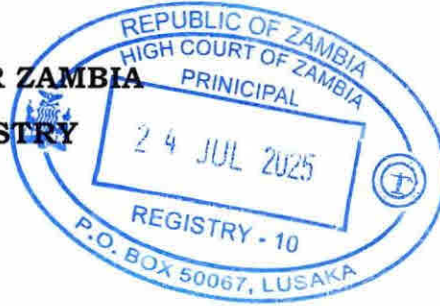


**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**

*(Civil Jurisdiction)*



**2025/HP/0420**

**IN THE MATTER OF:**

**AN APPLICATION FOR SUMMARY POSSESSION OF  
LAND PURSUANT TO ORDER 113 OF THE RULES OF  
THE SUPREME COURT OF ENGLAND, 1999 EDITION  
(WHITEBOOK)**

**IN THE MATTER OF:**

**THE PROPERTY KNOWN AS LOT NO 14784/M**

**BETWEEN**

**LYDIA CHIMBA**

**1<sup>ST</sup> APPLICANT**

**BUPE CHIMBA**

**2<sup>ND</sup> APPLICANT**

**AND**

**NOVICE SAMAKAKA**

**1<sup>ST</sup> RESPONDENT**

**UNKNOWN ILLEGAL SQUATTERS**

**2<sup>ND</sup> RESPONDENT**

**Before the Honourable Mrs. Justice R. Chibbabbuka on the 24<sup>th</sup> day of  
July, 2025**

For the Applicants : In person

For the Respondents : No appearance

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## **JUDGMENT**

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**Cases referred to:**

1. *Anti-Corruption Commission Vs Barnet Development Corporation Limited (2008) Volume 1, ZR 69 (SC)*

2. *David Nzooma Lumanyenda Kafuko Muzumbwa Vs Chief Chamuka and Kabwe Rural District Council and Zambia Consolidated Copper Mines Limited (1988-1989) Z.R 194 (S)*

**Legislation referred to:**

*Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia*

*Rules of the Supreme Court of England, 1965 (The White book) 1999 Edition*

**1.0 Introduction**

1.1 The applicants issued an Originating Summons for Possession of land on the 27<sup>th</sup> March, 2025 claiming the following reliefs:

1. A declaration that the applicants are the legal and beneficial owners of Lot 14784/M Lusaka.
2. A declaration that the respondents and/or their agents are illegally and unlawfully in occupation of the applicant's premises known as Lot 14784/M Lusaka.
3. An order granting the applicants vacant possession of the premises known as Lot 14784/M Lusaka.

**2.0 The applicant's affidavit evidence**

2.1 In an affidavit in support of the Originating Summons, sworn by Bupe Chimba, the 2<sup>nd</sup> applicant herein, he deposes as follows:

2.2 The applicants are Zambian nationals and therefore capable of owning land in Zambia. The applicants are both in possession of National Registration Cards as exhibited in the affidavit and marked "BC1". The applicants are the beneficial owners of Lot 14784/M Lusaka and have in their possession a Certificate of Title relating to the same as exhibited in the affidavit and marked "BC2".

2.3 The 1<sup>st</sup> respondent has without justifiable cause, illegally entered upon the applicants' property and demarcated plots to himself and to the 2<sup>nd</sup> respondents, who have commenced making developments thereon as is shown in exhibit

marked "BC3". Attempts to resolve this matter amicably has failed due to the respondents' hostility.

2.4 By reason of the respondents' illegal occupation of the applicants' property, the applicants have suffered loss, inconvenience and loss of quiet enjoyment of their land.

### **3.0 The applicant's skeleton arguments**

3.1 The applicants filed skeleton arguments in support on even date. For the jurisdiction of this court to entertain the application, reference was made to *Order 113 Rule 1* and *Order 8 (11)* of the *Rules of the Supreme Court of England, 1965 (The White book) 1999 Edition*. *Order 113 Rule* provides that:

*"Where a person claims possession of land which he alleges is occupied solely by a person or person (not being a tenant or tenants holding over after termination of a tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this order."*

3.2 In furtherance of the above provision of the law, it was argued by the applicants that for all intents and purposes, the applicants are without out a doubt the legal and beneficial owners of the property known as Lot 14784/M, Lusaka. Additionally, that the applicants are seeking for summary possession of the land and are as such rightfully before this court.

3.3 Reference was also made to *Section 33* of the *Lands and Deeds Registry Act, Chapter 185* of the *Laws of Zambia* which provides that a certificate of title is conclusive evidence of ownership of land to which it relates. To buttress this provision of the law, reference was also made to the case of **Anti-Corruption**

**Commission Vs Barnet Development Corporation Limited**<sup>1</sup> where it was held that:

*“Under section 33 of the Lands and Deeds Registry Act, a certificate of title is conclusive evidence of ownership of land by a holder of a certificate of title.....”*

3.4 Reference was also made to *section 35* of the *Lands and Deeds Registry Act* which provides:

*“35. After land has become the subject of a Certificate of Title, no title thereto, or to any right, privilege, or easement in, upon or over the same, shall be acquired by possession or user adversely to or in derogation of the title of the Registered Proprietor.”*

3.5 The applicants in making reference to the said *sections 33* and *35* of the *Lands and Deeds Registry Act* argued that, the applicants as holders of a certificate of title relating to Lot 14784/M Lusaka, have conclusive proof of ownership of the said property and the respondents do not have the right to adverse possession of the property.

3.6 To fortify the foregoing arguments, reference was also made to the case of **David Nzooma Lumanyenda Kafuko Muzumbwa Vs Chief Chamuka and Kabwe Rural District Council and Zambia Consolidated Copper Mines Limited**<sup>2</sup> where it was held that:

*“No right by adverse possession can be acquired if land becomes subject of a certificate of title.”*

3.7 On the basis of the foregoing authorities and law, the applicants submitted that the respondents are illegally occupying their property and the mere erection

of developments thereon cannot divest the applicants of ownership of the property. It was also submitted that the respondents must be removed from the property so as to allow the applicants take vacant possession of the same forthwith.

#### **4.0 The hearing**

4.1 At the hearing, the 2<sup>nd</sup> applicant submitted that they had filed an affidavit of service on the 5<sup>th</sup> June, 2025 as proof of service.

4.2 Upon a perusal of the said affidavit of service, this court confirmed that the respondents were served by substituted service via two advertisements in the Zambia Daily Mail newspaper on the 27<sup>th</sup> and 28<sup>th</sup> May, 2025 and allowed the 2<sup>nd</sup> applicant to proceed with the case.

4.3 The 2<sup>nd</sup> applicant placed reliance on the documents that they had filed before court.

#### **5.0 The decision of the Court**

5.1 The applicant in this cause of action has claimed for the following reliefs:

1. A declaration that the applicants are the legal and beneficial owners of Lot 14784/M Lusaka.
2. A declaration that the respondents and/or their agents are illegally and unlawfully in occupation of the applicant's premises known as Lot 14784/M Lusaka.
3. An order granting the applicants vacant possession of the premises known as Lot 14784/M Lusaka.

5.2 In support of this application the applicants filed an affidavit in support deposed to by the 2<sup>nd</sup> applicant. The respondents have not responded to this

action by way of filing an affidavit in opposition and skeleton arguments in support of the same, in spite of being served with the originating process and notice of hearing of this cause of action.

5.3 Section 33 of the *Lands and Deeds Registry Act, Chapter 185* of the *Laws of Zambia* is clear that a certificate of title is conclusive evidence of ownership of land. A perusal of exhibit “BC2” in the affidavit in support of the Originating Summons, shows a certificate of title dated 9<sup>th</sup> November 2020 relating to Lot No. 14784/M, Lusaka. The said certificate of title was issued under the hands and seal of the Registrar of the Lands and Deeds Registry in the names of Lydia Chimba and Bupe Chimba, the applicants herein. As such I find that the applicants are the legal and beneficial holders of the property known as Lot No. 14784/M, Lusaka.

5.4 Additionally, Section 35 of the *Lands and Deeds Registry Act* is categorically clear that no right by way of adverse possession of land can be upheld where a certificate of title has been issued. This position of the law was echoed in the case of **David Nzooma Lumanyenda Kafuko Muzumbwa Vs Chief Chamuka and Kabwe Rural District Council and Zambia Consolidated Copper Mines Limited** where it was held that:

*“No right by adverse possession can be acquired if land becomes subject of a certificate of title.”*

5.5 Based on the foregoing conclusive evidence before the Court, I see no reason why the applicants should be denied the reliefs that they seek as it is apparent that the respondents have no legal right to be on the applicants’ land and I find accordingly.

5.6 Consequently, this court declares and orders the following:

1. The applicants are the legal and beneficial owners of Lot No. 14784/M, Lusaka.
2. The respondents and or their agents are illegally and unlawfully in occupation of the applicants' premises known as Lot No. 14784/M Lusaka.
3. The applicants are granted vacant possession of the premises known as Lot 14784/M Lusaka forthwith.
4. Costs for this action are awarded to the applicants to be paid forthwith.

Leave to appeal is hereby granted.

Dated the *24<sup>th</sup>* day of *July* 2025



**Ruth Chibbabbuka**

**JUDGE**