

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

(Civil Jurisdiction)



2025/HP/0779

IN THE MATTER OF:

ORDER 30 RULE 11 OF THE OF THE HIGH COURT
RULES, CHAPTER 27 OF THE LAWS OF ZAMBIA AS
READ TOGETHER WITH ORDER 113 RULE 1 OF THE
SUPREME COURT RULES OF ENGLAND, 1965,
(WHITE BOOK)1999 EDITION

IN THE MATTER OF:

AN APPLICATION FOR SUMMARY POSSESSION OF
STAND NO. LN-5660/1255 CHISAMBA

BETWEEN

FLORENCE BESA

APPLICANT

AND

CHARLES CHILWA
ALICE CHILWA

1ST RESPONDENT
2ND RESPONDENT

Before the Honourable Mrs. Justice R. Chibbabbuka on the 30th day of
December, 2025

For the Applicant : Ms. M. Chikoye, Messrs Findlay Besa & Associates

For the Respondents: No appearance

JUDGMENT

Cases referred to:

1. *Dutton & Others Vs Manchester Airport Plc* (1999) 2 ALL ER 691
2. *Oscar Chinyanta & 31 Others Vs Alasia Building Construction Ltd & Tap Zambia Limited*
18

3. *Anti-Corruption Commission Vs Barnett Development Corporation Limited (2008) Volume 1 Z.R 69*
4. *Liamano Choka Vs Ivor Chilufya (SCZ Judgment No. 41 of 2002)*
5. *David Nzooma Lumanyenda Kafuko Muzumbwa Vs Chief Chamuka and Kabwe Rural District Council and Zambia Consolidated Copper Mines Limited*

Legislation referred to:

The High Court Rules, in the High Court Act, Chapter 27 of the Laws of Zambia.

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 applicant issued an Originating Summons for Possession of land on the 5th June, 2025 claiming the following relief:

An order that she recover possession of Stand No LN-56605/1255 Chisamba on the ground that she is entitled to possession and that the persons in occupation are in occupation without any license and consent from the applicant.

2.0 The applicant's affidavit evidence

2.1 In an affidavit in support of the Originating Summons of even date, and sworn by Florence Besa, the applicant herein, she deposes as follows:

2.2 She is the registered legal and beneficial owner of Stand No. LN-56605/1255 Chisamba as evidenced by a certificate of title produced in the said affidavit and marked "FB1". Following her acquisition of the said property she allowed the respondents to continue being in occupation of her property.

2.3 She has become aware of the respondent's illegal activities wherein they claim ownership of her property and have intentions of illegally selling the same. Arising from this state of events she revoked the permission for the respondents

to stay on her property and gave them notice to vacate the same which they have ignored, refused and or neglected to engage or respond to her request.

2.4 The continued illegal occupation of her premises by the respondents is obstructing her from enjoying the ownership of her property and utilizing the same for gainful purpose.

3.0 The applicant's skeleton arguments

3.1 The applicant filed skeleton arguments in support on even date. For the jurisdiction of this court to entertain the application, reference was made to *Order 30 Rule 11* of the *High Court Rules*, in the *High Court Act, Chapter 27* of the *Laws of Zambia*. Reference was also made to *Order 113 Rule 1* of the *Rules of the Supreme Court of England, 1965 (The White book) 1999 Edition* which 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 To buttress the above provisions of the law, reference was also made to the case of **Dutton & Others Vs Manchester Airport Plc¹** and **Oscar Chinyanta & 31 Others Vs Alasia Building Construction Ltd & Tap Zambia Limited²**. Counsel argued that from the foregoing law and authorities, the applicant is entitled to possession as she is the legal owner of the property subject of these proceedings and the occupants of the applicant's property have no claim of right to the property.

3.3 It was argued by the applicant that as seen from the exhibits on the affidavit in support of Originating Summons particularly in paragraph 6, that it is not a disputable fact that the applicant is the legal owner of the property subject of these proceedings and the persons in occupation of the said property have no tenancy agreement and do not occupy the said premises as employees of the applicant. For these arguments reference was 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 shall be conclusive evidence as to ownership to land as from the date of its issue and upon and after the issue thereof.”

3.4 Reference was also made to the case of **Anti-Corruption Commission Vs Barnett Development Corporation Limited**³, which case cited *Section 33* of the *Lands and Deeds Registry Act* as a certificate of title being conclusive evidence of ownership of land. Counsel submitted that from the above provisions of the law and the factual evidence presented to this court in *casu*, the applicant is the owner of the property subject of these proceedings and as such is entitled to be granted possession of the said property. This is because the applicant holds a valid title to the property and there is no proof that the persons in occupation have authority to occupy the same which in clear terms is an illegal occupation of the applicant's premises. For this argument reference was made to the case of **Liamano Choka Vs Ivor Chilufya**⁴ where the Supreme Court held that:

“the summary procedure under Order 113 can only be suitable for squatters and others without any genuine claim of right or who have since transformed into squatters.”

3.8 On the basis of the foregoing authorities and law, the applicant submitted that the applicant has shown that she is the legal owner of the property and that the respondents are squatters who are illegally occupying her property. Counsel

prayed that this court grants the applicant a final order for possession to allow the applicant enjoy her property and to use it for gainful purpose.

4.0 The respondent's affidavit in opposition

4.1 The respondents filed an affidavit in opposition on the 19th September, 2025 deposed to by both respondents who aver that they were unaware that the applicant obtained a certificate of title over the land in issue as the said land is traditional land purchased by their late mother. They denied knowledge of the applicant and that the said applicant does not reside at Stand No. 56605/1255 Chisamba.

4.2 The respondents averred further that the applicant has no right to revoke permission as she is not the rightful owner of Stand No. 56605/1255, Chisamba having obtained the same fraudulently. They believed that the applicant obtained the said certificate of title fraudulently because upon the death of their mother, no Administrator was appointed to her estate and therefore no one had lawful authority to sell the land.

4.3 They were never served with any notice of eviction relating to Stand No. 56605/1255 Chisamba. The applicant relied on a purported letter of sale bearing the 1st and 2nd respondent's names with an alteration. The 2nd respondent only became aware of this document upon conducting a search at the Chisamba Council after serving the originating process. The 2nd respondent is not the author of the said document as she is illiterate and unable to read or write

5.0 The hearing

5.1 At the hearing, only the applicant was present and there was no appearance by the respondents or their legal counsel who were present at the previous hearing and were aware of the hearing date. On that basis the court allowed the applicant to proceed.

5.2 Counsel for the applicant placed reliance on the documents before court and more or less reiterated what was in the said affidavit and skeleton arguments in support of this application.

6.0 The decision of the Court

6.1 The applicant in this cause of action has claimed for:

An order that she recover possession of Stand No LN-5605/1255 Chisamba on the ground that she is entitled to possessions and that the persons in occupation are in occupation without any license and consent from the applicant.

6.2 Before addressing the claim, the Court notes that on the Originating Summons the applicant described the property as LN-53306/1555 Chisamba but the certificate of title describes the property as LN-5660/1255 Chisamba. I find that the description of the property in issue in the pleadings was a typographical error and that the property is actually LN-56606/1255 as described in the certificate of title exhibited by the applicant in her affidavit in support.

6.3 Turning now to the claim before this Court, the applicant has shown in her affidavit evidence that she is the owner of the said Stand No. 56605/1255 Chisamba by virtue of a certificate of title in her name relating to the said land. *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 "FB1" in the affidavit in support of the Originating Summons, shows a certificate of title dated 21st February, 2020 relating to Stand No. Chisa/LN 56605/1255. The said certificate of title was issued under the hands and seal of the Registrar of the Lands and Deeds Registry in the name of Florence Besa, the applicant herein. As such I find that the applicant herein is the legal and beneficial holder of the property known as Stand No. Chisa/LN 56605/1255.

6.4 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**⁵ where it was held that:

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

6.5 In relation to the affidavit in opposition that was filed by the respondents, while the same contains an allegation of fraud, there is no evidence placed before this court to substantiate the said allegation of fraud as there are no details concerning their mother’s purchase of the said land, by way of a contract of sale or registration in the village register, her date of death and if an Administrator was subsequently appointed to deal with her estate. Additionally, there is no evidence before this court by way of a National Registration Card to show that the 2nd respondent is not the holder of the National Registration Card bearing the number 289576/17/1 as is indicated in the letter exhibited in the respondent’s affidavit. As such I do not accept the respondent’s version of events due to insufficient evidence placed before the court to substantiate their position, that the applicant obtained her title deed fraudulently.

6.6 Based on the foregoing conclusive evidence before the Court, I see no reason why the applicant should be denied the relief that she seeks as it is apparent that the respondents have no legal right to be on the applicants’ land and I find accordingly.

6.7 Consequently, this court grants the following:

1. An order that the applicant recover vacant possession of Stand No. LN-5605/1255 Chisamba forthwith.
2. Costs for this action are awarded to the applicant to be paid forthwith.

Leave to appeal is hereby granted.

Dated the..... day of 2025

