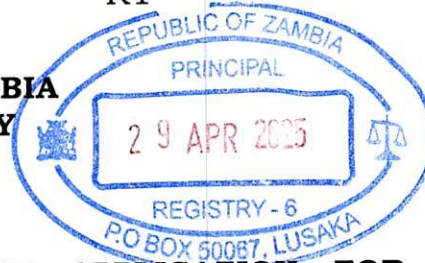


R1

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



**2024/HP/1432**

**IN THE MATTER OF:**

**AN APPLICATION FOR AN ORDER FOR  
SUMMARY POSSESSION**

AND

**IN THE MATTER OF:**

**SUBDIVISION C OF FARM NO 4300 LUSAKA**

AND

**IN THE MATTER OF:**

**ORDER 113 OF THE RULES OF THE SUPREME  
COURT OF ENGLAND, 1965, 1999 EDITION**

BETWEEN:

**KWICKBUILD CORPORATION ZAMBIA LIMITED**

**APPLICANT**

AND

**ALL UNKNOWN OCCUPANTS  
EVANS MUMBI AND OTHERS  
DENNY NYONI**

**1<sup>st</sup> RESPONDENT  
2<sup>nd</sup> RESPONDENT  
INTERESTED PARTY**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 29<sup>th</sup>  
DAY OF APRIL, 2025**

*For the Applicant* : *Mrs P. Chilembo with Mr D.M. Silavwe, Messrs Raso  
Chambers*  
*For the Respondents* : *Ms C. K. Puta and Ms M. Musonda for Mr L. Kasuba,  
Messrs Lennard Lane Partners*  
*For the Interested Party* : *Mr M. Ntanda, for Mrs Melody Mwansa, Messrs Melody  
Mwansa Legal Practitioners*

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## **R U L I N G**

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CASES REFERRED TO:

- 1. Bloomfield v Serenji 1945 2 ALL ER 646**
- 2. Brink's Mat Limited v Elomie 1988 1 WLR 1350**
- 3. Zinka v Attorney General 1990-1992 ZR 73**
- 4. Attorney General and the Speaker v The People 1999 ZR 186**
- 5. Kajimanga v Chilemya Appeal No 50 of 2014**

6. *Madison Finance Company Limited v Yotamu Chisi and others* 2014/HPC/003
7. *Prisca Lubungu v Obby Kapango and others & Ndola City Council* Appeal No 216 of 2016
8. *All Illegal Squatters of Farms v Benny Chundu* Appeal No 77 of 2017
9. *Jonathan Van Blerk v The Attorney General, Lusaka City Council, Legacy Holdings, Kwickbuild Corporation Zambia Limited, Bantu Capital Corporation Limited & National Pension Scheme Authority* SCZ/8/03/2020

LEGISLATION REFERRED TO:

1. *The High Court Rules, Chapter 27 of the Laws of Zambia*
2. *The Rules of the Supreme Court of England, 1965, 1999 Edition*

**1. INTRODUCTION**

- 1.1 On 18<sup>th</sup> January, 2025, the interested party, Denny Nyoni applied to set aside the Order of possession, pursuant to **Order 12 Rule 2** as read with **Order 3 Rule 2 of the High Court Rules, Chapter 27 of the Laws of Zambia**. He also applied ex-parte to stay further execution of the Writ of Possession pending determination of the application, to set aside the Order of possession pursuant to **Order 36 Rule 10 of the High Court Rules**.
- 1.2 In support of the applications, Denny Nyoni filed a composite affidavit and a List of Authorities and Skeleton Arguments in support.
- 1.3 I granted the ex-parte application to stay further execution pending the determination of the application to set aside the Writ of Possession on 18<sup>th</sup> January, 2025.
- 1.4 Then on 20<sup>th</sup> January, 2025, all the unknown occupants and Evans Mumbi filed ex-parte summons to stay execution of the Writ of Possession, and to set aside the Writ of

Possession, and for leave to join the proceedings, pursuant to **Order 39 Rule 3 of the High Court Rules, Chapter 27 of the Laws of Zambia** and **Order 113/5 of the Rules of the Supreme Court of England, 1965, 1999 Edition**.

- 1.5 The applications were supported by an affidavit and a List of Authorities and Skeleton Arguments.
- 1.6 I granted an Order ex-parte, to join Evans Mumbi and the others to the proceedings, and an Order to stay execution of the Writ of Possession on 21<sup>st</sup> January, 2025.
- 1.7 Then on 27<sup>th</sup> January 2025, Kwickbuild Corporation Zambia Limited applied ex-parte, to discharge the Order staying further execution. That application was supported by an affidavit and a List of Authorities and Skeleton Arguments. On the same date, Kwickbuild Corporation Zambia Limited filed a combined affidavit in opposition to Denny Nyoni and Evans Mumbi and the others' application to set aside the Order of possession.
- 1.8 The combined affidavit in opposition was accompanied by a List of Authorities and Skeleton Arguments in opposition. I directed that the said application be heard interpartes.
- 1.9 Denny Nyoni filed an affidavit in opposition and a List of Authorities in opposition to the application to discharge the stay of execution on 13<sup>th</sup> February, 2025. A list of Authorities and Skeleton Arguments in opposition was also filed.

## **2. BACKGROUND**

- 2.1 Kwickbuild Corporation Zambia Limited suing by Originating Summons which was accompanied by an

affidavit and a List of Authorities and Skeleton Arguments in support, pursuant to **Order 113 Rule 1 of the Rules of the Supreme Court of England, 1965, 1999 Edition** on 4<sup>th</sup> October, 2024, sought an Order for the summary possession of the property known as Subdivision "C" of Farm No 4300, Lusaka, against the unknown occupants of the property.

- 2.2 On 7<sup>th</sup> October, 2024, Kwickbuild Corporation Zambia Limited applied ex-parte for leave to serve the Originating Summons on the unknown persons, via substituted service as personal service had failed, as the illegal structures on the property were unoccupied and abandoned.
- 2.3 That application was granted on 9<sup>th</sup> October, 2024. An affidavit of service was filed on 17<sup>th</sup> October, 2024 which showed that the unknown occupants were served the Originating Summons and accompanying documents by way of advertisement in the Zambia Daily Mail newspaper.
- 2.4 At the hearing on 15<sup>th</sup> November, 2024, I granted the Order for summary possession of the property, F/4300/C.
- 2.5 It is that Order that prompted the filing of the applications which are the subject of this Ruling.

### **3. SUBMISSIONS AT THE HEARING**

#### **SUBMISSIONS BY COUNSEL FOR DENNY NYONI AND OTHERS UNKNOWN**

- 3.1 At the hearing, Counsel relied on the affidavit which was filed in support of the application, as well as the List of Authorities and Skeleton Arguments in support.

**RESPONSE BY COUNSEL FOR KWICKBUILD CORPORATION ZAMBIA LIMITED**

- 3.2 Counsel in response, submitted that they opposed the application, and that in doing so, they had filed an application to discharge the stay of execution which was supported by an affidavit and a List of Authorities and Skeleton Arguments.
- 3.3 In augmenting, Counsel stated that the gist of the opposition was that Denny Nyoni and the others unknown had not satisfied the requirements in Order for a stay of the Writ of Possession to be granted. In that regard, his submission was that a stay of execution is granted where a party can demonstrate reasonable prospects of success.
- 3.4 It was also Counsel's submission, that Denny Nyoni and the others unknown, had failed to produce documents to show that they owned the property Sub Division C of Farm 4300. Further submission was made, that Kwickbuild Corporation Zambia Limited, on the other hand, had produced a certificate of title, a certificate of official search and a letter from the Ministry of Lands confirming the same.
- 3.5 Counsel still in submission, went on to state that Denny Nyoni and the others unknown, in obtaining a stay of further execution of the Writ of Possession had misrepresented several facts surrounding the matter. Paragraph 6 of the Skeleton Arguments which were filed in support of the application to discharge the stay of execution was referred to in that regard.

3.6 It was also stated that Denny Nyoni and the others unknown, would not suffer any prejudice if the stay of execution was discharged, as they were squatters on the land. The case of ***Prisca Lubungu v Obby Kapango and Others & Ndola City Council*** <sup>(7)</sup> was relied on, stating that the Supreme Court in that matter, noted that a squatter has no rights at law, in comparison with a land owner who has a certificate of title.

3.7 The prayer was that the stay of execution be discharged with costs to Kwickbuild Corporation Zambia Limited.

**REPLY BY COUNSEL FOR DENNY NYONI AND OTHERS UNKNOWN**

3.8 In reply, Counsel stated that reliance was placed on the affidavit in opposition together with the List of Authorities and Skeleton Arguments which were filed on 6<sup>th</sup> February, 2025. It was submitted that in the affidavit in reply, they had referred to the case of ***Jonathan Van Blerk v The Attorney General, Lusaka City Council, Legacy Holdings, Kwickbuild Corporation Zambia Limited, Bantu Capital Corporation Limited & National Pension Scheme Authority*** <sup>(9)</sup> in which part of the land in dispute was adjudicated upon.

3.9 Counsel also submitted that they relied on ***Order 113/5/1 of the Rules of the Supreme Court of England*** as providing that any party who is not named as a defendant, may apply to be joined as a defendant. It was stated that the proceedings were not served on Denny Nyoni and the others

unknown, but was advertised. Note was made, that Denny Nyoni and the others unknown were on the land, and they could have been served the Originating Summons.

- 3.10 The submission was further that if Denny Nyoni and the others were not there, the Originating Summons could have been affixed on the door. It was accordingly prayed that the application be granted.

**APPLICATION BY EVANS MUMBI AND OTHERS**

- 3.11 In applying, Counsel stated that they relied on the documents which were filed in support of the application. In response to the application to discharge the stay of execution, Counsel stated that they had filed an affidavit in opposition and a List of Authorities and Skeleton Arguments in opposition.
- 3.12 In further submitting, Counsel stated that one of the main issues related to disclosure. In that respect, the submission was that Kwickbuild Corporation Zambia Limited had informed the Court that there were incomplete structures which had been built on the property and which were unoccupied, hence the need for substituted service of the Originating Summons.
- 3.13 Counsel submitted that the Court acted on that information which was untrue, as exhibit 'DN3' to the affidavit in opposition which was dated 7<sup>th</sup> February, 2025, showed that there were complete houses which were occupied by people and who could easily have been served the Court process.

- 3.14 Assertion was made, that Kwickbuild Corporation Zambia Limited intended to deceive the Court in obtaining an Order for possession. Reiteration was made, that the interests of justice demanded that all the parties be heard before a decision was made. The case of **Zinka v Attorney General** <sup>(3)</sup> was cited as authority in support of the submission.
- 3.15 Also, in submission, Counsel stated that the High Court Rules and the Rules of the Supreme Court of England are clear that substituted service may be made where personal service has proved impossible.
- 3.16 This Court was asked to note that there are proceedings before Hon Lady Justice Chocho relating to the property, and that an Order to join Kwickbuild Corporation Zambia Limited and the Attorney General so that all the issues relating to the property could be resolved, had been made.

**RESPONSE BY COUNSEL FOR KWICKBUILD CORPORATION ZAMBIA LIMITED**

- 3.17 The submission in response, was that exhibit 'MM3' to the affidavit which was filed in support of the Originating Summons, was a pictorial image taken from google and reflected how the properties were sitting on the land. Addition was made, that the land is in extent of 120 hectares with very few structures on the land which were incomplete.
- 3.18 It was stated that exhibit 'DN3' showed only a slight portion of some of the buildings. Therefore, Kwickbuild Corporation Zambia Limited could not determine how many people and

who in particular, was constructing on the land, and who was yet to start construction.

- 3.19 Counsel also stated that Counsel for Evans Mumbi only served them the documents that they had filed on 21<sup>st</sup> January, 2025, on 12<sup>th</sup> January, 2025. It was his submission that they had only filed documents as they conducted a search on the record.
- 3.20 On the submission relating to the case of ***Jonathan Van Blerk v The Attorney General, Lusaka City Council, Legacy Holdings, Kwickbuild Corporation Zambia Limited, Bantu Capital Corporation Limited & National Pension Scheme Authority***<sup>(9)</sup>, Counsel stated that the case had been misconstrued, as it had been referred to this Court for determination by the Supreme Court, as to whether the Judgment in cause number 1997/HP/27 and the Supreme Court Judgment in cause number SCZ/8/190/2002 were procured by fraudulent misrepresentation.
- 3.21 This Court was asked to take judicial notice of its' Judgment dated 22<sup>nd</sup> August, 2023, where it held that the fraudulent misrepresentation had not been demonstrated. It was also stated that in the Judgment, none of the Five (5) certificates of title, including that for Kwickbuild Corporation Zambia Limited were cancelled.
- 3.22 Thus, the Judgment of the Supreme Court lacked merit. As to the matter that is before Hon Lady Justice Chocho, Counsel's submission was that they only become aware of those proceedings after an application to join Kwickbuild

Corporation Zambia Limited was filed by Evans Mumbi on 12<sup>th</sup> February, 2025.

3.23 It was noted that Evans Mumbi in paragraph 6 of the affidavit dated 7<sup>th</sup> February, 2025, had admitted that Kwickbuild Corporation Zambia Limited obtained a certificate of title for the property Sub Division C of Farm 4300. Thus, Evans Mumbi was aware that Kwickbuild Corporation Zambia Limited had a certificate of title for the property. As a result, the proceedings before Hon Lady Justice Chocho could not be referred to.

3.24 As to the issue of service, reliance was placed on the case of ***All Illegal Squatters on Farms v Benny Chundu*** <sup>(8)</sup>, stating that the Court of Appeal in that matter, held that service of the notice of hearing by substituted service was appropriate, since the Applicant was unable to serve the Respondents personally.

3.25 Counsel also submitted that the pictures that his learned colleague had referred to, and the certificate of title 'DN6' were for the property Sub Division D of Farm 4300 which belonged to Furigas Nyoni, while the land in dispute is Sub Division C of Farm 4300 which belonged to Kwickbuild Corporation Zambia Limited.

**REPLY**

3.26 There was no reply.

#### 4. DECISION OF THIS COURT

4.1 I have considered the applications. **Order 36 Rule 10 of the High Court Rules, Chapter 27 of the Laws of Zambia** provides that:

**“10. Except as provided for under rule 9, the Court or Judge may, on sufficient grounds, order stay of execution of judgment.”**

4.2 On the other hand, the provisions of **Order 3 Rule 2 of the High Court Rules** are:

**“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.”**

4.3 **Order 39 Rule 3 of the said High Court Rules** states that:

**“3. The application shall not of itself operate as a stay of execution unless the Judge so orders, and such order may be made, upon such terms as to security for performance of the judgment or decision or otherwise as the Judge may consider necessary. Any money in court in the suit shall be retained to abide the result of the motion or the further order of the Judge.”**

4.4 The provisions of **Order 113/5 of the Rules of the Supreme Court of England, 1965, 1999 Edition** are:

***“Without prejudice to Order 15, rules 6 and 10, any person not named as a defendant who is in occupation of the land and wishes to be heard on the question whether an order for possession should be made may apply at any stage of the proceedings to be joined as a defendant.”***

- 4.5 The explanatory notes in **Order 32/6/30 of the Rules of the Supreme Court of England** state the following:

***“Rule 6 embodies the fundamental rule of practice that a party affected by an ex parte order may apply to the Court to discharge it, in as much as he has not had an opportunity of being heard.***

***The Court has an inherent jurisdiction to revoke leave given ex parte, e.g. if it feels that it gave its original leave under a misapprehension upon new matters being drawn to its attention.***

***When applying for an ex parte order it is the duty of the applicant to make a full and fair disclosure to the Court of all the relevant facts of which he knows and failure to do so may itself be a ground for setting aside such an order. Quaere, whether the non-disclosure must have amounted to an attempt to deceive the Court.***

***By its nature, an ex parte order is essentially a provisional order made by the Judge on the basis of evidence and submissions emanating from one side only and there is therefore no basis for***

***making a definitive order and accordingly when the Judge reviews his provisional order in the light of the evidence and argument adduced by the opposite party, he is not hearing an appeal from himself and is in no way inhibited from discharging or varying his original order.***

***Where an order is made by a judge ex parte the same judge, or another judge of co-ordinate jurisdiction has power to set aside the order after an inter partes hearing. Indeed, in some cases a Master may, if it is right to do so, set aside an ex parte order made by a Judge (e.g. an ex parte order extending the validity of a writ on appeal from the refusal by a Master to accede to such an ex parte application) when the matter is heard inter partes.”***

- 4.6 Denny Nyoni in the composite affidavit which was filed in support of the application to stay further execution of the Writ of Possession, and to set aside the said Writ of Possession, deposed that Kwickbuild Corporation Zambia Limited commenced this action against him and the other occupants of Farm 4300, but did not serve him or the other occupants, the originating process or the notice of hearing for the said matter.
- 4.7 He further averred that on 17<sup>th</sup> January, 2025, the Sheriff of Zambia went to the land around 23:00 hours to enforce a Writ of Possession, and started demolishing structures on

the land. Denny Nyoni stated that it was only thereafter, that they obtained the Court documents and established that they had been sued.

- 4.8 He deposed that Kwickbuild Corporation Zambia Limited knew of Denny Nyoni and the others occupation of the land as on 28<sup>th</sup> March, 2024, it served them an Enforcement Notice, which required all the occupants to demolish all the structures, failing which, the Lusaka City Council would do so.
- 4.9 Denny Nyoni still in deposing, stated that the matter was tried before the Planning Appeals Tribunal, which tribunal by the Ruling which was exhibited as 'DN1', quashed the enforcement notice on the basis that Denny Nyoni's family had been on the land for Thirty-Seven (37) years, and had been paying rates to the Council.
- 4.10 He stated that a search on the Lands Register as shown by exhibit 'DN2', showed that Farm 4300 is in the names of other people, and not Kwickbuild Corporation Zambia Limited.
- 4.11 Still in averment, Denny Nyoni stated that as shown by exhibit 'DN3', he is the Administrator of the estate of his late mother, Violet Nyoni, who was the owner of Lot No 401 A, which was later renamed as Lot No 4300, and who executed a lease for 300 acres for Five (5) years, with an option to purchase at K120.00 per acre.
- 4.12 It was further deposed that the late Violet Nyoni exercised the right to purchase the land, which offer was accepted by

the owners of the land, and exhibit 'DN2' was stated as being the said acceptance.

- 4.13 The acknowledgments for the payments for the purchase, were exhibited as 'DN4 (i)-(ii)' and Denny Nyoni stated that the Nyoni family had been in occupation of the land since 1971. He added that as at 2024, they had put up developments on the land, which were valued at ZMW323, 500, 000.00, as shown by the valuation report which was exhibited as 'DN5'.
- 4.14 It was Denny Nyoni's averment that he applied for regularization of sub division C of Farm 4300, and that a layout plan was approved, and recommendation for numbering of the proposed regularization of Sub Division C of Farm 4300 was made to the Commissioner of Lands by the Town Clerk. The same was exhibited as 'DN6'.
- 4.15 However, Denny Nyoni had been unable to obtain a certificate of title for the property, as possession of the property had been before the Courts of law, and was currently being determined under cause number 2023/HP/1884, where the High Court issued an Order of injunction on 17<sup>th</sup> November, 2024.
- 4.16 In the List of Authorities and Skeleton Arguments in support, the law which was relied on, in making the application was cited. Further reliance was placed on **Order XLII of the High Court Rules**.
- 4.17 Also stated, was that the practice notes in **Order 47/1/8 of the Rules of the Supreme Court of England, 1965, 1999**

**Edition** state that execution may be set aside where the execution has been improperly issued, even after execution is levied.

- 4.18 Evans Mumbi in the affidavit that he deposed in support of the application, stated that Kwickbuild Corporation Zambia Limited purporting to be the title holder, commenced this action on or about 4<sup>th</sup> October, 2024. It was his averment that without exhausting all the established channels at law, Kwickbuild Corporation Zambia Limited on 7<sup>th</sup> October, 2024, applied ex-parte, for an Order to serve the Originating Summons by substituted service, which Order was granted.
- 4.19 Then without Evans Mumbi and the others' knowledge, Kwickbuild Corporation Zambia Limited went to the land with police officers to demolish, and Evans Mumbi was alerted by a neighbour around 01:00 hours.
- 4.20 He averred that they had a right to occupy the land by virtue of an agency agreement, and by the Ruling of the Planning Appeals Tribunal which was exhibited as 'EM1-EM2'. He also stated that as shown by the Judgment of the Supreme Court, which was exhibited as 'EM3', the certificate of title for Kwickbuild Corporation Zambia Limited was cancelled.
- 4.21 The law which had been relied on, in making the application was cited in the List of Authorities and Skeleton Arguments in support. Further reliance was placed on **Order 35 Rule 5 of the High Court Rules** as empowering this Court to set aside any Judgment which was obtained in the absence of the other party.

- 4.22 The opposition by Kwickbuild Corporation Zambia Limited was by way of an application to discharge the stay of execution.
- 4.23 Mike Machila, the Director of Kwickbuild Corporation Zambia Limited, in the affidavit in opposition, deposed that Kwickbuild Corporation Zambia Limited is the legal and beneficial owner of the property known as Subdivision C of Farm 4300, having obtained the land from the Commissioner of Lands in or about September, 2006.
- 4.24 He averred that after the land was acquired, there had been numerous Court proceedings emanating from cause number 2017/HP/2193 between ***Jonathan Van Blerk v The Attorney General, Lusaka City Council, Legacy Holdings, Kwickbuild Corporation Zambia Limited, Bantu Capital Corporation Limited & National Pension Scheme Authority*** <sup>(9)</sup> over the compulsory acquisition and ownership of the land.
- 4.25 Thus, due to the Court proceedings, Kwickbuild Corporation Zambia Limited was deprived of use of the land, and it was only after the proceedings in cause number 2017/HP/2193 were determined, that it came to learn that there were unknown occupants on its' property.
- 4.26 It was also stated that on 4<sup>th</sup> October, 2024, Kwickbuild Corporation Zambia Limited commenced this matter and as there are unfinished structures on the property, with no occupants, and personal service of the Originating Summons could not be made, Kwickbuild Corporation

Zambia Limited applied for an Order for substituted service of the Originating Summons on the unknown occupants.

- 4.27 It was stated that on the Order being obtained, substituted service was made by advertisement in the Zambia Daily Mail newspaper, and an affidavit of service was filed.
- 4.28 Mike Machila deposed that after the hearing on 15<sup>th</sup> November, 2024, an Order for possession of the property was granted, and the Sheriff of Zambia, on 17<sup>th</sup> January, 2025 proceeded to execute the said Order.
- 4.29 It was stated that Denny Nyoni, Mike Mumbi and the others unknown had applied for Orders to stay execution of the Writ of Possession. However, they had not exhibited certificates of title or any other relevant documents to show that they owned the land.
- 4.30 Mike Machila deposed that Denny Nyoni had exhibited a printout of the Lands Register for Farm 4300 Lusaka, when the land that is subject of these proceedings is Subdivision C of Farm 4300.
- 4.31 He also averred that in making the application to stay further execution, Denny Nyoni, Evans Mumbi and the others, had stated that they were not served the Court process, and that by virtue of the Judgment by the Supreme Court in cause number SCZ/8/03/2020, the certificate of title for Kwickbuild Corporation Zambia Limited was cancelled.
- 4.32 He also stated that Denny Nyoni, Evans Mumbi and the others had further deposed that the Ruling of the Planning Appeals Tribunal, Land Rate Receipts, and the Agency

Agreement, as well as the certificate of title for Farm 4300 gave them authority to be on the land.

- 4.33 Exhibited as 'MM1' was the search certificate from the Ministry of Lands, and a letter from the Ministry of Lands which showed that the property Subdivision C of Farm 4300 is in the names of Kwickbuild Corporation Zambia Limited.
- 4.34 In the List of Authorities and Skeleton Arguments in opposition, the explanatory notes in **Order 32/6/30 of the Rules of the Supreme Court of England** were referred to. The case of **Bloomfield v Serenyi** <sup>(1)</sup> was further relied on, as where the Court held that it is the duty of an applicant to make full and fair disclosure to the Court of all the relevant facts which he knows, and failure to do so, will be a ground for setting aside the Order, whether the non-disclosure amounts to an attempt to deceive the Court.
- 4.35 Further reliance was placed on the case of **Brink's Mat Limited v Elomie** <sup>(2)</sup>, as where the Court held that the overriding question for the Court when considering to set aside an ex-parte Order, is that it must be in the interests of justice, and the Court must consider the nature and materiality of the non-disclosure and any prejudice that the innocent party will suffer.
- 4.36 It was argued that Kwickbuild Corporation Zambia Limited attempted to effect personal service of the Originating Summons on the unknown occupants, but was unsuccessful as there are unfinished and unoccupied structures on its' property.

- 4.37 Therefore, it applied for substituted service, and advertised on the Order being granted. Relying on the case of **Madison Finance Company Limited v Yotamu Chisi and others** <sup>(6)</sup>, it was stated that substituted service is as good as personal service.
- 4.38 Further reliance was placed on the case of **All Illegal Squatters of Farms v Benny Chundu** <sup>(8)</sup> stating that the Court of Appeal in that matter, held that substituted service of the notice of hearing on the Respondent was necessary, as personal service on him was unable to be done.
- 4.39 As for the reliance on the case of **Jonathan Van Blerk v The Attorney General, Lusaka City Council, Legacy Holdings, Kwickbuild Corporation Zambia Limited, Bantu Capital Corporation Limited & National Pension Scheme Authority** <sup>(9)</sup> it was argued that in that matter, the Supreme Court referred to the High Court, determination of whether the Judgments in cause number 1997/HP/272 and SCZ/8/190/2002 were obtained by fraud.
- 4.40 Then on 22<sup>nd</sup> August, 2023, this Court delivered a Judgment under cause number 2017/HP/2193, in which it found that Jonathan Van Blerk had failed to demonstrate that the Judgments were procured by fraud. Therefore, it was an attempt to mislead the Court by stating that the certificate of title for Kwickbuild Corporation Zambia Limited was cancelled.
- 4.41 Reference was made to exhibit 'MM1' to the affidavit which was filed in support of the application to discharge the stay,

stating that it was an official search and a letter from the Ministry of Lands, dated 28<sup>th</sup> November, 2024 which confirmed that the certificate of title for Subdivision C of Farm 4300 is valid.

- 4.42 The agency agreement was stated as being an agreement between Denny Nyoni and Evans Mumbi conspiring to sell land which did not belong to them.
- 4.43 Argument was made, in line with the provisions of **Section 33 of the Lands and Deeds Registry Act Chapter 185 of the Laws of Zambia** and the case of ***Kajimanga v Chilemya*** <sup>(5)</sup>, that a certificate of title is proof of ownership of land.
- 4.44 Relying on the explanatory notes in **Order 59/13/2 of the Rules of the Supreme Court of England**, the submission was that Denny Nyoni and the others, and Evans Mumbi and the others had not satisfied the threshold for the grant of a stay of execution of the Writ of Possession.
- 4.45 The case of ***Prisca Lubungu v Obby Kapango and others & Ndola City Council*** <sup>(7)</sup> was stated as where the Supreme Court, held that an owner of land who has a certificate of title has rights to quiet possession of the land, and power and control of use of the land, as well as an unfettered discretion to dispose of the land. However, a person in adverse possession is in a precarious position, and cannot assume colour of right against a title holder.

**DECISION**

- 4.46 In this matter, it will be seen that Kwickbuild Corporation Zambia Limited by virtue of the certificate of title which is exhibited as 'MM1' to the affidavit which was filed in support of the Originating Summons, is the owner of the property known as Subdivision C of Farm 4300, which land is in extent of 120.7995 hectares, as at 21<sup>st</sup> September, 2006. This certificate of title is also exhibited as 'MM1' to the affidavit which was filed in support of the summons to discharge the stay of execution.
- 4.47 Also exhibited, is the official search certificate dated 22<sup>nd</sup> January, 2025, for the property. The letter dated 'MM2' to the said affidavit, is dated 28<sup>th</sup> November, 2024 which was authored by the Assistant Chief Registrar, Mutete Chisupa, for the Chief Registrar at the Ministry of Lands, which confirms that Kwickbuild Corporation Zambia Limited is the owner of Subdivision C of Farm 4300.
- 4.48 Kwickbuild Corporation Zambia Limited commenced these proceedings under ***Order 113 of the Rules of the Supreme Court of England, 1965, 1999 Edition*** for summary possession of land, on the basis that the unknown occupants are in illegal possession of the property, without its' licence or consent.
- 4.49 From the affidavits which were filed by Kwickbuild Corporation Zambia Limited and Evans Mumbi, they establish that the property, Subdivision C of Farm 4300 has been the subject of proceedings under causes number

1997/HP/272 and SCZ/8/190/2002 in which Jonathan Van Blerk challenged the compulsory acquisition of the land by the Commissioner of Lands, and he lost those two cases.

4.50 It will further be seen that Jonathan Van Blerk later commenced an action under cause 2017/HP/2193 alleging that the Judgments in causes number 1997/HP/272 and SCZ/8/190/2002 were procured by fraud.

4.51 The Supreme Court in cause number SCZ/8/03/2020 referred cause number 2017/HP/2193 back to the High Court to determine whether the said Judgments under cause numbers 1997/HP/272 and SCZ/8/190/2002 were obtained by fraud.

4.52 In a Judgment, which I delivered on 22<sup>nd</sup> August, 2023, I found that Jonathan Van Blerk had not demonstrated that there was fraud in the procuring the Two (2) Judgments. Thus, the Two (2) Judgments were not set aside, entailing that those two Judgments still stood.

4.53 It consequently follows that reliance on the Supreme Court Judgment which is exhibited as 'EM3' to the affidavit which Evans Mumbi filed, does not help as the direction in that Judgment, was that the High Court in cause number 2017/HP/2193 determines whether the Judgments in cause numbers 1997/HP/272 and SCZ/8/190/2002 were procured by fraud. I have stated that I delivered Judgment in that matter.

- 4.54 Denny Nyoni and Evans Mumbi and the others have not demonstrated that they have successfully appealed against my Judgment.
- 4.55 It is noteworthy that in cause number 2017/HP/2193, I delivered a Ruling on an application that Denny Nyoni made to be joined to the proceedings.
- 4.56 I found as follows in that Ruling:

***“Coming to the application itself, the Applicant contends that he has an interest in the matter, as he is in possession of the land that is subject of these proceedings, and he holds a certificate of title to the land in question. The contention by the Plaintiff and the 2<sup>nd</sup> Defendant in opposing the application, is that the Applicant has no interest in the land, subject of these proceedings as he does not own it, and therefore, he will not be affected by the outcome of these proceedings.***

***They further contend that the claims by the Applicant were adjudicated upon in cause number 1982/HP/669 which awarded vacant possession of the area where the Applicant has settled to the Plaintiff. They also allege that the Applicant re-launched the claims under cause number 2019/HP/0551 which were dismissed for being res judicata.***

***It is trite that once a matter is adjudicated upon by a Court of competent jurisdiction, it is res***

*judicata. Exhibit 'JVB4' to the Plaintiff's amended affidavit in opposition is the Judgment in the 1982 matter. The plaintiff in that cause was John Henry Van Blerk and Thomas Turigas Nyoni was the defendant. The plaintiff sought possession of portions of Farm No 401a and the remaining extent of Farm 49a situate in Lusaka.*

*The Judgment shows that there were agreements in writing made on 17<sup>th</sup> September, 1971 between the plaintiff and Violet Nyoni to let the premises comprising 300 acres for a period of five (5) years from 17<sup>th</sup> September, 1971 at rentals of K1, 500.00 per year. That after the expiration of five (5) years, Violet Nyoni held over the tenancy of the premises until her death on 9<sup>th</sup> June, 1978. The plaintiff also claimed that by a notice to quit dated 12<sup>th</sup> January, 1979, the plaintiff determined the tenancy and therefore, the defendant was wrongfully in occupation of the premises.*

*The defendant denied the plaintiff's claims, stating that while the plaintiff leased the property to his deceased mother, it was with an option to purchase the property at the expiry of the lease at K120.00 per acre totaling K36, 000.00. The defendant contented that his deceased mother accepted that offer by the letter dated 21<sup>st</sup> June,*

1974, although the plaintiff disputed that assertion, and the matter was pursued through lawyers.

The defendant further contended that by a letter dated 4<sup>th</sup> August, 1974, the plaintiff's lawyers while maintaining that there was no offer to purchase the land, stated that they were prepared to negotiate a sale in line with the conditions stated in the letter dated 10<sup>th</sup> July, 1974. Thus, on 9<sup>th</sup> August, 1974, the deceased's lawyers, Walusiku and Company, replied accepting the offer, which was acknowledged in the letter dated 19<sup>th</sup> June, 1975 by the plaintiff's lawyers.

That in pursuance of that agreement, on 20<sup>th</sup> October, 1975, the plaintiff's lawyers wrote to the deceased's advocates acknowledging payment of K5, 000.00, and in a letter dated 19<sup>th</sup> November, 1976, the plaintiff's lawyers acknowledged receipt of K16, 000.00 paid in furtherance of the sale. Then on 29<sup>th</sup> June, 1978, the deceased passed away, after having paid K23, 000.00 out of the K36, 000.00, and as the plaintiff held himself out as intending to sell the property, developments were made to the property.

Most parts of the rest of the Judgment are not very legible, but at page 11 of that Judgment, which was delivered on 7<sup>th</sup> April, 1987, the Court found

*that as consent of the Commissioner of Lands was not obtained, there could be no sale of the property, and possession of the property was given to the plaintiff. The Court also found that the plaintiff had agreed to pay the defendant the value of the unexhausted improvements that Mrs Nyoni made to the land.*

*In that regard, the Commissioner of Lands was directed to give the latest valuation of the unexhausted improvements which report was submitted by 10<sup>th</sup> March, 1987. The Court thereafter directed that Mrs Nyoni's estate be paid K25, 000.00 less any outstanding rent.*

*Exhibit 'JVB1' is the Writ of Summons and statement of claim filed by the Applicant, as plaintiff in cause number 2019/HP/0551, against the Plaintiff herein as the 1<sup>st</sup> defendant, Henry Ernest Van Blerk, the 2<sup>nd</sup> defendant, the Attorney General as the 3<sup>rd</sup> defendant and the Lusaka City Council as the 4<sup>th</sup> defendant.*

*In that matter, he sought a declaration that he is the rightful owner of a portion of Farm No 4300 that the 3<sup>rd</sup> and 4<sup>th</sup> defendants had subdivided, and were about to make available to third parties, which portion was bought from the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs. The Applicant also sought cancellation of the certificates of title that were issued to third*

*parties like Bantu Corporation Capital Limited, the 5<sup>th</sup> Defendant herein, and Kwikbuild Construction, the 4<sup>th</sup> Defendant herein, arising from the wrongful subdivision.*

*Exhibit 'JVB2' to the Plaintiff's affidavit in opposition is the notice of motion and affidavit in support, that the 1<sup>st</sup> and 2<sup>nd</sup> defendants filed in that cause, alleging that the claims were res judicata and statute barred, and an abuse of the Court process. Exhibit 'JVB3' is the Order of the Judge dated 13<sup>th</sup> September, 2019 dismissing the claims for being res judicata.*

*From the above, it can be seen that the claims relating to the estate of the late Violet Nyoni seeking ownership of portions of Farm 4300 was decided upon in cause number 1982/HP/669, and an attempt to re-litigate that claim was made in cause number 2019/HP/0551, and the claims were dismissed for being res judicata.*

*There is no evidence to show that the Applicant or indeed any other person who has an interest in the estate in the estate of the late Violet Nyoni ever appealed against the Judgment in the 1982 cause, or the Order made in the 2019 matter. The Applicant in the affidavit in reply states that the plaintiff in the 1982 matter has never executed the Judgment nor paid the Judgment sum that was*

*ordered in that cause. He alleges that he cannot enforce the portion of the Judgment in the 1982 matter relating to repayment to the late Violet Nyoni's estate, as it is statute barred in line with Section 4 of the Limitation Act, 1939. That Section provides as follows:*

*"An action shall not be brought upon any judgment after the expiration of twelve years from the date on which the judgment became enforceable and no arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due".*

*While this is indeed the position of the law, that in itself cannot give the Applicant locus standi in this matter on account of the fact that he is unable to enforce the 1982 Judgment. From that Judgment, it is clear that the same did not grant the estate of the late Violet Nyoni any interest in the land subject of these proceedings.*

*The 1982 cause found that the late Violet Nyoni was not the owner of the portions of Farm No 4300 that she had contracted to buy, hence the Order to refund her estate. I note that the Applicant has referred to exhibit 'DN4' to the affidavit in reply, as proof of ownership of the land. That document*

*is a certificate of title that was issued to Nyoni Turigas Thomas on 28<sup>th</sup> December, 2012 for the unexpired residue term of ninety -nine (99) years from 1<sup>st</sup> July, 2010 for the land being subdivision No 2 of subdivision D of Farm 4300.*

*The certificate of title does not state that the land is held by Nyoni Turigas Thomas as Administrator of the estate of the late Violet Nyoni, who entered into a contract of sale for the properties which the Plaintiff claims in this matter, and which claims as already seen, were not upheld in the Judgment in the 1982 matter. Further, while the Applicant in the affidavit in reply has referred to exhibit 'DN5' as a letter from the 1<sup>st</sup> Defendant acknowledging his interest in the property, exhibit 'DN5' is the Judgment in cause number 1982/HP/669.*

*Exhibit 'DN6' to the said affidavit, is a letter from the Commissioner of Lands to the Applicant dated 16<sup>th</sup> February, 2022, responding to a request seeking cancellation of title deeds and subdivisions on property No F/4300/C. The Commissioner of Lands in that letter advised that the office could not respond to the request, as there is an active Court matter in cause number 2017/HP/2193, which is this cause, and the*

*Applicant would have to await the outcome of the proceedings.*

*The Commissioner of Lands further advised that in terms of the law, neither the Commissioner of Lands nor the Registrar of Lands has power to cancel a certificate of title that has been duly registered in the absence of a Court Order to that effect. Thus, there is no evidence to show that the 1<sup>st</sup> Defendant in this matter has acknowledged the Applicant's interest in this matter.*

*More importantly, however, there is a Judgment that was delivered in cause number 1982/HP/669 which found that the late Violet Nyoni was not entitled to the properties that she had agreed to buy, and there is no evidence to show that there was a successful appeal against the said Judgment. By failing to execute to recover the claims that were awarded to the estate of the late Violet Nyoni in the 1982 case, and alleging that the said claim is now statute barred, the Applicant as Administrator of the estate sat on his rights.*

*On that basis, while the Applicant may be the Administrator of the estate of the late Violet Nyoni, he has not demonstrated that he has any interest in the property, subject of this suit, and that he will be affected by the outcome of this suit, even though he is in possession of the property. I*

***accordingly decline to join the Applicant as a 2<sup>nd</sup> Plaintiff in this matter.”***

4.57 As to the proceedings before the Planning Appeals Tribunal whose ruling is exhibited as ‘DN1’ to the affidavit that Denny Nyoni filed, which is dated 22<sup>nd</sup> July, 2024, and which found that the Enforcement Notice in respect of Farm 4300 in so far as it relates to the proposed or actual subdivision C of Farm 4300 was revoked, for having been unreasonably issued considering the facts of the matter, I can only say that Denny Nyoni has not shown that he appealed my Ruling which found that he could not be joined to the proceedings in cause number 2017/HP/2193.

4.58 Then as for the proceedings in cause number 2023/HP/1884, what I can state is that the High Court Judge who has conduct of that matter, has equal jurisdiction as I have.

4.59 ***Section 4 of the High Court Act*** in that regard states the following:

***“4. Subject to any express statutory provision to the contrary, all the Judges shall have and may exercise, in all respects, equal power, authority and jurisdiction, and, subject as aforesaid, any Judge may exercise all or any part of the jurisdiction by this Act or otherwise vested in the Court, and, for such purpose, shall be and form a Court.”***

12.4 Further, the holding in the case of ***Attorney General and Speaker of the National Assembly v The People*** <sup>(4)</sup> by the Supreme Court was that;

***“There is only one High Court. A decision of one Judge of the High Court becomes a Judgment of the High Court. A Judge of the High Court cannot override or otherwise interfere with a Judgment of another High Court Judge.”***

4.60 That being the position, and subject to what reliefs are being sought in that matter, the Judge in that matter, in deciding the case, will have to have regard to the provisions of ***Section 4 of the High Court Act.***

4.61 In terms of service of the Originating Summons on Denny Nyoni, Evans Mumbi and the others unknown, the record shows that Kwickbuild Corporation Zambia Limited obtained an Order to serve them through substituted service on the basis that there are unfinished and unoccupied structures on the land, and they did not know who was constructing on the property.

4.62 Denny Nyoni, Evans Mumbi and the others in stating that they were prejudiced by the obtaining of the Order for substituted service, stated that Kwickbuild Corporation Zambia Limited is aware that they are on the property, as they have finished structures on the land, which they occupy.

4.63 They further stated that Kwickbuild Corporation Zambia Limited issued an Enforcement Notice against them which it

served them, and this saw proceedings being commenced at the Planning Appeals Tribunal which quashed the Enforcement Notice.

4.64 I have referred to the Ruling of the Planning Appeals Tribunal which is dated 22<sup>nd</sup> July, 2024, which was between Denny Nyoni and the Lusaka City Council, and is exhibited as 'DN1' to the composite affidavit which Denny Nyoni filed in support of the applications which are before Court. Kwickbuild Corporation Zambia Limited was not a party to that matter. Therefore, it was not bound by the decision that was given in that matter.

4.65 What Kwickbuild Corporation Zambia Limited has shown, is that exhibit 'MM3' to the affidavit which was filed in support of the Originating Summons being the google map, shows the extent of the properties that fall within Subdivision C of Farm 4300, while that produced by Denny Nyoni shows only part what he claims is occupied.

4.66 In view of that, Kwickbuild Corporation Zambia Limited cannot be faulted for obtaining an Order for substituted service of the Originating Summons as the structures that fall within its' land for which it obtained an Order of possession are unfinished and unoccupied. The service was therefore not irregular.

## **5. CONCLUSION**

5.1 In view of what I have stated above, and the entire facts surrounding this case, Kwickbuild Corporation Zambia Limited has demonstrated that it is the legal owner of the

property known as Subdivision C of Farm 4300 on the basis of which it obtained an Order for possession of the land pursuant to **Order 113 of the Rules of the Supreme Court of England.**

5.2 I am alive to the powers that are vested in me in **Order 113/8 of the Rules of the Supreme Court of England** which states the following:

***“The court may, on such terms as it thinks just, set aside or vary any order made in proceedings under this Order.”***

5.3 However, on the facts of this case, and the findings that I have made above, setting aside the Order for possession on the basis that Denny Nyoni, Evans Mumbi and the others were not heard would not serve the ends of justice, as the undisputed evidence is that Kwickbuild Corporation Zambia Limited is the legal owner of Subdivision C of Farm 4300, and it did not licence or consent to Denny Nyoni, Evans Mumbi and the others unknown to enter or to remain on the said land.

5.4 There is no evidence on record to show that the certificate of title for the property, Subdivision C of Farm 4300 which was issued to Kwickbuild Corporation Zambia Limited, and which was the basis for the proceedings being taken out for summary possession of the said land has been cancelled.

5.5 This is therefore not a proper case, where a stay of further execution of the Writ of Possession, and to set aside the said Order of possession should be granted. I decline to grant the

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same, and discharge the stay of further execution of the Writ of Possession, which was earlier granted, with costs to Kwickbuild Corporation Zambia Limited, which shall be taxed in default of agreement.

5.6 Leave to appeal is granted.

**DATED AT LUSAKA THE 29<sup>th</sup> DAY OF APRIL, 2025**

*S. Kaunda*

**S. KAUNDA NEWA  
HIGH COURT JUDGE**

