

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

2023/HP/1927

BETWEEN:

JANT COMPANY LIMITED

PLAINTIFF

AND

MICHEAL CHARLES CHRISTIAN

1ST DEFENDANT

MARGARET MAY CHRISTIAN

2ND DEFENDANT

Before the Honourable Mrs Justice Ruth Chibbabbuka on the 27th day of May, 2024

For the Plaintiff:

Mrs F. Mwanda Chani, Messrs Choongo Manda & Associates

For the Defendants:

No appearance

JUDGMENT

Legislation referred to:

The High Court Act, Chapter 27 of the Laws of Zambia

1.0 Introduction

The plaintiff issued a Writ of Summons on the 1st November, 2023, claiming the following reliefs:

- (i) Specific performance of the agreement for sale of Farm No. 3332 Kabwe in 1997.
- (ii) An order that the plaintiff is entitled to a vesting order for his advocates or any other officer of the court to sign all the

documentation and apply for property transfer tax instead of the defendant in order to effect the change of ownership.

(iii) Any other relief the court may deem fit.

2.0 The statement of claim

In its statement of claim, the plaintiff states as follows: By an agreement in writing dated November, 1997, the defendants sold a piece of land namely Farm No. 3332 in Kabwe in the Central Province of Zambia to the plaintiff at the price of K10,000,000.00 unrebased. Upon receipt of the full purchase price the defendants yielded vacant possession of the property to the plaintiff and handed over the certificate of title for the property. Before the process for change of ownership could be effected, the defendants relocated to Australia and could not be traced and no one knows their whereabouts.

The plaintiff is now desirous of effecting the change of title in its name. Despite diligent enquiries, the plaintiff has failed to locate the defendants for purposes of signing the assignment thereto, and completion, hence the plaintiff's claim.

3.0 The defence

The defendants were served by way of substituted service as is evidenced by an affidavit of service that was filed into court on the 28th November, 2023. The defendants however did not file a defence or any court process in response to this claim.

4.0 The plaintiff's witness statement

A witness statement was filed into court on the 15th April, 2024 by Louise Nortje on behalf of the plaintiff. According to the said witness statements Louise Nortje avers that: she is a Director and shareholder in the plaintiff company.

The plaintiff bought Farm No. 3332 from the defendants and paid for it in full as is evidenced by a letter dated 3rd November, 1997 from the 1st defendant to the plaintiff's lawyers which letter is on page 3 of the plaintiff's bundle of documents. The property was jointly owned by the 1st and 2nd defendants as shown on the certificate of title on page 4 of the plaintiff's bundle of documents. Soon after the defendants received the purchase price in full, they moved to Zimbabwe, however when she followed them to Zimbabwe to have them sign the assignment, she found that they had relocated to Australia leaving no forwarding address.

The plaintiff applied for and obtained a Vesting Order from the Ndola High Court in 2005, but due to some unforeseen circumstances, it could not complete the conveyance. The Vesting Order was renewed in 2013 and the plaintiff even obtained consent to assign from the Ministry of Lands by virtue of the same. However, the plaintiff failed to pay the property transfer tax which Zambia Revenue Authority was asking for, as it was way beyond the plaintiff's financial means at that time. This resulted in the vesting order lapsing.

Several attempts were made to apply for another extension of the vesting order at the Ndola High Court, but unfortunately the file could not be traced. The plaintiff then decided to commence a fresh action before the Lusaka High Court. The plaintiff, after many meetings with the Zambia Revenue Authority is now ready to complete the conveyance of the farm in issue and is ready to pay the revised property transfer tax.

She prays that the defendants be ordered to complete the transaction by signing the agreement and that in the absence of the defendants, since their whereabouts are unknown, a vesting order be granted enabling the Registrar of the High Court to sign the Assignment and all other documents relating to the conveyance of Farm No. 3332, Kabwe.

4.0 The hearing

On the 17th April, 2024, only the plaintiff and their advocates were in attendance. The court allowed the matter to proceed to trial. The plaintiff called only one witness in support of its case being Louise Nortje, who placed reliance on her witness statement as well as the plaintiff's bundle of pleadings and documents.

That was the close of the plaintiffs' evidence.

5.0 The decision of the Court

On the evidence before me, I find as a fact that Farm No. 3332 was owned by the defendants as is evidenced by the certificate of title at pages 4 to 12 of the plaintiff's bundle of documents. I also find as a fact that Farm No. 3332 was sold by the defendants to the plaintiff, as is evidenced by a letter at page 3 of the plaintiff's bundle from the 1st defendant to Messrs Lloyd Siame and Company. The said letter is couched in the following manner:

"3 November 1997

PO BOX 80094

KABWE

LLOYD SIAME AND COMPANY

PO BOX 7287

NDOLA

ZAMBIA

Dear Mr Siame

RE: FARM NUMBER 3332, KABWE: MICHEAL CHARLES CHRISTIAN

Please would you hand the title deeds for this farm to Mrs Louise Nortje as it is now fully paid for, your fees and the transfer fees having been paid.

I appreciate your cooperation in this matter and would be grateful if it could be executed as speedily as possible.

Yours sincerely,

MC CHRISTIAN

In view of the foregoing, I am satisfied that the plaintiff purchased Farm No. 3332, Kabwe from the defendants and what remains is for the formal conveyance to be done.

Be that as it may, the evidence before this court shows that the conveyance of the property from the defendants to the plaintiff was not completed. The evidence also shows that the defendants are no longer in Zambia as they initially moved to Zimbabwe and thereafter to Australia. That all efforts to trace them have proved futile as they could not be located in Zimbabwe and they did not leave a forwarding address, as was averred by Louis Nortje in her witness statement. Additionally, the affidavit of service filed into court on the 28th November, 2023, as proof of service, reveals that the defendants were served by way of substituted service but have not responded to this cause of action.

Section 14 of the High Court Act, Chapter 27 of the Laws of Zambia provides that:

“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.”

It is evident from the foregoing provision that the court has power on such terms as seem just, where a judgment has not been complied with, to order that any document that has not been executed by a party either due to neglect or failure to comply, be executed by any other person that the court so nominates. For the circumstances at hand, the intervention of the court will be done through entering judgment for specific performance to complete the conveyance and should this fail, the granting of a vesting order which relief the plaintiff has asked for.

Accordingly, the defendants having failed to respond to this cause to show any evidence contrary to the plaintiff's claims, Judgment is hereby entered in favour of the plaintiff as follows:

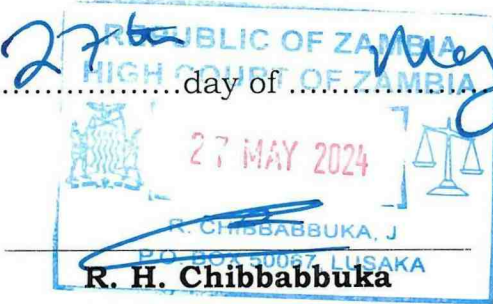
- (i) That the plaintiff is entitled to specific performance of the agreement dated November 1997 of the sale of Farm No. 3332 Kabwe by the defendants to the plaintiff.
- (ii) The defendants are ordered to sign the assignment and all other documents pertaining to the conveyance of Farm No. 3332 to the plaintiff, within 30 days of this Judgment.
- (iii) Should the defendants not sign the assignment and all documentation pertaining to the conveyance of Farm No. 3332 Kabwe within 30 days from this judgment, the plaintiff is granted a vesting

order to be signed by the Registrar or Deputy Registrar of the High Court.

- (iv) The plaintiff is granted leave to apply for property transfer tax instead of the defendants in order to effect the change of ownership.
- (v) Each party will bear their own costs.

Leave to appeal is granted.

Dated the.....*27th*.....day of *May*.....2024.



R. H. Chibbabbuka
HIGH COURT JUDGE