



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

2023/HP/2177

IN THE MATTER OF:

**SECTIONS 81 AND 82 OF THE LANDS AND
DEEDS REGISTRY ACT CHAPTER 185 OF THE
LAWS OF ZAMBIA**

AND

IN THE MATTER OF:

**APPLICATION FOR REMOVAL OF A CAVEAT
PLACED ON STAND NO. 25891, LUSAKA**

AND

IN THE MATTER OF:

**AN ORDER FOR THE REGISTRATION OF THE
JUDGMENT DATED 8TH JANUARY 2020 OUT
OF TIME**

AND

IN THE MATTER OF:

**ORDER 30 RULES 11(f) & 12(g) OF THE HIGH
RULES CHAPTER 27 OF THE LAWS OF
ZAMBIA**

AND

IN THE MATTER OF:

**SECTIONS 5 & 6 OF THE LANDS AND DEEDS
REGISTRY ACT CHAPTER 185 OF THE LAWS
OF ZAMBIA**

BETWEEN:

LOUIS MUSWEMA**APPLICANT**

AND

IDAH MBULO MULENGA**RESPONDENT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 6th DAY OF MAY,
2024**

For the Applicant : Ms. R. Nyirenda, Messrs Fred Jere and Company

For the Respondent : Mr. V. Chilao, Messrs Chilao Nyirongo Mwinde Practitioners

J U D G M E N T

CASES REFERRED TO:

1. *Construction and Investment Holdings Limited v William Jacks and Company (Zambia) Limited* 1972 ZR 66
2. *Sentongo Produce & Coffee Farmers Limited v Rose Nakafuma Thijusa* HCMC 690/99
3. *Christopher Lubasi Mundia v Sentor Motors Ltd* 1982 ZR 66
4. *Wilson Masauso Zulu v Avondale Housing Project Limited* 1982 ZR 172.
5. *Lenton Holding Limited v Airforce Moyo* 1984 ZR 55
6. *Rosemary Phiri v Awadh Karen Collen* 2008 Vol 1 ZR 12
7. *Attorney General v Roy Clarke* 2008 Vol 1 ZR 38
8. *Sobek Lodges Limited v Zambia Wildlife Authority* 2011 Vol 2 ZR 235
9. *Corpus Legal Practitioners v Mwanandani Holdings Limited* SCZ No 50 of 2014
10. *Hakainde Hichilema and 5 Others v The Government of the Republic of Zambia* Appeal No. 28 of 2017
11. *Atlantic Bakery Limited v ZESCO Limited* Selected Judgment No. 61 of 2018
12. *Gawa Trust Limited v Mwanawasa & Company and another* (unreported)

LEGISLATION REFERRED TO:

1. *The High Court Rules, Chapter 27 of the Laws of Zambia*
2. *The Rules of the Supreme Court of England, 1999 Edition*
3. *The Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia*

1. INTRODUCTION

1.1 The Applicant, Louis Muswema, commenced these proceedings on 5th December 2023, by way of Originating Summons, which was accompanied by an affidavit and Skeleton Arguments, seeking the following reliefs:

1. *An Order that the caveats placed on Stand No. 25891 in Lusaka should be removed forthwith;*
2. *An Order that Idah Mulenga immediately vacates Louis Muswema's house;*

3. *An Order for compensation against Idah Mbulo Mulenga for maliciously placing caveats on Louis Muswema's house;*
4. *Costs; and*
5. *Any other relief that the Court may deem fit.*

2. AFFIDAVIT IN SUPPORT OF ORIGINATING SUMMONS

- 2.1 In deposing to the affidavit filed in support of the Originating Summons, Louis Muswema averred that he is the owner of the house. He exhibited a copy of the certificate of title as 'LM1' to his affidavit. It was also his averment, that on 8th January 2020, the Local Court dissolved the marriage between himself and Idah Mbulo Mulenga. He stated that the Judgment Ordered that the matrimonial house, which is the subject property, be sold and the proceeds be shared equally between the parties.
- 2.2 A copy of the certificate of the Judgment was exhibited as 'LM2'. Louis Muswema further deposed that thereafter, he moved out of the property to enable them to sell it, but Idah Mbulo Mulenga had refused or neglected to leave the house, despite several notices to her.
- 2.3 Still in averment, Louis Muswema stated that recently, as he was trying to sell the property, a search was conducted at the Ministry of Lands, and it was discovered that there was a caveat placed on the property by Idah Mbulo Mulenga. He exhibited as 'LM3', a copy of the search form. Louis Muswema stated that he approached Idah Mbulo Mulenga so that she could remove the caveat placed on the property, but she refused to do so without any justifiable cause.

- 2.4 He stated that his lawyers also wrote to Idah Mbulo Mulenga demanding the removal of the caveat, but she simply neglected to have it removed. It was also his averment, that as a result of the caveat that was placed on his property, he had been unable to sell the house, as all the purchasers were frustrated by the caveat. Louis Muswema also deposed that Idah Mbulo Mulenga had continued occupying the house, making it difficult for them to proceed with the sale of the said house.
- 2.5 He stated that he had been advised by his Advocates, which advice, he believed was correct, as follows:
- i. This is a good case in which this Court can Order the removal of the caveat on the property, in the interests of justice;
 - ii. This Court can Order Idah Mbulo Mulenga to vacate his house;
 - iii. There is no justifiable cause or reason for which Idah Mbulo Mulenga had the caveat placed on his property;
 - iv. The Judgment of 8th January 2020, involved land, and he ought to have registered it within twelve (12) months but due to his lack of knowledge, the Judgment was not registered within the prescribed period;
 - v. The Court can grant an Order for the registration of the Judgment of 8th January 2020.

3. LIST OF AUTHORITIES AND SKELETON ARGUMENTS IN SUPPORT OF ORIGINATING SUMMONS

REMOVAL OF THE CAVEAT

- 3.1 In the Skeleton Arguments, the case of ***Gawa Trust Limited v Mwanawasa & Company and another*** ⁽¹²⁾ was relied on, the argument being that in that matter, Judge G.Milimo Salasini labored to explain the nature and effect of the caveat. Louis Muswema also cited ***Sections 76 and 77 of the Lands and Deeds Registry Act Chapter 185 of the Laws of Zambia.***
- 3.2 It was argued that Idah Mbulo Mulenga had not demonstrated the interest that she intends to serve by placing a caveat on the property that belongs to him. The case of ***Lenton Holding Limited v Airforce Moyo*** ⁽⁵⁾ was also relied on, where it was held that:

“to be effective, a caveat should disclose the interest claimed...”

- 3.3 Further reliance was placed on the case of ***Sentongo Produce & Coffee Farmers Limited v Rose Nakafuma Thijusa*** ⁽²⁾. Louis Muswema submitted that Idah Mbulo Mulenga had not established sufficient interest in the property, that entitled her to it, and the equitable legal interest, which she intended to protect, as demonstrated in the affidavit in support.

REGISTRATION OF THE JUDGMENT

- 3.4 It was argued that the application was made pursuant to ***Section 5(3) and 6 of the Lands and Deeds Registry Act*** as read together with ***Order 3 Rule 5(1) of the Rules of the Supreme Court of England 1965 (1999 edition) White***

Book. Sections 5 (3) and 6 of the Lands and Deeds Registry Act provide as follows:

“5(3) Probate of a will affecting land or any interest in land shall be registered within twelve months of the grant thereof or the sealing thereof under the provisions of the Probates (Resealing) Act, as the case may be.

...

(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-

(1) 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; ...”

3.5 **Order 3 rule 5 of the Rules of the Supreme Court of England** provides that:

“5. - Extension, etc., of time

(1) The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorised by these rules, or by any Judgment, order or direction, to do any act in any proceedings.

(2) The Court may extend any such period as is referred to in paragraph (1) although the application for extension is not made until after the expiration of that period.”

- 3.6 It was argued that the effect of the above rule, is that where the time sought to be enlarged is fixed in the proceedings, this Court has inherent jurisdiction to extend the time independently of it. The argument was further that in the ***Rules of the Supreme Court of England*** cited, the guiding word is that there must be good reason. Louis Muswema stated that he had demonstrated in his affidavit in support, the reasons for the failure to register the Judgment in time. His contention was that there was a good reason for the delay.
- 3.7 Further reliance was placed on ***Order III Rule 2 of the High Court Rules Chapter 27 of the Laws of Zambia*** which provides that:

“2. Subject to any particular rules, the Court or a Judge may, in all causes and matters, make any interlocutory order which it or he considers necessary for doing justice, whether such order has

been expressly asked by the person entitled to the benefit of the order or not.

3.8 It was stated that this Rule was well illustrated and given good meaning in the case of ***Hakainde Hichilema and 5 Others v The Government of the Republic of Zambia*** ⁽¹⁰⁾ where the Supreme Court held that:

“From its wording, Order 3 Rule 2 gives discretionary power to a court to make interlocutory orders even if the said orders are not expressly asked for in order to meet the ends of justice.”

3.9 The submission was that where something was left undone, this Court is left with discretionary power to extend the period within which to register the probate and the Judgment in the interests of justice.

4. AFFIDAVIT IN OPPOSITION

4.1 In her affidavit in opposition, Idah Mbulo Mulenga admitted that the house is registered in Louis Muswema’s name. She deposed that she had been advised by her Advocates, and believed the same to be true, that it did not matter whether or not both spouses contributed financially or materially to the acquisition or development of the family assets, as a party to a marriage can contribute either materially or in kind to the assets.

4.2 She averred that Louis Muswema and herself constructed the house, whose certificate of title was exhibited as ‘LM1’ to his affidavit, during the subsistence of their marriage. She also

deposed that she constructed Two (2) semidetached flats on the same property without Louis Muswema's financial input, from which they now equally shared the monthly rentals.

- 4.3 Idah Mbulo Mulenga stated that the Judgment of 8th January 2020, ordered that the matrimonial home be sold within Ninety (90) days, and that the proceeds to be shared equally between Louis Muswema and herself. She exhibited a copy of the Judgment as 'IMMI', adding that the copy of the Judgment that had been exhibited by Louis Muswema to his affidavit, was not a true copy of the Judgment of the Local Court at Kamwala.
- 4.4 Further in averment, Idah Mbulo Mulenga deposed that the house had not been sold since the passing of the Order, because they had not received any good offer. She also averred that soon after the passing of the Order, the COVID-19 pandemic hit, and subsequently a lockdown was imposed, which made it particularly difficult to find buyers for the house during that time.
- 4.5 Idah Mbulo Mulenga further deposed she had tried her best to advertise since 2020, so that the property could be sold and the proceeds be shared accordingly. Her contention was that Louis Muswema had already moved out of the house at the time the Court Order was passed, and he was living with his new wife, whom he married during the subsistence of their marriage. She stated that the Local Court on dissolving their marriage, merely Ordered him to continue living with his new wife, which Order was confirmed on exhibit 'IMM1' to her affidavit.

- 4.6 Still in averment, Idah Mbulo Mulenga stated that Louis Muswema built a house during the subsistence of their marriage without her knowledge, and moved into the same, with another woman, who is now his new wife.
- 4.7 In responding to the placement of the caveat on the property, Idah Mbulo Mulenga averred that Louis Muswema sold their family house in Kasama, and a residential plot in Kapiri Mposhi without her knowledge, and he did not share the proceeds of the sale. She stated that she placed the caveat on the property in early 2019, which is their only remaining property. Exhibited as 'IMM3' was the entry of the caveat.
- 4.8 Idah Mbulo Mulenga contended that she had on several occasions, requested Louis Muswema to meet, so that they could agree on how they may best sell the house, and share the proceeds of the sale, in a fair manner, but he had refused to do so. It was her averment, that this had left her fearful and insecure about losing her home, without receiving adequate compensation to acquire a new one.
- 4.9 Exhibited as 'IMM4' were excerpts of the correspondence between Idah Mbulo Mulenga and Louis Muswema.
- 4.10 It was also deposed that Louis Muswema went ahead and executed a contract of sale without involving Idah Mbulo Mulenga or consulting her, on the amount that they were to sell the house. Idah Mbulo Mulenga stated that Louis Muswema merely informed her through a text message, that the new owners may evict her within Twenty-Four (24) hours of signing

the contract. She exhibited as 'IMM5' a copy of the text message informing her to vacate the house.

- 4.11 Idah Mbulo Mulenga averred that the house was constructed on 40 meters by 70 meters plot, which was valued at K3,850,000.00, as per the valuation report, which was exhibited as 'IMM6' to her affidavit. It was contended that Louis Muswema would bring in prospective buyers, claiming that they were offering K2,100,00.00. Idah Mbulo Mulenga deposed that based on her experience of Louis Muswema having sold family properties without her knowledge, and her interest and entitlement to the property, she objected to the removal of the caveat, before her interest was taken care of.
- 4.12 She stated that, she had been advised by her Advocates and believed the same to be true, that since there was a stay of execution of the Judgment of the Local Court, until the determination of her appeal, she entreated this Honourable Court not to remove the caveat. Exhibited as 'IMM7' was a copy of the letter of service to Louis Muswema, which was accompanied by a stay of execution of the Judgment.
- 4.13 Idah Mbulo Mulenga denied having received a letter from Louis Muswema's Advocates requesting her to remove the caveat. She stated that as a former wife of Louis Muswema, she was entitled to 50% of the proceeds of the sale of the property, as per the Local Court Judgment dated 20th January 2020, which Judgment, Louis Muswema did not appeal.
- 4.14 It was also her averment, that she had suggested to Louis Muswema, that the property should be subdivided, since it has

enough space, and he could sell his portion, while she remained with her portion, because she does not have a house to live in.

- 4.15 Idah Mbulo Mulenga also stated that, she had been advised by her Advocates, and believed the same to be true, that an Order to remove a caveat is discretionary, and the Court considers all the circumstances for such an application, before exercising its' powers. She further deposed that the removal of the caveat on the property would work against any attempt to properly administer justice, and it would prejudice her case, as she would suffer loss and damage.
- 4.16 It was stated that if the caveat was removed, Idah Mbulo Mulenga would be driven out of the house, on to the streets as Louis Muswema had so often threatened her, as shown on exhibit 'IMM7' to her affidavit.
- 4.17 She deposed that she had been advised by her Advocates and verily believed the same to be true, that Louis Muswema sat on his rights by not registering the Judgment of the Local Court, and that even if he did, the effect would still remain that the property be sold, and the proceeds shared equally.
- 4.18 Finally, Idah Mbulo Mulenga stated that she had been further advised by her Advocates, and believed the same to be true, that the application to file the Local Court Judgment out of time should be a complete and separate application, detailing reasons for delay, aside from the application for removal of the caveat.

5. LIST OF AUTHORITIES AND SKELETON ARGUMENTS IN OPPOSITION

- 5.1 In the List of Authorities and Skeleton Arguments in opposition, reliance was placed on **Sections 76, 77 and 79 of the Lands and Deeds Registry Act.**
- 5.2 It was argued that Idah Mbulo Mulenga fell within the ambit of **Section 76**, as an interested person, by virtue of the Local Court Judgment, which entitled her to 50% of the property, and subsequently the proceeds of the sale. It was stated that if the Local Court Judgment did not establish sufficient interest in the property on the part of Idah Mbulo Mulenga, then they were yet to learn what did.
- 5.3 The case of **Lenton Holding Limited v Airforce Moyo** ⁽⁵⁾ was also relied on, where the Supreme Court held that:

“we have set out what would appear to require that the caveat should disclose the interest claimed. The document in question has never been produced and in the premises, it seems to us that we cannot now assume that it did not disclose the interest claimed. On the contrary, we do not see how the Registrar of Lands and Deeds could have accepted the document for registration if it did not specify some interest within the contemplation of section 76. We believe that we have just answered a question which Dr Mushota asked as to how an interest in the land should be evidenced in

order to justify the lodging of a caveat; the interest must be disclosed in the caveat itself.”

5.4 Further reliance was placed on the case of ***Rosemary Phiri v Awadh Karen Collen*** ⁽⁶⁾ where the Supreme Court held as follows:

“...the removal of the caveat in those circumstances without the consent of the appellant, as caveator, was unlawful and a breach of the law.”

5.5 It was submitted that Idah Mbulo Mulenga was within her rights, to place the caveat on the property, because of her relationship with Louis Muswema, and because of the Local Court Judgment, which entitled her to half the property. It was also argued, that the Court should not remove the caveat until this matter was deemed resolved.

5.6 The further argument with regard to registration of the Local Court Judgment, was that no injustice would be caused to Idah Mbulo Mulenga, if it was filed out of time, but because the certificate of Judgment which had been exhibited by Louis Muswema was significantly different. On that basis, she objected to its' registration.

6. AFFIDAVIT IN REPLY TO AFFIDAVIT IN OPPOSITION

6.1 In his affidavit in reply, Louis Muswema admitted that the house was constructed during the subsistence of the marriage, but denied that it was constructed by both himself and Idah Mbulo Mulenga. He disputed the allegation that the semi-detached flats were built by Idah Mbulo Mulenga, stating that

they were built by himself, with little or no financial assistance from her.

- 6.2 Louis Muswema further averred that he would give Idah Mbulo Mulenga money to buy the necessary materials for the construction of the flats. He denied that the rental money was being shared equally, contending that Idah Mbulo Mulenga had never shared it with him since he left the matrimonial home.
- 6.3 Louis Muswema also stated that the original certificate of Judgment from the Local Court that was given to them by the Kanyama Local Court, was in Idah Mbulo Mulenga's custody and care, and she had refused to share a copy with him when he left the matrimonial home. Thus, he went to the Local Court in Kanyama to obtain a copy from the Court's record.
- 6.4 He averred that a lot of intended purchasers had shown interest in the property, but Idah Mbulo Mulenga would always chase them, telling them that the property was not for sale. It was added that she had refused to leave the property, despite the Local Court Judgment allowing her to stay there for Ninety (90) days. Louis Muswema contended that this was a major reason why the property had remained unsold for over Four (4) years, because of Idah Mbulo Mulenga's selfish interest.
- 6.5 He stated that Idah Mbulo Mulenga's assertions were unfounded, as there was no other house that he had built and later sold, without her knowledge. Louis Muswema contended that he did not understand her reasons for placing a caveat on his property.

- 6.6 It was also his averment, that Idah Mbulo Mulenga had never made any efforts to engage him on how best they could sell the property, as was evident from exhibit 'IMM4' to her affidavit in opposition. Louis Muswema added that exhibit 'IMM4' also showed that it was actually him that engaged her for purposes of the sale, which property had since been sold to Transparency International Zambia Limited, as shown on the contract of sale exhibited as 'LM1'.
- 6.7 The averment by Louis Muswema was also that, Idah Mbulo Mulenga was invited for the signing of the contract, but she opted to stay away from the entire process, as evidenced on exhibit 'IMM5' to the affidavit in opposition.
- 6.8 With regard to the evaluation report, Louis Muswema admitted that the property was valued at K3,000,000.00. However, his contention was that in the past Five (5) years, no prospective buyers had been found, who were willing to pay that much. He added that even when he had found buyers who were willing to pay something close to the valued amount, Idah Mbulo Mulenga, had frustrated them for reasons that she never wanted to leave his house.
- 6.9 In response to the stay of execution of the Local Court Judgment until determination of the appeal in the Subordinate Court, Louis Muswema stated that Idah Mbulo Mulenga was aware that the Local Court heard the matter inter partes and discharged the stay, which she unilaterally obtained from the Local Court. He stated that this prompted her to have the same renewed in the Subordinate Court. Louis Muswema deposed

that even the Subordinate Court declined to grant her a stay, as shown on exhibit LM2(a)-(b) to the affidavit.

- 6.10 He stated that the notion that there was a stay pending appeal was incorrect, and was only an attempt to mislead the Court. Still in deposing, Louis Muswema averred that the allegation that Idah Mbulo Mulenga did not receive a demand letter from Louis Muswema's Advocates, was incorrect, as a letter was served on her, but she refused to acknowledge receipt of the said letter after perusing through it. He exhibited as 'LM3', copies of the said letter.
- 6.11 Louis Muswema acknowledged that Idah Mbulo Mulenga is entitled to 50% of the proceeds of the sale of the property. He added that the same was the reason why after the sale, his lawyers had written to her, and informed her of the sale. Further, his lawyers had asked her for her bank details, in which they would transfer her share of the 80% that was paid in accordance with the sale. He exhibited copies of the letter as 'LM4'.
- 6.12 He stated that after perusing the contents, Idah Mbulo Mulenga had refused to acknowledge receipt of the letter, and as a consequence, her share was being kept in trust by Louis Muswema's lawyers. Louis Muswema denied that Idah Mbulo Mulenga had suggested that the property be subdivided because it has enough space, and he could sell his portion, while she remained in the house, as she does not have a house to live in. He stated that Idah Mbulo Mulenga's allegation was

proof that she never had the intention of leaving the house, but to continue utilizing it for her selfish gains.

- 6.13 He also stated that it was immaterial that she does not have any other house to live in, as the money that she is entitled to from the sale, is enough for her to buy another house. Louis Muswema averred that it had been Five (5) years since the Judgment of the Local Court, and Idah Mbulo Mulenga had continued to derive benefits from his property, whilst he had not benefited in any way in these years, because she had refused to sell the property.
- 6.14 He contended that he had suffered loss and damage as a result of her actions, and if the caveat was not removed, he would continue suffering injustice. Louis Muswema stated that at no point, had Idah Mbulo Mulenga been threatened to be driven out of his property, contending that those assertions were trying to seek unnecessary empathy through her lies.
- 6.15 In reply to the opposition to the application for registration of the Local Court Judgment, Louis Muswema stated that Idah Mbulo Mulenga was well aware of the facts that transpired between 2020 to date, adding that besides, Louis Muswema not being aware of the requirement to register the Local Court Judgment, the copy of the Judgment was in Idah Mbulo Mulenga's custody, and she had refused to share it with him.
- 6.16 He further stated that her objection to the registration of the Judgment, was one of her attempts to continue delaying execution of the Judgment.

7. SUBMISSIONS AT THE HEARING

SUBMISSIONS BY COUNSEL FOR LOUIS MUSWEMA

7.1 Counsel for Louis Muswema, Ms. Nyirenda, stated that in applying for removal of the caveat, they relied on the Originating Summons, the affidavit in support thereof, as well as the Skeleton Arguments dated 5th December 2023. Further reliance was placed on the affidavit in reply dated 8th February 2024. Counsel prayed that the reliefs sought be granted.

RESPONSE BY COUNSEL FOR IDAH MBULO MULENGA

7.2 In opposing the Originating Summons, Counsel for Idah Mbulo Mulenga, Mr. Chilao, relied on the affidavit in opposition and the Skeleton Arguments in opposition, which were dated 16th January 2024. He reiterated part of the averments and submissions in the affidavit in opposition and the Skeleton Arguments respectively.

7.3 Counsel further submitted that currently, there was an appeal in the Subordinate Court, which had been launched by Idah Mbulo Mulenga for subdivision of the property, so that she could be in occupation of 50% of the property, while Louis Muswema could sell his 50% of the property.

7.4 He also submitted that Louis Muswema purported to have sold the property to Transparency Zambia International, as shown by the exhibit 'LM1' to the affidavit filed in support of the Originating Summons, notwithstanding the caveat that was placed in 2019. Counsel added that if the application to remove

the caveat was granted, Idah Mbulo Mulenga stood to suffer, because Louis Muswema would sell the property without considering her interest, thereby rendering the matter in the Subordinate Court nugatory.

REPLY BY COUNSEL FOR LOUIS MUSWEMA

- 7.5 In reply, Ms. Nyirenda stated that an affidavit in reply was filed, and she reiterated some of the averments that had been made in that affidavit. Her submission was also that, exhibits 'LM2a-d' showed that Idah Mbulo Mulenga intended to appeal, but there was no appeal on record, and nothing stopped Louis Muswema from selling the matrimonial home, in line with the Judgment.
- 7.6 The further submission was that, the Judgment was not stayed at the time the intention to appeal was filed, as the Local Court discharged the stay which was granted ex-parte. Counsel reiterated that the application was renewed in the Subordinate Court, which Court held that it had no merit, as shown on exhibits 'LM2a-d'.
- 7.7 Counsel still in reply, stated that the sale was done on 6th June 2023, and Idah Mbulo Mulenga made her application to appeal on 19th June 2023. Thus, the contention was that the appeal by Idah Mbulo Mulenga had been overtaken by events, because the Judgment had been perfected. Counsel repeated that the property had been sold, and that Louis Muswema awaited Idah Mbulo Mulenga's account details, to enable him transfer 50% of her share, as well as removal of the caveat.

8. DECISION OF THIS COURT

8.1 I have considered the matter. It was brought pursuant to **Sections 81 and 82 of the Lands and Deeds Registry Act** and **Sections 5 and 6 of the said Lands and Deeds Registry Act Chapter 185 of the Laws of Zambia** which provide as follows:

“81. (1) Such Registered Proprietor or other interested person may, if he thinks fit, summon the caveator, or the person on whose behalf such caveat has been lodged, to attend before the Lands Tribunal, Court or Judge thereof to show cause why such caveat should not be removed.

(2) Such Lands Tribunal, Court or Judge, upon proof that such person has been summoned, may make such order in the premises, either ex parte or otherwise, as to such Lands Tribunal, Court or Judge seems meet.

82. (1) Any person lodging any caveat without reasonable cause shall be liable to make to any person who may have sustained damage thereby such compensation as may be just.

(2) Such compensation shall be recoverable in an action at law by the person who has sustained damage from the person who lodged the caveat.”

And,

“5. (1) All bills of sale must be registered within three months of the execution of the same.

2. All other documents, except probate of a will, required to be registered as aforesaid shall be registered-

(a) in the case of a document executed at the place where it is registered, within thirty days from its date;

(b) in the case of a document executed elsewhere in Zambia, within ninety days from its date;

(c) in the case of a document executed out of Zambia, within one year from its date.

3. Probate of a will affecting land or any interest in land shall be registered within twelve months of the grant thereof or the sealing thereof under the provisions of the Probates (Resealing) Act, as the case may be.

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;

(ii) the probate of a will required to be registered as aforesaid, and not registered within the time specified in the last preceding section, shall be null and void so far only as such will affects land or any interest in land.”

- 8.2 In support of the Originating Summons, Louis Muswema averred that he is the owner of the property, as shown on the certificate of title which was exhibited to the affidavit filed in support of the said Originating Summons. He stated that the Local Court dissolved his marriage to Idah Mbulo Mulenga on 8th January 2020, and Ordered that the property be sold, and money or proceeds thereof, be shared equally between them. As evidence, the certificate of Judgment was exhibited to the affidavit in support of the application.
- 8.3 Louis Muswema further deposed that he moved out of the property to enable the sale to be done, but Idah Mbulo Mulenga had refused and/or neglected to leave the property. Thus, when he tried to sell the house, he discovered that she had placed a caveat on it, as shown on the Lands Register, which was exhibited to the affidavit in support. Louis Muswema further averred that Idah Mbulo Mulenga had refused to remove the caveat from the property.
- 8.4 Further in the affidavit, Louis Muswema stated that he had been advised by his Advocates, which advice he believed to be true, that he ought to have registered the Local Court Judgment

within Twelve (12) months of it being granted. However, due to his lack of knowledge, he did not register the Judgment, and this Court can grant him an Order for the registration of the said Judgment.

- 8.5 In the Skeleton Arguments, Louis Muswema argued that Idah Mbulo Mulenga had not demonstrated her interest, in placing the caveat on the property. In support of that argument, he relied on **Sections 76 and 77 of the Lands and Deeds Registry Act**, as well as the case of **Lenton Holding Limited v Airforce Moyo** ⁽⁵⁾ earlier quoted.
- 8.6 With regard to the application for registration of the Judgment, reliance was placed on **Sections 5 (3) and 6 of the Lands and Deeds Registry Act** which deal with the time within which an interest in land should be registered. Louis Muswema also relied on **Order 3 Rule 5(1) of the Rules of the Supreme Court of England**, which provides for extension of time, and **Order III Rule 2 of the High Court Rules** which authorizes a Court to make any interlocutory Order.
- 8.7 It has been seen from the opposition, that Idah Mbulo Mulenga averred that Louis Muswema and herself constructed the matrimonial house together, and that she constructed Two (2) semi-detached flats on the property by herself, from which they equally share the monthly rentals. Idah Mbulo Mulenga stated that the Judgment Ordered that the house be sold within Ninety (90) days of the Judgment, and that the proceeds of the sale be shared equally between herself and Louis Muswema.

- 8.8 She contended that the copy of the Judgment that had been exhibited by Louis Muswema, was not the correct Judgment. Her further averment, was that the house was not sold because they could not find good offers, with the COVID-19 pandemic having made it difficult to find buyers. Nevertheless, she tried her best to advertise it for sale in 2020.
- 8.9 With respect to placement of the caveat, Idah Mbulo Mulenga stated that Louis Muswema sold Two (2) of their properties without her knowledge, and he did not share the proceeds of the sale with her. It was her contention, that the house was their only remaining property.
- 8.10 Idah Mbulo Mulenga also averred that due to the stay of execution of the Judgment, she entreated this Court not to Order for the removal of the caveat.
- 8.11 As regards the application for registration of the Local Court Judgment out of time, Idah Mbulo Mulenga contended that Louis Muswema sat on his rights, adding that it should have been made as a separate application, with reasons for the delay being advanced, aside from the application for removal of the caveat.
- 8.12 In her skeleton arguments, it was stated that Idah Mbulo Mulenga falls within the ambit of **Section 76 of the Lands and Deeds Registry Act** as an interested person, by virtue of the Judgment of the Local Court, which entitles her to 50% of the proceeds of the sale of the house. The cases of **Lenton Holding Limited v Airforce Moyo** ⁽⁵⁾ and **Rosemary Phiri v Awadh**

Karen Collen (6) were also relied on in support of that argument.

- 8.13 It was argued that Idah Mbulo Mulenga was within her rights to place the caveat on the property, because of her relationship with Louis Muswema, and because the Judgment of the Local Court entitles her to half of the property.
- 8.14 As regards the application for registration of the Local Court Judgment out of time, it was submitted that no injustice would be occasioned to Idah Mbulo Mulenga, if the Judgment was registered, but Idah Mbulo Mulenga objected to its' registration, because it was not a true Judgment.
- 8.15 The reply shows that, Louis Muswema averred that he built the semi-detached flats with little or no financial assistance from Idah Mbulo Mulenga, and that since he left the matrimonial home, she had not shared any rentals with him.
- 8.16 His reaction to the assertion by Idah Mbulo Mulenga that the Judgment that he sought to register out of time was not the correct one, was that, the original copy of the Judgment was with Idah Mbulo Mulenga, who had refused to share a copy with him. Thus, he went and obtained the one, that he had exhibited from the Local Court record.
- 8.17 Louis Muswema stated that the house had remained unsold, because Idah Mbulo Mulenga would chase away intending purchasers, telling them that the house was not for sale. He denied having been approached by her, on the best way to sell the property. Louis Muswema also denied having built any other house, and later selling it without Idah Mbulo Mulenga's

knowledge. He added that when he engaged her for purposes of the sale and signing of the contract, she opted to stay away from the entire process.

8.18 With regard to stay of execution of the Local Court Judgment, Louis Muswema's reply was that it was discharged by the Local Court. He further stated that when Idah Mbulo Mulenga appealed to the Subordinate Court, that Court declined to grant her the stay of execution.

DECISION

8.19 **Section 76 of the Lands and Deeds Registry Act** provides for the registration of caveats. It states as follows:

"76. Any person-

(a) claiming to be entitled to or to be beneficially interested in any land or any estate or interest therein by virtue of any unregistered agreement or other instrument or transmission, or of any trust expressed or implied, or otherwise howsoever; or

(b) transferring any estate or interest in land to any other person to be held in trust; or

(c) being an intending purchaser or mortgagee of any land;

may at any time lodge with the Registrar a caveat in Form 8 in the Schedule".

8.20 The holding in the case of **Sobek Lodges Limited v Zambia Wildlife Authority** ⁽⁸⁾ with regard to the rationale for applications to remove caveats was that;

“Although the originating proceedings in an application for the removal of a caveat is at the instance of an applicant, section 81 of the Lands and Deeds Registry Act, places the burden of showing cause why a caveat should not be removed on the respondent.”

8.21 Therefore, in this matter, the burden is on Idah Mbulo Mulenga to show cause why the caveat that she placed on the property should not be removed. The reason that she advanced for placing the caveat on the property, was that she had built the house on the property jointly with Louis Muswema during the subsistence of the marriage. Therefore, she acquired an interest in the said property.

8.22 It was further Idah Mbulo Mulenga’s contention that Louis Muswema sold other properties that they had acquired, and he did not share the proceeds with her. She contended that the property was the only asset that they had, and the Judgment of the Local Court awarded her a fifty percent interest in the same. Therefore, she falls within the ambit of ***Section 76 of the Lands and Deeds Registry Act***, by virtue of the Judgment of the Local Court, which entitles her to 50% of the proceeds of the sale of the property.

8.23 Louis Muswema on the other hand, argued that Idah Mbulo Mulenga had not demonstrated the interest that she seeks to serve by placing a caveat on the property.

8.24 A perusal of the documents on record, show that there are Two (2) Judgments from the Local Court, which have been exhibited

by the parties. In the affidavit in opposition, Idah Mbulo Mulenga averred that the copy of the Judgment that had been exhibited by Louis Muswema in the affidavit in support of the Originating Summons, was not a true copy of the Judgment that was issued by the Local Court.

- 8.25 In response, Louis Muswema contended that the original copy of the Judgment was in Idah Mbulo Mulenga's possession, and she had refused to share a copy with him. Thus, he had to go to the Local Court to obtain a copy from the Court's record.
- 8.26 A reading of the Two (2) Judgments, which were exhibited as 'LM2' to the affidavit in support of the Originating Summons and 'IMM1' to the affidavit in opposition respectively, reveals that they are not significantly different, but the copy exhibited by Idah Mbulo Mbulo Mulenga provides more detail than the one that was exhibited by Louis Muswema. It is worth noting that Louis Muswema did not depose in the affidavit filed in support of the Originating Summons, to not having a copy of the original Judgment, and hence his obtaining a copy from the Local Court record.
- 8.27 Further, he did not exhibit any proof that he made an application to obtain a copy of the Judgment from the Local Court record. Louis Muswema did not dispute that Idah Mbulo Mulenga was in possession of the original copy of the Judgment. Therefore, exhibit IMM1' to the affidavit in opposition, is the correct Judgment from the Local Court.
- 8.28 That Judgment shows that the Local Court Ordered as follows:

“The house to be sold and the proceeds to be shared equally. PL to continue living in the matrimonial house, in the interim time (the 90 days) and def to also continue living where he is with his second wife. The rentals from the 2 flats at the same matrimonial house to be shared equally between parties intermly (before the sale of the house).”

8.29 The Judgment reveals that it was Ordered that the house should be sold, and the proceeds from the sale, should be shared equally between the parties. Therefore, Idah Mbulo Mulenga was within her rights to place a caveat on the property as she is entitled to it, by virtue of the Judgement by the Local Court. This position is supported by **Section 76(a) of the Lands and Deeds Registry Act** which entitles any person entitled to any land or estate by virtue of an unregistered agreement or other instrument to lodge a caveat with the Registrar.

8.30 What is however of particular note, is that Idah Mbulo Mulenga placed a caveat on the property before the divorce. The caveat was placed on 16th April 2019, as shown on the Lands Register which is exhibited to Louis Muswema’s affidavit in support of the Originating Summons. The narration on the entry reads as follows:

“CAVEAT LODGED CLAIMING INTEREST AS BENEFICIALLY AND SPOUSE AS PER ATTACHED MARRIAGE CERTIFICATE”

- 8.31 From this entry, it can still be concluded that even at that time that she placed the caveat, Idah Mbulo Mulenga still fell within the ambit of **Section 76 of the Lands and Deeds Registry Act** as a person with an interest in the property, because she was a spouse to Louis Muswema, at the time she placed the caveat. By virtue of that position, she had an interest in the property, which was a matrimonial property.
- 8.32 In relation to removal of the caveat, **Section 81 of the Lands and Deeds Registry Act** gives this Court authority to remove the caveat. The section guides that the caveator should show cause why the caveat should not be removed. It has been seen that, Idah Mbulo Mulenga, the caveator, stated that Louis Musemwa sold Two (2) of their properties without her knowledge, and he did not share the proceeds of the sale with her.
- 8.33 Idah Mbulo Mulenga further contended that there is a stay of execution of the Local Court Judgment that directed sale of the house, and for her and Louis Muswema to share the proceeds of the sale equally. Therefore, Ordering the removal of the caveat will prejudice her appeal.
- 8.34 In response, Louis Muswema denied that he sold Two (2) of their properties, and he also stated that there is no stay of execution that was granted by the Court, as the same was denied.
- 8.35 The evidence on record, reveals that Idah Mbulo Mulenga has not shown proof that Louis Muswema previously sold their other properties without her knowledge, and that he neglected

to share the proceeds of the sales with her. It is trite that when a party makes an allegation, that party must prove such allegation, as was stated in the case of ***Wilson Masauso Zulu v Avondale Housing Project Limited*** (4).

8.36 It was held in that case that;

“I think that it is accepted that where a plaintiff alleges that he has been wrongfully or unfairly dismissed, as indeed any other case where he makes any allegations, it is generally for him to prove those allegations. A plaintiff who has failed to prove his case cannot be entitled to judgment, whatever may be said of the opponents’ case.”

8.37 Therefore, Idah Mbulo Mulenga’s assertion was not supported by any evidence.

8.38 In relation to the stay of execution of the Local Court Judgment, the evidence on record shows that the stay of execution was granted on 20th June 2023, but it was discharged by the Local Court on 27th July 2023. In the Subordinate Court, the Magistrate dismissed the application on the grounds that the application lacked merit, and that Idah Mbulo Mulenga sat on her rights to appeal, which was Thirty (30) days from the date of the Judgment, and the application to stay execution which came Three (3) years later, could not be considered by the Court, as it did not have jurisdiction to stay such a Judgment.

8.39 The documents on record, also show that Louis Muswema entered into a contract of sale for the property with Transparency International Zambia Limited in 2023, at a

consideration of K2,400,000.00. As earlier stated, Idah Mbulo Mulenga placed the caveat on the property in April 2019.

8.40 With regard to the effect of placing a caveat on property, **Section 79 of the Lands and Deeds Registry Act** provides as follows:

“79. So long as a caveat in Form 8 remains in force, the Registrar shall not make any entry on the Register having the effect of charging or transferring or otherwise affecting the estate or interest protected by such caveat: Provided that nothing herein shall prevent the completion of the registration of an instrument which has been accepted for registration before the receipt of the caveat”.

8.41 The above provision clearly states that the Registrar of Lands and Deeds is prohibited from making any entry on the Register that has an effect of charging or transferring or otherwise affecting the estate or interest protected by such caveat. Thus, while Louis Muswema could have lawfully sold the property in compliance with the Judgment of the Local Court, change of ownership of the property could not be done, as long as the caveat was in place.

8.42 In the case of **Sobek Lodges Limited v Zambia Wildlife Authority** ⁽⁸⁾ reference was made to the case of **Construction and Investment Holdings Limited v William Jacks and Company (Zambia) Limited** ⁽¹⁾ where the Court noted as follows:

“...if one looks at this ordinance one observes that, where a person lodges a caveat under s. 49, the Registrar is forbidden to make any entry on the register having the effect of charging or transferring or otherwise affecting the estate or interest protected by a caveat. This means that the registered proprietor is prevented from showing a clear title and dealing with his property as he might wish to do and would be able to do but for the caveat. It seems to me to be necessary, therefore, to ask in what circumstances another person would have the right to prevent the registered proprietor dealing freely with the property registered in his name and to my mind the answer should be if that other person has or purports to have, an enforceable interest in the property in question. If that other person has not and does not even purport to have any such interest in the property, then he should not in my opinion be justified in interfering with the rights of the registered proprietor. I would say that a caveator's cause for lodging a caveat is dependent upon his claim to be entitled to an interest in the land, and that “reasonable” in those circumstances must mean the same as “justifiable.” If he has not a justifiable claim then he cannot be said to have reasonable cause for lodging the caveat and if he is not able to justify his claim it must follow that his action in

lodging a caveat was without reasonable cause. If his claim is not justifiable and he interferes with the rights of the registered proprietor so that the latter suffers damages it would appear to me that it is only right and proper that such damage should be laid at the door of the person who by his action, caused it. One might therefore say caveat caveator."

- 8.43 In this matter, Idah Mbulo Mulenga has an interest in the property, and this is evident from the caveat that she was able to lodge, as the spouse to Louis Musemwa, the registered owner, at the Ministry of Lands and Natural Resources. She still has an interest in the property because of the Judgment of the Local Court which entitles her to 50% of the proceeds of the sale.
- 8.44 The conversations exhibited as 'IMM4' and 'IMM5' to Idah Mulenga's affidavit in opposition, show that Louis Muswema communicated to Idah Mbulo Mulenga about the sale of the property, and he even called her to witness the signing of the contract of sale. His contention was that she opted to stay away.
- 8.45 As seen from ***Section 79 of the Lands and Deeds Registry Act***, as well as the case of ***Construction and Investment Holdings Limited v William Jacks and Company (Zambia) Limited*** ⁽¹⁾, the effect of placement of a caveat is that the Registrar will not make any entry which has the effect of charging or transferring or otherwise affecting the estate or interest protected by such caveat. The sale and transfer of

ownership of the property cannot therefore pass without removal of the caveat.

- 8.46 The law requires that a caveator needs to have a justifiable and reasonable cause for placing a caveat. As earlier pointed out, Idah Mbulo Mulenga did not rebut the assertion that she stayed away from the sale process despite being informed by Louis Muswema. She simply expressed her fear of what may transpire if the caveat is removed. Exhibit 'IMM2' to the affidavit in opposition is a letter dated 19th June, 2023, which the advocates for Idah Mbulo Mulenga wrote to the Provincial Local Court Officer, seeking leave to appeal out of time.
- 8.47 There is an indorsement on that document, granting leave to appeal out of time on the same date. However, no notice of appeal has been exhibited, which shows that after leave to appeal out of time was granted, an appeal has since been lodged. Exhibit 'IMM5' is the Order of the Local Court dated 27th July, 2023 discharging the stay of execution which was granted on 20th June, 2023.
- 8.48 Then exhibit 'LM2d' is the Ruling of the Subordinate Court declining to stay execution of the Judgment. Thus, there is no evidence on record, showing that there is a pending appeal before any Court. The documents show that the stay was dismissed by the Subordinate Court on 16th November 2023.
- 8.49 Consequently, it cannot be said that there is any justifiable and reasonable cause for not removing the caveat, because Idah Mbulo Mulenga still has legal options available to her in the

event that Louis Muswema does not comply with the Judgment of the Local Court.

8.50 I accordingly Order that the caveat placed on the property shall be removed, upon Louis Muswema transferring the fifty percent share of the proceeds of the sale to Idah Mbulo Mulenga. In that regard, the Chief Registrar of Lands and Deeds shall proceed to remove the caveat from the property on evidence being availed of the transfer by Bank transfer advice.

REGISTRATION OF THE LOCAL COURT JUDGMENT

8.51 With regard to registration of the Local Court Judgment, Louis Muswema, averred that he had no knowledge that he had to register the Judgment within Twelve (12) months of its' delivery. However, as advised by his Advocates, this Court has the authority to grant an Order to register the Judgment out of time.

8.52 Idah Mbulo Mulenga stated that Louis Muswema sat on his rights by not registering the Judgment, and that the application for registration of the Judgment should have been a separate application, aside from the application for removal of the caveat. In the Skeleton Arguments, it was stated that no injustice would be occasioned to Idah Mbulo Mulenga, if the Judgment was registered out of time.

8.53 The objection nevertheless to the same, was that the certificate of Judgment that had been exhibited to the affidavit in support of the Originating Summons by Louis Musemwa, was not the correct Judgment that the Local Court issued.

8.54 **Sections 5(3) and 6 of the Lands and Deeds Registry Act** provide that any interest in land should be registered within twelve (12) months of the grant, and that if the same is not done, it is null and void. The proviso to **Section 6**, however, clothes the Court with jurisdiction to extend the time within which to register the judgment, if it is satisfied that the failure to register the same was unavoidable, or that any special circumstances afford ground for giving relief from the results of such failure, and that no injustice will be caused by allowing the registration.

8.55 In this matter, Louis Muswema stated that he was unaware of the requirement to register the Judgment which involved interest in land.

8.56 A perusal of Originating Summons, reveals that despite citing the law that provides for registration of a Judgment in his heading, Louis Muswema did not ask this Court to grant him relief for an Order for registration of the Judgment. In the case of **Atlantic Bakery Limited v ZESCO Limited** ⁽¹¹⁾, the Supreme Court held that:

“A court is not to decide on an issue which has not been pleaded. Put differently, a court should confine its decision to the questions raised in the pleadings. It can thus not grant relief which is not claimed. Litigation is for the parties; not the court.”

8.57 The decision of the Court shows that parties must state the reliefs that they seek in the originating process, and that the Court cannot grant relief which has not been pleaded. In the

case of **Christopher Lubasi Mundia v Sentor Motors Ltd** ⁽³⁾ it was held that:

"The function of pleadings is very well known, it is to give fair notice of the case which has to be met and to define the issues on which the Court will have to adjudicate in order to determine the matters in dispute between the parties. Once the pleadings have been closed, the parties thereto are bound by their pleadings and the Court has to take them as such. As was stated by Lord Russell of Killowen at p. 347 in the case of LONDON PASSENGER TRANSPORT BOARD v MOSCROP: "...Any departure from the cause of action alleged, or the relief claimed in the pleadings should be preceded, or at all events, accompanied, by the relevant amendments, so that the exact cause of action alleged, and relief claimed shall form part of the Court's record, and be capable of being referred to thereafter should necessity arise. Pleadings should not be 'deemed to be amended' or 'treated as amended.' They should be amended in fact."

..."

8.58 This case shows that if a party wants to depart from the reliefs claimed, it is imperative that an amendment is made to the pleadings. Louis Muswema did not plead registration of the Judgment, as a relief in the Originating Summons, but only stated it in the supporting documents.

8.59 No amendment was made to the Originating Summons to include a relief for registration of the Judgment out of time. Idah Mbulo Mulenga responded to the averments relating to registration of the Judgment out of time, entailing that she did not raise objection to the unpleaded relief.

8.60 In the case of ***Attorney General v Roy Clarke*** ⁽⁷⁾ the Supreme Court held inter alia:

“A party cannot rely on unpleaded matters except where evidence on the unpleaded matter has been adduced in evidence without objections from the opposing party.”

8.61 Therefore, no objection having been raised to the unpleaded relief, I am not precluded from considering it. I will address the question of whether this relief could properly be brought in these proceedings, as I deal with the next claim.

ORDER THAT IDAH MBULO MULENGA IMMEDIATELY VACATES THE HOUSE

8.62 These proceedings were commenced by Originating Summons primarily seeking removal of a caveat. Louis Muswema in these proceedings asks the Court to Order Idah Mbulo Mulenga to vacate the house. In the case of the case of ***Corpus Legal Practitioners v Mwanandani Holdings Limited*** ⁽⁹⁾, the Supreme Court at page J16 of the Judgment in that matter, noted that while the procedure for commencement of proceedings for removal of a caveat is by Originating Summons, however, as that was not the only relief that was being claimed, the Order of the Judge directing amendment of the Writ of

Summons and statement of claim, to include an Order for the removal of a caveat, was not improper.

- 8.63 Applying the rationale for the decision in that matter to this case, as this matter was commenced by Originating Summons and not by Writ of Summons, Louis Muswema cannot seek an Order for Idah Mbulo Mulenga to vacate the house, in these proceedings, as the claims that may be made under Originating Summons do not extend to such. That claim therefore fails and it is dismissed.
- 8.64 Returning to the relief to the register the Judgment out of time, that is a relief that can be sought in proceedings that are commenced by Originating Summons, as it involves a statute. It has been seen that the proceedings were commenced by Originating Summons. The only objection raised to the registration of the Judgment out of time, was that Louis Muswema had not exhibited the correct Judgment of the Local Court. I have found that exhibit 'IMM1' to the affidavit in opposition is the correct Judgment of the Local Court.
- 8.65 I accordingly direct that the Judgment exhibited as 'IMM1' to the affidavit in opposition, is the Judgment that shall be registered out of time. The Judgment shall be registered by 6th June, 2024 failure to which the leave will be deemed not to have been granted.

ORDER FOR COMPENSATION FOR MALICIOUSLY PLACING THE CAVEAT ON THE PROPERTY

- 8.66 On this claim, while Louis Muswema contended that Idah Mbulo Mulenga did not have a basis for registering the caveat,

I found that she did by virtue of the fact that it was matrimonial property in which she had interest. However, that interest has since been overtaken as the Local Court shared the property on divorce, giving Idah Mbulo Mulenga fifty percent proceeds of the sale.

8.67 The caveat was not maliciously registered. It is also noteworthy that while Louis Muswema alleged that he suffered damage and loss, as a result of the placement of the caveat on the property, he did not demonstrate that damage or loss, entailing that the claim was not proved. The claim for payment of damages for placement of the caveat fails, and it is dismissed.

9. CONCLUSION

9.1 The claims for removal of the caveat and registration of the Judgment of the Local Court out of time succeed. The rest of the claims fail. In view of the fact that the proceedings arise out of matrimonial proceedings where the parties have been divorced, I Order that each party shall bear their own costs of the proceedings. Leave to appeal is granted.

DATED AT LUSAKA THE 6th DAY OF MAY, 2024



S. Kaunda
S. KAUNDA NEWA
HIGH COURT JUDGE