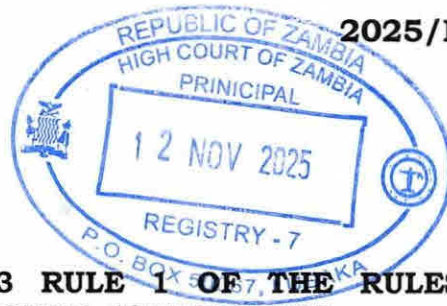


**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**

*(Civil Jurisdiction)*



**2025/HP/1122**

**IN THE MATTER OF:**

**ORDER 113 RULE 1 OF THE RULES OF THE  
SUPREME COURT, 1999 EDITION.**

**IN THE MATTER OF:**

**APPLICATION FOR SUMMARY POSSESSION OF FARM  
NO. 667/A/12**

**BETWEEN**

**MBONYIWE BANDA**

*(Suing as Administratrix of the estate  
of Ernest John Rabson Banda)*

**APPLICANT**

**AND**

**PERSONS UNKNOWN**

**RESPONDENTS**

**Before the Honourable Mrs. Justice R. Chibbabbuka on the 12<sup>th</sup> day of  
November, 2025**

For the Applicant : Mr. R. Musumali, Messrs. SLM Legal Practitioners

For the Respondents : In Person.

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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. *Liamond Choka vs Ivor Chilufya (2002) Z.R 33 (SC)*
3. *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 applicant issued an Originating Summons for Possession of land on the 8<sup>th</sup> August, 2025 for recovery of possession of Farm No. 667/A/12 situate in Lusaka on the ground that she is entitled to possession of the same and that the respondents are in occupation of the same without licence or her consent.

**2.0 The applicant's affidavit evidence**

2.1 In an affidavit in support of the Originating Summons, the applicant swears that she is the administratrix of the estate of the late Ernest John Rabson Banda (the deceased) who died intestate on the 24<sup>th</sup> October, 2016 at the University Teaching Hospital. The deceased was the legal owner and registered proprietor of the property in issue, and that she is in possession of the original certificate of title issued under the hand and seal of the registrar of Lands and Deeds. The property was acquired by the deceased without any encumbrances whatsoever as confirmed by the Lands Register computer printouts exhibited as "MB3" in the affidavit in support of this matter.

2.2 The respondents have been interfering with her quiet possession of the property by continuing to claim ownership of it. She issued a letter of demand advising the respondents to desist from their illegal activities but to no avail. The respondents have been interfering and in occupation without her licence or consent, and are denying her the enjoyment of possession and benefit of the property. She desires to take physical possession and make further development on the property.

### **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 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 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**<sup>1</sup> for the argument that a certificate of title is conclusive evidence of ownership of land. Counsel argued further that the deceased acquired the property in question in the year 2008 from one Mark Chona Chuungu. That the extent or boundaries of the applicant's property is as per the certificate of title and cannot be questioned because the property has been surveyed as confirmed by the survey diagrams contained in the certificate of title.

3.3 That the respondents are within the beacons and boundaries of the applicant's property and that she has full authority to eject them. The defendants are neither licensees nor tenants of the applicant and thus are squatters. That the court in the case of **Liamond Choka vs Ivor Chilufya**<sup>2</sup> held that *Order 113* of the *White book* is suitable for squatters and others without any genuine claim of right. 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>3</sup>** where it was held that:

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

3.4 On the basis of the foregoing authorities and law, the applicant submitted that the respondents are illegally occupying her property and must thus be ejected from the same. Counsel prayed that the applicant be granted possession of the property in issue forthwith.

#### **4.0 The hearing**

4.1 At the hearing, one respondent, Kelvin Nkhoma, was present and informed the court that the respondents had engaged legal representation through Legal Aid, who did not attend. This court refused to adjourn the matter because, at the previous sitting, the respondents were granted an adjournment to secure legal representation, and thus should have ensured their lawyer was before court.

4.2 I proceeded to hear the matter in which applicant’s counsel relied on the affidavit and skeleton arguments in the support of the matter, and briefly restated. 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 Farm No. 667/A/12. In support of this application, the applicant filed an affidavit in support. 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. One respondent did however attend to the hearing of this matter as indicated earlier in this judgment.

5.3 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. A perusal of exhibit “MB2” in the affidavit in support of the Originating Summons, shows a certificate of title relating to Farm No. 667/A/12, Lusaka. 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 Ernest John Robson Banda. Exhibits “MB1” and “MB3” show that the applicant is the appointed Administratrix of the estate of the said Ernest John Robson Banda.

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 applicant should be denied the relief she seeks. It is apparent that the respondents have no legal right to be on the land in question and should thus be ejected.

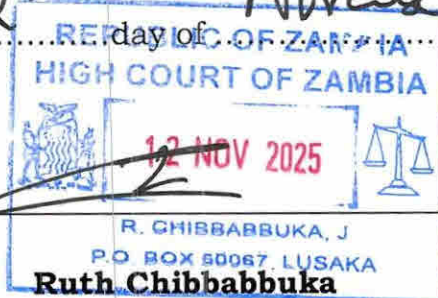
5.6 Consequently, this court declares and orders the following:

1. The respondents and or their agents are illegally and unlawfully in occupation of the premises known as Farm No. 667/A/12, Lusaka.

2. The applicant is granted vacant possession of the premises known as Farm No. 667/A/12 forthwith.
3. Costs for this action are awarded to the applicant to be paid forthwith.

Leave to appeal is hereby granted.

Dated the 12<sup>th</sup> day of November 2025



**JUDGE**