subject land or interfering with the Plaintiff's quiet enjoyment of the subject land. The Injunction was confirmed on March 27th, 2024.

2. TRIAL COURSE

- 2.1. The matter was scheduled for trial and trial was heard on March 26th, 2025. On scheduled date the Defendant did not attend Court. The Plaintiff having shown proof of service on the Defendant, I proceeded to hear the matter.
- 2.2. The Plaintiff called one witness in aid of his case. The Plaintiff PW, filed a witness statement dated June 3rd, 2024.
- 2.3. PW testified under oath and in chief averred that the Defendant is sued as the Administrator of the Estate of the late Faustina Albert Decoque.
- 2.4. PW testified that he entered into written agreement on/about August 8th, 2006 with the late Faustina Albert Decoque for the purchase of property known as Subdivision A of Subdivision No. 2 of Farm No. 417, situate in Ndola of the Copperbelt Province (hereinafter referred to as the Subject Land).
- 2.5. PW testified that the Subject Land was registered in the name of Faustina Albert Decoque.
- 2.6. PW further testified that the total purchase price for the 6 hectares was Kwacha Thirteen Million Two Hundred Thousand (K13,200,000.00) unrebased. He referred to documents at pages 1-5 of his bundle of documents.
- 2.7. PW testified that he applied for the Subject Land to be surveyed and subdivided towards completion. He referred the Court to page 6 of his bundle of documents.
- 2.8. PW further testified that in accordance with the written agreement he paid the purchase price in three (3) instalments on August 16th,

2006, August 21st, and August 30th, 2006. He referred the Court to pages 7-10 of his bundle of documents.

- 2.9. PW testified that the late Faustina Albert Decoque requested/appointed one Phillip Sichilongo (retired Captain) to assist with the conclusion of the conveyance of the 6 hectares of land.
- 2.10. PW testified that the Subject Land was duly surveyed by a qualified surveyor and beacons duly placed accordingly.
- 2.11. PW further testified that he built and developed on the subject land where his family is in occupancy. He referred the Court to pages 11-17 of the Plaintiff's bundle of documents.
- 2.12. PW further testified that Faustina Albert Decoque died before the conveyance of the Subject Land was concluded.
- 2.13. PW testified that he made several demands to the Administrator of the Estate (the Defendant) to conclude the conveyance but the Defendant ignored, denied and failed to complete the conveyance.
- 2.14. PW testified that in complete disregard of the Contract of Sale between Faustina Albert Decoque and the Plaintiff, the Defendant has sold and still attempts to continue selling part of the Plaintiff's property. The Defendant has brought surveyors to demarcate the land.
- 2.15. PW further testified that the Defendant has removed or caused to be removed the beacons around the property despite protestations from the Plaintiff and his family.
- 2.16. PW testified that the Defendant has threatened and verbally abused the Plaintiff and his mother over the property.

2.17. PW was not subjected to cross examination as the Defendant did not attend Court.

2.18. The Plaintiff closed his case.

3. LAW AND SUBMISSION

3.1. The Plaintiff filed his written submissions on April 30th, 2025, for which I am grateful. As stated earlier in this Judgment, the Defendant has not participated in this matter, having not filed appearance/defence, witness statements and no submissions.

3.2. The Plaintiff submits that in civil litigation a Party must prove their claim and that he has discharged this burden of proof on a balance of probabilities. The Plaintiff submits that he has duty to prove that he is entitled to an Order for specific performance of the agreement for the sale of 6 hectares of land known as Subdivision A of Subdivision No. 2 of Farm No. 417 Ndola situate in the Copperbelt Province.

3.3. The Plaintiff submits that the relief of specific performance is one that lies in equity. Reliance was made on the case of **Match Corporation Limited Vs. Edward Choolwe and Another Appeal No. 75 of 2002**, where it held that;

“Specific performance is not legal remedy. It is an equitable remedy. When considering whether to order specific performance we have to take into consideration all the circumstances of the case including the conduct of the Plaintiff.”

3.4. The Plaintiff submits that in contracts of land, damages do not suffice but rather specific performance by reason of the unique

nature of land. Reference was made to the case of **Gideon Mundanda Vs. Timothy Mulwani and Agricultural Finance Company Limited and S. S. S. Mwiinga (1987) ZR 29 S.C**, provides;

“the law concerning specific performance of the contracts relating to or the sale of land is quite clearly set out in paragraph 1764 of Chitty on Contracts 25th Edition, which reads in part: Land, the law takes the view that damages cannot adequately compensate a party for breach of contracts for the sale of an interest in a particular piece of land or of a particular house (however ordinary)...”

- 3.5. The Plaintiff further submits that his evidence before the Court particularly pages 1 – 5 of the Plaintiff’s bundle of documents, clearly shows the agreement for the sale of the 6 hectares of land from the Defendant to the Plaintiff. The purchase price having been fully paid, the Defendant failed/neglected to complete the sell.
- 3.6. The Plaintiff urges this Court to grant Judgment in his favour and order for specific performance of the contract of sale between him and the Defendant.

4. **COURT ANALYSIS AND DECISION**

- 4.1. The clear and undisputed facts in this case are as follows:
- i. That the Plaintiff executed a contract of sale for property known as Subdivision A of Subdivision 2 of Farm No. 417 Ndola in extent of 6 hectares.

- ii. That the purchase price was fully paid to Vendor one Faustin Albert Decoque (deceased) and the administrator of the Estate refused/neglected to complete the transaction.
- 4.2. By reason of the Defendant's failure/neglect to participate in this action, there are no disputed facts.
- 4.3. The Defendant attended Court on March 7th, 2024 at the hearing of the Injunction application. The Defendant was advised to seek Counsel and visit Messrs Legal Aid Board for advise and possible representation in the matter. The Defendant neglected/failed to attend on all other dates that matter was scheduled.
- 4.4. Failure by the Defendant to defend this action does not remove the Plaintiff's obligation/burden to prove his claim. It is trite that "he who alleges must prove" and in casu the Plaintiff must prove this claim even though the Defendant filed nothing in defence. I am forfeited by the authority in the celebrated case of **Khalid Mohamed V. Attorney General (1982) ZR 49** and the case of **Ackim Chirwa, Levy Joseph Ngoma and U Fuel (Z) Limited Vs. Mini Mart Development Corporation Limited CAZ Appeal No. 68 of 2021**. The Court of Appeal stated that a party must prove their claim and cannot automatically be entitled to Judgment even where the other party's defence fails.
- 4.5. Having addressed my mind to the evidence adduced by the Plaintiff in this matter, I am of the considered opinion that the Plaintiff has proved his case on a balance of probabilities thereby discharging the legal burden to prove his case.
- 4.6. The documents as appears at pages 1 – 4, 5, 7 and 9 of the Plaintiff's bundle of documents dated July 4th, 2024 clearly show

that the Plaintiff did execute contract of sale and make full payment of the purchase price entitling him to the Subject Land.

4.7. I find that the Plaintiff has indeed adduced sufficient evidence to Judgment in his favour. I further opine that monetary damages in casu cannot suffice to satisfy the Plaintiff's claims. The authority in the of **Gideon Mundanda** case refers.

5. CONCLUSION

5.1. For the foregoing reasons and on a balance of probability, I find that the Plaintiff's case succeeds.

5.2. Specific performance of the contract of sale is hereby Granted.

5.3. The Defendant **IS HEREBY ORDERED** to complete the conveyance of the property known as Subdivision A of Subdivision No. 2 of Farm No. 417, Ndola.

5.4. Costs to the Plaintiff to be taxed in default of agreement.

Delivered at Lusaka on 12th May, 2025



S. CHOCHO
JUDGE

