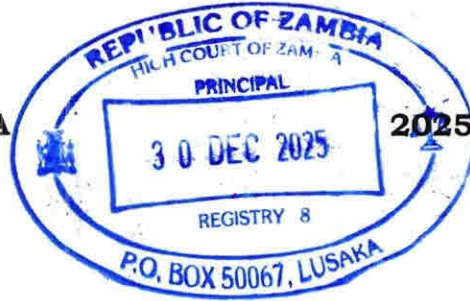


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**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**

(Civil Jurisdiction)



2025/HP/0784

**IN THE MATTER OF: ORDER 113 RULE 1-4 OF THE RULES OF THE
SUPREME COURT, 1999 EDITION.**

**IN THE MATTER OF: APPLICATION FOR SUMMARY POSSESSION OF
SUBDIVISION D OF FARM NO. SHIBU/1592272
SITUATE IN THE CENTRAL PROVINCE OF ZAMBIA.**

BETWEEN

MOHAMAD JAVED YUNUSBHAI PATEL

APPLICANT

AND

PERSONS UNKNOWN

RESPONDENTS

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

For the Applicant : Mr. J. Tembo, Messrs. Paul Norah Advocates
For the Respondents : N/A

JUDGMENT

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*

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 applicant issued an Originating Summons for Possession of land on the 5th June, 2025 for recovery of possession of the property known as Subdivision D of Farm No. SHIBU/1592272 situate in Central Province on the ground that he is entitled to possession of the same as the registered owner, and that the respondents are in occupation of the same without his licence or consent.

2.0 The applicant's affidavit evidence

2.1 In an affidavit in support of the Originating Summons, the applicant swears that sometime in 2022, he was gifted Subdivision D of Farm No. SHIBU/1592272 situate in Central Province by Maiy Oddin Yakub. The subject land was initially owned by Roster Muleya before passing on to Maiy Oddin Yakub, then him. The respondents have for some time been occupying the said property without his consent or licence.

2.2 The respondents initially took occupation of the land by making beams for a wall fence within his boundaries. He was alerted of this by his worker, Mr. Mwamba. The respondents then proceeded to build a fence across the boundaries of the property without his consent or licence. His several attempts to evict the respondents from the property have proved futile as they claim is theirs, prompting him to engage the surveyor's department to ascertain the extent of the intrusions. Sometime in December, 2024, he placed an advert in a newspaper of wide circulation requesting the unknown persons to desist from occupying his land but the same proved futile.

3.0 The applicant's skeleton arguments

3.1 The applicant filed skeleton arguments in support on even date as the affidavit. For the jurisdiction of this court to entertain the application, reference was made to *Order 113 Rule 1* 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 Counsel also referred to *Section 33* of the *Lands and Deeds Registry Act* and the case of **Anti-Corruption Commission vs Barnet Development Corporation Limited**¹ for the argument that a certificate of title is conclusive evidence of ownership of land. Counsel also relied on *Section 35* of the *Lands and Deeds Registry Act* for the argument that land which is subject of a certificate of title cannot be adversely acquired. Counsel prayed that the applicant be granted possession of the property in issue forthwith.

4.0 The hearing

4.1 At the hearing, upon seeing the affidavit of service as proof of service via substituted service, the court allowed the applicant to proceed. Counsel for the applicant relied on the affidavit and skeleton arguments in support of the originating summons. Counsel prayed for the grant of the order sought with costs.

5.0 The decision of the court

5.1 I have carefully considered this matter in which the applicant in this cause of action is seeking an order of possession of the property known as Subdivision D of Farm No. SHIBU/1592272, Central Province. I have carefully examined *Section 33 of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia* which is clear that a certificate of title is conclusive evidence of ownership of land. The exhibit marked “MJYP-1” in the affidavit in support of the Originating Summons is a certificate of title relating to Subdivision D of Farm No. SHIBU/1592272 issued to the applicant. The said certificate of title was issued under the hand and seal of the Registrar of the Lands and Deeds Registry.

5.2 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**² where it was held that:

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

5.3 Based on the foregoing conclusive evidence before the Court, I see no reason why the applicant should be denied the relief he seeks. It is apparent that only the registered owner, being the applicant, has a legal right to be on the land in question. The respondents should thus be ejected.

6.4 Consequently, this court declares and orders the following:

1. The respondents and or their agents are illegally and unlawfully in occupation of the premises known as Subdivision D of Farm No. SHIBU/1592272.
2. The applicant is granted vacant possession of the premises known Subdivision D of Farm No. SHIBU/1592272 forthwith.
3. Costs for this action are awarded to the applicant to be paid forthwith.

Leave to appeal is hereby granted.

Dated the..... day of 2025



R.H Chibbabbuka

HIGH JUDGE