

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



2024/HP/0088

IN THE MATTER OF:

SECTION 81 OF LANDS AND DEEDS
REGISTRY ACT CHAPTER 185 OF
THE LAWS OF ZAMBIA

AND

IN THE MATTER OF:

REMOVAL OF CAVEAT ON
PROPERTY KNOWN AS PLOT NO
2821/37520 CHILUSA STREET IN
CHELSTONE ARE OF THE CITY AND
PROVNCNE OF LUSAKA IN THE
REPUBLIC OF ZAMBIA

BETWEEN:

JEANNY MWAMBA LOMINGO

(suing in her capacity as an attorney
of SAMPALA MAGGIE MWAPE)

APPLICANT

AND

RICHARD KALOMBA

RESPONDENT

BEFORE THE HONOURABLE MRS. JUSTICE M.C. KOMBE

For the Applicant: *In person*

For the Respondent: *No Appearance*

J U D G M E N T

Case referred to:

- 1. Sobek Lodge Limited v. Zambia Revenue Authority 2008/HP/668.**

Legislation and materials referred to:

- 1. Lands and Deeds Registry Act Chapter 185 of the Laws of Zambia.**
- 2. Garner's Black Law Dictionary 8th Edition (Thomson West 2004).**

1. INTRODUCTION

1.1 This matter was commenced by Originating Summons for the removal of a Caveat on a property known as Plot No. 2821/37520 Chilusa Street in Chelstone in the City and Province of Lusaka in the Republic of Zambia. The Applicant seeks the following substantive reliefs:

- (i) An order that the Caveat registered over property known as Plot No. 2821/37520 situated along Chilusa Street, Chelstone area in the City and Province of Lusaka in the Republic of Zambia on 12th February, 2009, by the Respondent be removed.**
- (ii) Costs of this application be in the cause; and**
- (iii) Any other relief the court may deem fit.**

2. APPLICANT'S AFFIDAVIT EVIDENCE

- 2.1 The affidavit in support of the Originating Summons was deposited by the Applicant who was the biological mother to Maggie Sampala Mwape, current and sole owner of the property in question. The Applicant averred that on 18th January, 2024, Maggie appointed her to act and represent her as an attorney in relation to the said plot as Maggie had received a job offer in the United States of America and left Zambia for the same job.
- 2.2 Prior to Maggie leaving Zambia, she rented a house namely Plot No. 2821/37520 along Chilusa Street in Chelstone from In'utu Tembo. The Applicant explained that sometime in 1998 In'utu Tembo approached Maggie informing her that she wanted to sell the said house and was offering it to Maggie being the sitting tenant.
- 2.3 Maggie accepted the verbal offer and they agreed to a purchase price of the house at K11, 000,000.00 (eleven million Kwacha un-rebased) and the sum of K5, 300,000.00

(five million three hundred thousand kwacha un-rebased) was made as a deposit.

- 2.4 Upon payment of the deposit, In'utu Tembo left for Zimbabwe and Maggie was furnished with all the documents for the house. The Applicant asserted that later in 1999 In'utu Tembo started demanding for the balance of K5, 700, 000.00 (five million seven hundred thousand kwachas un-rebased), and it was discovered that In'utu Tembo's brother illegally sold the house to Richard Kalomba, the Respondent herein.
- 2.5 Upon discovery of the same, Maggie went to the Council on 24th March, 1999, and placed a caveat on the file to protect her interest. To her dismay Maggie learned that the Respondent had also placed a Caveat on the same plot.
- 2.6 The Applicant deposed that later, in order to find a remedy to the issue, she engaged a lawyer by the name of Irene Zeko Mbewe who practiced under the firm known as Messrs. Verity and May Chambers. The Respondent was engaged and it was resolved that Maggie was the legal purchaser of the said

house and that the balance that had remained be paid to the Respondent's advocates. She produced "**JML1**" which was a copy of a receipt of payment and acknowledgment letter.

2.7 Thereafter all the original documents relating to the house in question, including those that were with the Respondent were handed over to Maggie as legal owner of the property. Copies of the offer letter to In'utu Tembo from Council, offer of accommodation from Zambia Airways, Notice Demanding Payment and Payment record card were produced and marked "**JML2**".

2.8 The Applicant revealed that Maggie left for the United States of America in 2001 and she remained overseeing the property to date. In January, 2024, Maggie appointed her to be her attorney in relation to the said property so that she could obtain title in her name in her absence. She produced a copy of the power of attorney legally lodged in the High Court which was marked as "**JML3**".

2.9 The Applicant conducted a search at Lusaka City Council and realized that the Caveat placed by the Respondent in 1999 was never removed. The Applicant had tried to locate the Respondent but to no avail. The Applicant sought removal of the caveat in order for her to process the title deed according to the law.

3. HEARING

3.1 The Applicant applied for an order to serve the Respondent by way of substituted service. I granted the said application and ordered that service be done by way of advertising in a newspaper with county wide circulation. The Applicant filed affidavit of service on 30th July, 2024.

3.2 The matter came up for hearing on 18th September, 2024, where the Applicant was present and the Respondent was inexcusably absent. I proceeded with the application in the Respondent's absence as I was satisfied that he had been served but had deliberately not attended Court.

3.3 The Applicant relied on the documents and the skeleton arguments filed.

3.4 In the skeleton arguments, she referred to Section 81 (1) and (2) of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia which provides:

“(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 Court or a Judge thereof to show cause why such caveat should not be removed.”

3.5 The Applicant submitted that the power to remove a caveat was exercised by the Learned Dr. Justice P. Matabini as Judge in Charge as he was then in the case of **Sobek Lodge Limited v. Zambia Revenue Authority**⁽¹⁾ wherein the court ordered removal of the caveat placed by the Respondent for failure to meet the conditions precedent for effecting a caveat under the Act and failure to discharge his burden of proof as to why the caveat should not be removed.

3.6 The Applicant submitted that the Respondent did not have any interest in the property and as such the caveat placed on the property more than twenty years ago should not continue to be maintained.

3.7 She prayed that the Court removes the caveat that was placed on 2821/37520 Chilusa Street Chelstone, Lusaka.

3.8 In the verbal submissions, which were basically her responses to the questions posed by the Court, the Applicant argued that she only had offer letters' in her daughter's name Maggie from In'utu Tembo who sold her the house. The purchase price was K11, 000,000.00 un-rebased and that she was in possession of the documents for the property.

3.9 The Applicant also stated that Maggie placed a caveat on the property after a judgment was delivered in her favour. Asked where the judgment was, the Applicant stated that she did not have it as it was a long time ago. After the judgment, Maggie left for the United States of America to study and did not make any follow-ups on the issue.

3.10 The Applicant also asserted that Maggie was desirous that the property be put in her firstborn's name but that there was a caveat placed on the property by the Respondent.

4. DECISION OF THE COURT

- 4.1 I have carefully considered the evidence adduced by the Applicant and the submissions filed in support of the action.
- 4.2 The Applicant seeks an order that the Caveat registered over property known as Plot No. 2821/37520 situated along Chilusa Street area in the City and Province of Lusaka in the Republic of Zambia by the Respondent be removed.
- 4.3 Section 76 of the Lands and Deeds Registry Act (**'the Act'**) provides for caveats against dealing with land. It reads as follows:

"Any person-

- (a) claiming to be entitled to or to 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.

4.4 Furthermore, section 77 (1) provides for the particulars that must be indicated in the caveat. It reads as follows:

“(1) Every caveat shall be signed by the caveator or by his attorney or agent, and shall state with sufficient certainty the nature of the estate or interest claimed by the caveator, with such other information and evidence as may be required by any regulations under this Act, and shall appoint a place or give an address within 4.83 kilometers of the Registry at or to which notices and proceedings relating to such caveat may be served or addressed.”

4.5 It is clear from the foregoing provision that before a caveat is lodged with the Registrar, the caveator must establish that he is entitled to the land or beneficially interested in it by virtue of an unregistered agreement or instrument or that he is in the process of transferring his interest to be held in trust or that he is an intending purchaser or mortgagee of the

property. In short it is a requirement for the caveator to show the interest in the property.

- 4.6 Once a caveat has been duly lodged, the Registrar according to Section 79 cannot make any entry on the Register having the effect of charging or transferring or otherwise affecting the estate or interest protected by such caveat.
- 4.7 Section 80 further provides that upon the receipt of any caveat, the Registrar shall notify the same to the Registered Proprietor or other person against whose title to deal with land or other interest such caveat has been lodged.
- 4.8 The basis for this action is that the Respondent has no right to interfere with the Maggie's rights. This action has therefore been brought pursuant to Section 81 (1) of the Act. It provides that:

“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.

4.9 It is evident from the foregoing that the person entitled to bring an action against a caveator to show cause why the caveat should not be removed is a registered proprietor or interested person.

4.10 According to Section 2 of the Act, a registered proprietor means a person to whom a Certificate of Title or Provisional Certificate of Title has been issued. Simply put it is the owner of a particular land or property.

4.11 Based on the foregoing, it is also important for this Court to consider the right that Maggie has in the property in question for her to be entitled to the relief that she seeks. In short, it is important to consider whether the Applicant on behalf of Maggie has the *locus standi* to bring this action. The Black's Law Dictionary defines *locus standi* as:

“Right to bring an action or claim the reliefs before Court.”

4.12 As I have mentioned, the Applicant on behalf of her daughter Maggie contends that Maggie bought the subject property from In'utu M. Tembo at the price of K11,000,000.00 and she

paid K 5,300,000.00 as deposit and the balance of the purchase price being K5, 700,000.00. However, at this stage, it was discovered that the brother to In'utu had illegally sold the property to the Respondent. That she also discovered in May, 1999 that the Respondent had placed a caveat on the property. Thus Maggie engaged lawyers and it was resolved that Maggie was the legal purchaser and that the balance of the purchase price was to be paid to the Respondent.

4.13 I have carefully considered the documents in the bundle of documents. While the letter dated 19th November, 2001 shows that Messrs. Verity and May Chambers received an amount of K 5,700,00.00 from Maggie Sampala being the balance on the purchase price of Plot 2821 Chelstone, the letter dated 20th November, 2001 shows that a meeting was held between Messrs. Verity and May and LawBank Attorneys on 19th November, 2001 and the latter firm confirmed receipt of K5,700,00.00 being the second payment to Richard Kalomba.

4.14 This letter does not reveal under what circumstances the amount of K5,700,000.00 was paid to Richard Kalomba as

no other documents were produced concerning the transaction. Furthermore, at the hearing, the Applicant informed the Court that Maggie had a judgment in her favour as she was declared the owner of the said property but that judgment was not produced in Court.

4.15 Given the foregoing, I cannot express myself as wholly satisfied that the Applicant has proved Maggie's interest in the property. I say this because the judgment referred to in Court which would have disclosed the nature of Maggie's interest in the subject property was not produced and there is no contract of sale or any deed of assignment to show that In'utu sold the property to Maggie and the Respondent has no interest in the property.

4.16 Therefore, mere deposition that Maggie was the sole owner and legal purchaser of the property and that she had a judgment in her favour without any documents suggestive of a transfer of legal rights from In'utu to Maggie as owner of the property is not sufficient. This is because the subject matter is real property and any sale or other disposition of

land or any interest cannot be casually made as it has to be in writing.

4.17 I should hasten to add that the documents mentioned and produced in paragraph 14 of the affidavit in support being the offer letter to In'utu M. Tembo from the Council, offer of accommodation from Zambia Railways, Notice Demanding payment and Payment Record Card are all in the name of In'utu M. Tembo and not Maggie.

4.18 In addition, it is not the duty of this Court to hypothesize as to the import of the letter dated 20th November, 2001 without evidence why Mr. Richard Kalomba was paid K5, 700,000.00 as second payment. This is coupled with the fact that there is no evidence or plausible reason given why there were no steps taken by Maggie to have the purported transaction with In'utu completed for a period of twenty-three (23) years.

4.19 In the absence of any documentary evidence that Maggie is the registered proprietor of Plot 2821 Chelstone or an interested person, I find that the Applicant has failed at this stage to prove on a balance of probabilities that she has the right to bring this action on behalf of Maggie Sampala under

Section 81 of the Lands and Deeds Registry Act as a registered proprietor or indeed an interested person.

4.20 Accordingly, I decline to grant the relief sought. The action is therefore dismissed but I make no order as to costs.

DELIVERED AT LUSAKA THIS 30TH DAY OF SEPTEMBER, 2024.

