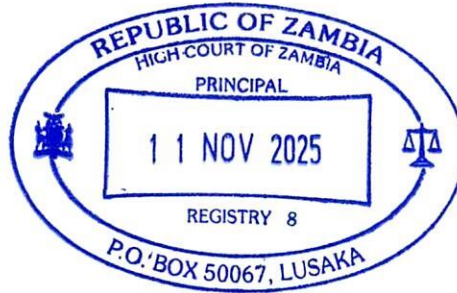


**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA  
(Civil Jurisdiction)**

**2018/HP/1698**



**BETWEEN:**

**JAMES MTONGA  
JOSEPH MASEKO**

**1<sup>ST</sup> PLAINTIFF  
2<sup>ND</sup> PLAINTIFF**

**AND**

**JMZ PROPERTIES ZAMBIA LIMITED  
LUSAKA CITY COUNCIL**

**1<sup>ST</sup> DEFENDANT  
2<sup>ND</sup> DEFENDANT**

**BEFORE HON. JUSTICE E. P. MWIKISA**

*FOR THE PLAINTIFF: MR. M. PHIRI OF MESSRS MPM LEGAL PRACTITIONERS*

*FOR THE 1<sup>ST</sup> DEFENDANT: NIL*

*FOR THE 2<sup>ND</sup> DEFENDANT: MR. A. NSAMA- DIRECTOR LEGAL SERVICES LUSAKA CITY COUNCIL*

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# **RULING**

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**Cases Referred To:**

- 1. Justine Mutale v William Mutale (SCZ Appeal No. 141/2008)*
- 2. City Bank Zambia Limited v Suhayl Dudhia CAZ/ 16/2020*
- 3. Esnart Mumba v Cosmo Mumba 2023/HP/0092*
- 4. Mbazima & Others Joint Liquidators of Zimco Limited (in liquidation) v Reuben Vera (SCZ No.6 of 2001)*

**Legislation Referred To:**

1. *The Rules of the Supreme Court of England, 1999, Edition, White Book*
2. *The Urban and Regional Planning Act No. 3 of 2015*

This is the 2<sup>nd</sup> defendant's application to dismiss action for want of jurisdiction pursuant to Order 14A Rule 1 of the Rules of the Supreme Court of England, 1999, Edition, White Book as read together with Section 2 of the Urban and Regional Planning Act No. 3 of 2015. The application is dated 28<sup>th</sup> October, 2024, and is supported by an affidavit and skeleton arguments of even date. The affidavit was deposed to by one Anna Namwila, a Legal Assistant in the employ of the 2<sup>nd</sup> defendant. It was deposed therein that the Plaintiffs commenced this action on 1<sup>st</sup> October, 2018, by way of writ of summons and statement of claim. That the aforestated originating process is improperly before this Court as this Court has no jurisdiction to preside and adjudicate over this matter. It was deposed that this is a fit and proper case for this Court to dismiss in totality owing to the fact that this matter derives from an occupancy licence which, as a result, falls within the jurisdiction of the Subordinate Court.

In opposing the application, the 1<sup>st</sup> plaintiff filed an affidavit in opposition dated 22<sup>nd</sup> November, 2024, deposed to by James Mtonga, the 1<sup>st</sup> plaintiff herein. The 1<sup>st</sup> plaintiff deposed that he filed a writ of summons and statement of claim on 1<sup>st</sup> October, 2018, and then filed an amended writ of summons and statement of claim on 5<sup>th</sup> October, 2018, seeking inter alia, compensation for unlawful demolition of his shop and damages for loss of business. The 1<sup>st</sup> plaintiff stated that the originating process issued and served against the 2<sup>nd</sup> defendant is not improperly before the court as this court has the jurisdiction to preside and adjudicate over this matter. That this matter is not primarily founded on the issue of an occupancy license as evidenced by the reliefs sought by the 1<sup>st</sup> plaintiff. It was deposed that the matter is premised on the fact that the 1<sup>st</sup> defendant unlawfully demolished his shop without any notice. That the 1<sup>st</sup> plaintiff has thus, lost business and suffered loss and damage. The 1<sup>st</sup> plaintiff deposed that he will be prejudiced if this matter is dismissed.

When the matter came up for hearing on 30<sup>th</sup> June, 2025, Counsel for the 2<sup>nd</sup> defendant, Mr Nsama, submitted that this was the 2<sup>nd</sup> defendant's application to dismiss matter for want of jurisdiction pursuant to Order 14A of the RSC, White Book. That the application

is supported by an affidavit and skeleton arguments. Counsel went on to submit that the 2<sup>nd</sup> defendant's application borders on the jurisdiction of this Court to hear this matter bearing in mind Section 2 of the Urban and Regional Planning Act which defines Court as Subordinate Court. That the Court's have, in a plethora of authorities, guided that in matters of occupancy licences, the Subordinate Court is the court of first instance as held in **Justine Mutale v William Mutale (SCZ Appeal No. 141/2008)**<sup>1</sup>. Counsel prayed that the matter be dismissed and referred to the Subordinate Court.

In opposing the application, Counsel for the Plaintiff, Mr Phiri, contended that this matter was commenced in 2018, and that the Plaintiff has been attending court and that orders for directions were issued and pleadings closed. That there were adjournments mid-trial and that the 2<sup>nd</sup> defendant has now decided to raise a preliminary issue, 8 years later, when the defendants had already subjected themselves to the authority of the Court. Counsel was of the opinion that the defendants acknowledged the jurisdiction of this Court. Counsel submitted that Order 2 Rule 2 states that any application to set aside for irregularity any proceedings, judgment or order shall not

be allowed unless it is made within a reasonable time. It was Counsel's submission that the 2<sup>nd</sup> defendant's application was not made within a reasonable time and that the Court's resources have been wasted. Counsel went on to state that Order 2 rule 2 of the RSC provides for fresh steps taken and that there has never been an application to set aside or seek leave before making this application. That this application is meant to waste the Court's time. In addition, Counsel contended that the issue of there being an occupancy licence does not arise as the 1<sup>st</sup> and 2<sup>nd</sup> defendants moved on the 1<sup>st</sup> plaintiff's property and destroyed the shop. Counsel submitted that this Court has inherent jurisdiction to hear this matter. Counsel prayed that the 2<sup>nd</sup> defendant's application be dismissed.

In reply, Counsel for the 2<sup>nd</sup> defendant submitted that in the case of **City Bank Zambia Limited v Suhayl Dudhia CAZ/16/2020<sup>2</sup>**, the Court stated that once the issue of jurisdiction is brought up, the Court must deal with it right away. That if a Court proceeds to hear a matter when it has no jurisdiction, its decision will be rendered a nullity.

I have taken note of the skeleton arguments on the record.

I have carefully considered the affidavit evidence as well as the skeleton arguments on the record. A brief background to this application shows that the plaintiffs herein commenced this action by way of writ of summons and statement of claim dated 1<sup>st</sup> October, 2018, and amended on 5<sup>th</sup> October, 2018, seeking inter alia; **payment of the sum of K500,000.00 being compensation for the unlawful demolition of the shop situate at 03/29/189/11009, Kalingalinga, Lusaka; damages for loss of business; damages for trauma and mental anguish arising from the demolition of the shop; a declaration that the 1<sup>st</sup> plaintiffs is the absolute owner of the property being number 03/29/189/11009, Kalingalinga, Lusaka.**

In the statement of claim, the plaintiffs pleaded that the 2<sup>nd</sup> defendant herein, sometime in 2001, wrote a letter to the 2<sup>nd</sup> plaintiff informing him that his application for a business plot was successful culminating in the issuance of Occupancy Licence number 18430, which was duly issued to the 2<sup>nd</sup> plaintiff on 1<sup>st</sup> February, 2002. That the said Occupancy Licence was valid for a period of 30 years subject to compliance. It was further pleaded that the 1<sup>st</sup> and 2<sup>nd</sup> plaintiff entered into a sell agreement of the property in issue and that upon

signing the said agreement, the 1<sup>st</sup> plaintiff took over the property subject of the Occupancy Licence. That on 14<sup>th</sup> September, 2018, the 1<sup>st</sup> plaintiff discovered that the property in issue was demolished by the 1<sup>st</sup> defendant who then erected an illegal structure on the property resulting in this cause of action.

In the defence dated 2<sup>nd</sup> August, 2019, the 1<sup>st</sup> defendant averred that prior to purchasing the property in issue now known as Stand Number 3081924, Kalingalinga, Lusaka, a diligent search by the 1<sup>st</sup> defendant did not show any purported interest whatsoever on the property with respect to the plaintiffs. The 1<sup>st</sup> defendant also averred that it legally acquired the property in issue from the 2<sup>nd</sup> defendant in accordance with the relevant laws, regulations and procedure on acquisition of land in Zambia. That all structures built on the property in issue are in conformity with planning permission and notice duly given to the general public with no objections whatsoever. That a further perusal of the record shows that the property cited by the 1<sup>st</sup> defendant as Stand No. 3081924, Kalingalinga, is subject of a Certificate of Title dated 10<sup>th</sup> July, 2018.

I find that although the 1<sup>st</sup> plaintiff, in the affidavit in opposition to this application, deposed that this matter is not primarily founded on

the issue of an Occupancy Licence, but rather premised on the unlawful demolition of his property without any notice, I hold the view that the main issue at the heart of this dispute is ownership of the property in contention. I am of the considered view that once it is determined who the rightful owner of the property in issue is, between the 1<sup>st</sup> plaintiff and the 1<sup>st</sup> defendant, the rights that flow therefrom can then be established.

The question I must now answer is whether or not this action is properly before this Court. I note that the property in issue herein is being claimed by both the 1<sup>st</sup> plaintiff and the 1<sup>st</sup> defendants herein. The 1<sup>st</sup> plaintiff produced an Occupancy Licence to substantiate his claims to the property, while the 1<sup>st</sup> defendant produced a Certificate of Title in its names relating to the same property in issue. It follows therefore that the property in issue is subject of both an Occupancy Licence and a Certificate of Title as both parties claiming ownership have produced the said documents to authenticate their claims. It is trite that Section 133 of Lands Act, states that certificate of title is evidence of ownership and in the absence of fraud a certificate is valid.

It is trite law that the Subordinate Court is the court of first instance mandated to resolve disputes involving property subject of an Occupancy Licence governed by the Urban and Regional Planning Act No. 3 of 2015. See the case of **Esnart Mumba v Cosmo Mumba 2023/HP/0092<sup>3</sup>**, which case is of persuasive value to me and which I cite with approval.

Had both parties produced Occupancy Licences to prove ownership to the property herein, it goes without saying that I would not have had jurisdiction to entertain this matter as the action should have been commenced in the Subordinate Court as per the authority cited above. The facts of this case, however, are such that the plaintiffs have produced an Occupancy Licence while the 1<sup>st</sup> defendant has produced a Certificate of Title making this action distinguishable from the **Esnart Mumba v Cosmo Mumba** case supra. Section 23 of the Subordinate Court Act Chapter 23 of the Laws of Zambia provides that:

***“If in any civil case or matter before a Subordinate Court, the title to any land is disputed, or the question of the ownership thereto arises, the court may adjudicate thereon if all parties interested consent; but, if they do not consent, the presiding magistrate shall apply to the High Court to transfer such cause or matter to itself.”***

This means the Subordinate Court only has jurisdiction to hear disputes relating to title or ownership to land when all parties to that action consent. In other words, the consent of all parties is required by law before a magistrate can adjudicate on matters relating to ownership of land. There is no such condition in the High Court. Furthermore, it is clear from the record that the plaintiffs herein are impugning the 1<sup>st</sup> defendant's title to the land in issue. I say so because the 1<sup>st</sup> plaintiff is seeking; inter alia, a declaration that he is the absolute owner of the property in issue. In the case of **Mbazima & Others Joint Liquidators of Zimco Limited (in liquidation) v Reuben Vera (SCZ No.6 of 2001)**<sup>4</sup> the Supreme Court stated that:

***“The law allows only the High Court to entertain issues relating to impugning of certificate of land.”***

Looking at the circumstances of this case, I am of the considered view that it would be prudent and in the interest of justice to have this action continue in the High Court. To insist that this action be commenced in the Subordinate Court in relation to the Occupancy Licence, when the property in question is subject of both an Occupancy Licence and a Certificate of Title, would result in asking that the different claims by the plaintiffs and 1<sup>st</sup> defendant be brought

in separate actions although involving the same parties and arising from the same set of facts. This is more so if the parties to the matter do not consent to the Subordinate Court adjudicating on the whole matter. This in turn would amount to multiplicity of actions, a practice which the courts have always frowned upon. I am therefore of the considered view that the High Court is the appropriate and suitable forum to deal with this action as it can deal with all the issues arising there from as a whole and at the same time. There are contentious issues in this case which can only be determined at trial.

For the reasons stated, the 2<sup>nd</sup> defendant's application fails and I accordingly dismiss it and order that the parties herein proceed to trial.

Leave to appeal is granted.

Dated at Lusaka the .....<sup>th</sup>..... day of *November*, 2025



.....  
**ELITA PHIRI MWIKISA**  
**JUDGE**