

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

2021/HP/0406

BETWEEN:

GODWELL IPUTU KABISA

PLAINTIFF

AND

**NGAMBO LUNETA
DR. MUSAKHA-NOV-JADGIMULAD**

**1ST DEFENDANT
2ND DEFENDANT**

**Before Hon. Lady Justice S. Chocho on 16th December, 2025 in
Chambers**

For the Plaintiff: Mr. F. M. Chombo – Messrs Chombo and Company
For the 1st Defendant: Ms. C. Jere – National Legal Aid Clinic for Women
For the 2nd Defendant: No Appearance

J U D G M E N T

Cases Referred to:

- 1. Ventriglia and Another vs Finsbury Investment Ltd. SCZ
Appeal No. 2 of 2019.***

Legislation Referred to:

- 1. Local Courts Act Chapter 29 of the Laws of Zambia.***

1. **INTRODUCTION**

1.1 This Judgment is in respect of the Plaintiff's claims as against the Defendants. The record will show that the Plaintiff by Amended Writ of Summons and Statement of Claim dated June 8th, 2022, claims the following;

- (i) An Order that Plaintiff is the legal and rightful owner of House Number 88/27 situate in Jack Compound in Lusaka, Zambia;
- (ii) An Order that Plaintiff takes vacant possession of house Number 88/27 situate in Jack Compound in Lusaka from 2nd Defendant and his Agents illegally occupying the said house;
- (iii) Mandatory order directing 1st Defendant to account for the money which are the proceeds of the illegal sale of the said house Number 88/27 and refund the money to the 2nd Defendant;
- (iv) Declaration and Order that the sale of house Number 88/27 in Jack Compound in Lusaka to 2nd Defendant was illegal, null and void as it had no blessings from the Plaintiff, his children and relatives and normal procedure of selling the house was not followed by the vendor;
- (v) An Order to cancel the sale of the house and Certificate of Title in possession of 2nd Defendant relating to House Number 88/27, Jack Compound, Lusaka;
- (vi) Declaration and Order that 1st Defendant's action through which she caused the house to be sold to 2nd Defendant was illegal and unlawful;

- (vii) Declaration and Order that transfer of ownership of house Number 88/27 situated in Jack Compound to 2nd Defendant or any person, if any, is illegal, null and void the Plaintiff did not consent the sale or transfer of the ownership of the said house;
- (viii) Declaration and Order that Chawama Local Court lacks capacity to order for the repossession and sale of the house and any order issued by the Chawama Local Court resulting in the illegal sale of the said house is null and void for lack of jurisdiction;
- (ix) Damages for loss of use of the house and depriving Plaintiff his right to own the said house and enjoy peaceful tenancy;
- (x) An Order compelling 1st Defendant to surrender the occupancy license to Plaintiff as the legal owner of the house and said occupancy license for house Number 88/27 in Jack Compound, Lusaka;
- (xi) An Order that the Plaintiff has suffered loss of property and that the defendant must account for the building materials that were not part of the house and further that the Defendant pays damages to the Plaintiff for the loss of the building materials and the buildings that were not part of the house;
- (xii) Damages for stress, anguish, threats of violence, inconvenience and trauma suffered by the Plaintiff as a result of Defendant's action;
- (xiii) Costs and incidental to these proceedings, plus interest on the amount found due.

- 1.2 In response, the 1st Defendant entered Appearance and filed Defence dated July 7th, 2022. By that Defence the 1st Defendant disputes the Plaintiff's claims and avers that the Plot No. 88/27 Jack Compound (hereinafter referred to as Subject Property) was sold by Bailiffs under Property Settlement Order of Court.
- 1.3 The Plaintiff joined issue with the Defendant's Defence by Reply dated August 3rd, 2025.
- 1.4 The 2nd Defendant who was joined by Court Order did not enter Appearance nor file Defence.

2. **TRIAL COURSE**

- 2.1 The matter was scheduled and for trial heard on March 8th, 2025. The Plaintiff called 2 witnesses and Defendant 1 witness in aid of their cases.
- 2.2 The Plaintiff's first witness was the Plaintiff himself Godwell Kabisa Iputu who testified on oath and submitted witness statement dated September 19th, 2024.
- 2.3 PW1 testified in chief that he was married to the 1st Defendant and divorced in 2004 at the Boma Local Court. That the Divorce Order granted no property sharing or maintenance but ordered that he compensate the 1st Defendant in the sum of K2,500.00 which amount he paid over a period of 1 year.

- 2.4 PW1 further testified that the Court granting the divorce viewed the Subject Property and ordered that the same was his and the children.
- 2.5 PW1 testified that he lived with his children and continued building the house on the Subject Property for 4 years.
- 2.6 PW1 testified that the 1st Defendant in November, 2008 returned to the Subject Property under the pretext of seeing the children but stayed and the Plaintiff and 1st Defendant had another child.
- 2.7 PW1 further testified that he asked the 1st Defendant to leave the house but she refused until he went to Chawama Local Court in 2017 where he sued the 1st Defendant so she could leave the Subject Property. That instead the Court granted a divorce and Ordered that the Subject Property land be sold and money shared equally between the Plaintiff and 1st Defendant.
- 2.8 PW1 testified that he was dissatisfied with the Chawama Local Court Judgment, as the Plaintiff and 1st Defendant were already divorced by Court Order in 2004 and he could not sell the house he lived with children.
- 2.9 PW1 further testified that he was summoned to Chawama Local Court and was imprisoned for 14 days for refusing to sell the Subject Property to the 2nd Defendant for the sum of K100,000.00.

- 2.10 PW1 testified that upon his release he and 1st Defendant had a meeting at Lilayi Police College on July 20th, 2019 at which meeting a panel convinced him to surrender to the 1st Defendant the Original Occupancy License which he did at Chawama Local Court.
- 2.11 Under cross examination PW1 testified that he never remarried the 1st Defendant and never paid any bride price for her after the first divorce.
- 2.12 When referred to Page 2 of the 1st Defendant's supplementary bundle of documents, PW1 conceded that his claim in 2017 was for divorce which relief is granted to married people.
- 2.13 PW1 conceded that the Reliefs granted to him in 2017 matter were;
- Divorce;
 - Order to sell Subject Property and share proceeds equally; and
 - Child maintenance of K500.00 per month.
- 2.14 PW1 further conceded that he did not institute proceedings claiming the sale was illegal.
- 2.15 PW1 testified in cross examination that he now seeks the Court's assistance because the Subject Property was sold without his knowledge.
- 2.16 PW1 conceded that he is aware that the Chawama Local Court, Ordered/warranted the sale of the Subject Property.

- 2.17 Under re-examination, PW1 testified that he explained to a Chawama Local Court Officer that he need assistance removing the 1st Defendant from the house but was told to file for divorce in 2017.
- 2.18 PW1 clarified that the Police threw him out of the Subject Property on the strength that the house had been sold to the 2nd Defendant.
- 2.19 PW1 confirmed that he never remarried the 1st Defendant nor did he pay any dowery.
- 2.20 PW2 was Evans Ngosa who testified on oath and filed witness statement dated September 19th, 2024.
- 2.21 PW2 testified in chief that he attended a meeting on July 10th, 2019 chaired by Assistant Commissioner of Police (ACP) Elizabeth Kalala at which meeting it was agreed that the Subject Property be surrendered by the Plaintiff to 1st Defendant for purposes of property being a place for her to stay with the children. That the Subject Property would not be sold, however the 1st Defendant was handed the Original Occupancy License and the 1st Defendant guaranteed she would not sell it or change title.
- 2.22 Under cross examination, PW2 conceded that he had no knowledge of the dealings of legal proceedings between the Plaintiff and the 1st Defendant.

- 2.23 PW2 further testified that he did not have before Court the agreement between the Plaintiff and 1st Defendant to the effect that Subject Property would not be sold.
- 2.24 In Re-examination PW2 stated that the Agreement he spoke of was written by PW1.
- 2.25 The Plaintiff closed his case after seeking leave to expunge the other witness statement.
- 2.26 DW1 was the 1st Defendant who testified on oath and filed witness statement dated October 7th, 2022.
- 2.27 DW1 testified in chief that she was married to the Plaintiff in 1992 under customary marriage and divorced in 2004.
- 2.28 DW1 further testified that she and the Plaintiff remarried in 2008. That they have 3 children together.
- 2.29 DW1 testified that the Plaintiff and her divorced again in 2017 and the Chawama Local Court Ordered that the Subject Property be sold. Purchase amount to be shared equally.
- 2.30 DW1 testified that the Plaintiff would chase her when she took would be purchasers. The Plaintiff was arrested for contempt of Court for 14 days.

- 2.31 DW1 testified that she failed to sell the Subject Property until the Court Sheriff was involved, who sold the Subject Property and the Plaintiff was ejected by the Sheriffs.
- 2.32 That the Plaintiff lodged a complaint at Police Headquarters and she was called for questioning. That the Plaintiff was advised to get his share at the Sheriiff's office.
- 2.33 DW1 testified that she was called at the instance of the Plaintiff to attend a meeting at Legal Aid Board, where the Plaintiff was again advised to collect his share of the sale.
- 2.34 DW1 testified under cross examination that she was first married to the Plaintiff in 1992 and divorced in 2004. That the Local Court granted her child maintenance and custody of one child which she did not get because the Plaintiff said he had no money.
- 2.35 DW1 testified that she and the Plaintiff remarried under same circumstances as first one. That the Plaintiff went to her father's house in Kaoma and was charged K1,500.00 and the Plaintiff made a down payment of K500.00.
- 2.36 DW1 testified that her father, uncle and his wife were present at the meeting though she did not have any written document to prove it.
- 2.37 DW1 testified that the Plaintiff lied when he denied ever going to see her father.

- 2.38 DW1 testified that at first divorce, even though the Court viewed the house did not give an Order on it but that the Plaintiff was to pay K2,500.00 which he did not pay.
- 2.39 DW1 testified that the Plaintiff and herself both built on the Subject Property. She conceded that page 5 of the Plaintiff's bundle of documents shows that the Plaintiff bought land from a Mr. Ngombo and her name was not there.
- 2.40 DW1 testified that the Plaintiff filed for divorce at Chawama Local Court and the Court ordered child maintenance of the young child at K500.00 per month and that the Subject Property be sold and purchase price shared equally.
- 2.41 DW1 testified that the Plaintiff kept the two older children and that the Plaintiff paid maintenance twice.
- 2.42 DW1 testified that the reason for selling the Subject Property was the Court Order. That the Plaintiff was arrested for contempt because he was denying her access to bring prospective purchasers, and failure to pay maintenance arrears.
- 2.43 DW1 further testified in cross examination that she was not involved in the sale of the Subject Property this was done by the Sheriff's Office, who advertised 2 or 3 times.

- 2.44 DW1 testified that she collected and signed for K93,050.00 and the Plaintiff's share is still at the Sherrif's Office as the Plaintiff sued for the house.
- 2.45 DW1 testified that she attended a discussion and not meeting at Lilayi Police College where the Plaintiff was advised that the house would be sold whether he wanted it or not. That she refused to discuss further as the matter between the Plaintiff and the Defendant was still in Court.
- 2.46 DW1 testified that the Plaintiff gave her the house documents/ Original Occupancy license at Court.
- 2.47 DW1 was not subjected to re-examination and the Defendant closed her case.
- 2.48 The 2nd Defendant did not attend trial nor file any process. The Plaintiff's Counsel advised that the Plaintiff was informed that the 2nd Defendant had returned to his home land and since he died. No documentary evidence was available to prove it.

3. **LAW AND SUBMISSIONS**

- 3.1 Both Parties filed written submissions and I am most grateful. I shall not reproduce the same save to say that I have considered them, in this my Judgment even though I may not make specific reference to them.

- 3.2 The Plaintiff submits that the 1st Defendant wrongly sold the Subject Property to the 2nd Defendant. He further submits that the Judgment of the Local Court that ordered the sale of the Subject Property was also wrong as the Plaintiff was not heard and there was no marriage between him and the 1st Defendant.
- 3.3 The Plaintiff further submits that a Warrant of Distress is not designated to execute possession of a property or for Sheriff's Office to sell the house for K10,000.00 Maintenance Order.
- 3.4 The 1st Defendant submits that the Chawama Local Court rightly issued the Order for sale of the Subject Property after granting divorce to the Parties
- 3.5 The 1st Defendant further submits that the Sheriff of Zambia rightly executed a Court Sanctioned Order or procedure. That the Local Court drew its mandate and jurisdiction from the Local Courts Act Chapter 29 of the Laws of Zambia, particularly Section 13 (1) (a).
- 3.6 The 1st Defendant submits that the Plaintiff did not appeal or challenge the local Court Divorce Order and the Property Settlement Order and thus cannot attack their validity.

4. **COURTS ANALYSIS AND DECISION**

4.1 The clear and undisputed facts are as follows:-

- (i) There is a Divorce order dated November 22nd, 2017;

- (ii) There is a Property Settlement Order that authorises the sale of the Subject Property and sharing of proceeds in equal shares between the Plaintiff and the 1st Defendant; and
- (iii) That the Subject Property was sold to the 2nd Defendant in furtherance of the Order at 4.1.2 above.

4.2 The disputed fact is whether or not the sale of the subject property was legal.

4.3 It would appear to me that the Plaintiff seeks to attack the validity of the jurisdiction of the Local Court's Order for the Dissolution of the marriage and property settlement. His main argument being that there was no marriage between him and the 1st Defendant.

4.4 As I see it, there is a jurisdiction question to be answered before I even venture into the question of whether the sale was legal or not. The Decision of the Local Court sitting at Chawama dated November 22nd, 2017 (Page 3 of the Defendant's bundle of documents) grants Divorce and Property Settlement as shown below;

REPUBLIC OF ZAMBIA
The Local Courts Act

CERTIFICATE OF JUDGEMENT

IN THE CHAWAMA LOCAL COURT, A DIVISION.

This is to certify that, in the case of GODWILL KARISHU IPHIA versus
NGAMEO LUNGINA for DIVORCE

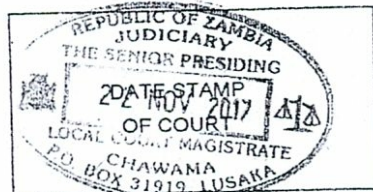
(state briefly nature of claim or offence)

Case No. 2141 of 2017, which was decided by this Court on the 22ND
NOVEMBER 2017, the Judgment of the Court was as follows:

Verdict (state names concerned) DIVORCE GRANTED
AND COURT FEES PAID.

Order (state names concerned) NO COMPENSATION
AWARDED TO EITHER PARTY.
CUSTODY OF THE YOUNGEST
CHILD TO BE GIVEN TO DEF
AND PL TO MAINTAIN THE
CHILD WITH K5000.00 MONTHLY
WITH EFFECTIVE 31/12/17
SUBJECT TO REVIEW YEARLY.
PL TO PROVIDE FOR EDUCATION
MEDICAL AND CLOTHINGS
AND HAVE ACCESS. HOUSE-
HOLD GOODS TO BE SHARED
EQUALLY. THE HOUSE TO BE
SOLD AND SHARE THE
PROCEEDS EQUALLY. IRANI

DA



Handwritten signature/initials

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Court Registrar or Clerk

From the Record, it is clear that the Plaintiff did not pursue the appeal of the Local Court's Decision

The record at page 4 of the 1st Defendant's bundle of documents is an Order of the Subordinate Court that dismissed the Plaintiff's appeal for want of jurisdiction. The Subordinate Court Order is detailed below.

IN THE SUBORDINATE COURT
OF THE FIRST CLASS
FOR THE LUSAKA DISTRICT
HOLDERS AT LUSAKA
(CIVIL JURISDICTION)
GODWELL KABISU IPULU
AND
NGAMBO LUNETA

2018/CRMP/LCA/053




APPELLANT

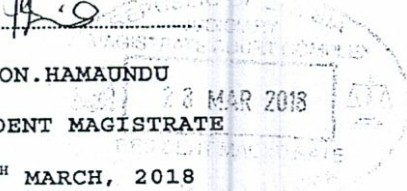
RESPONDANT

ORDER

Appeal dismissed for want of prosecution.

Signed:


HON. HAMAUNDU
RESIDENT MAGISTRATE
28TH MARCH, 2018



4.5 In light of paragraph 4.4 above, I find that the Divorce Order and Property Settlement Order of the Local Court is valid having not being appealed against or set aside by any Court of competent jurisdiction.

It is trite law that where a Party is dissatisfied with the Judgment of a Local Court the appeal lies to the Subordinate Court first and then to the high Court, Court of Appeal and lastly the Supreme Court.

The **Local Court Act under Section 56** is instructive on appeals, this is reproduced below;

“56 (1) Subject to the provisions of subsection (2), any interested party who is aggrieved by any judgment, order or decision of a local court given or made in the case in which he was concerned, and which has not been revised, may appeal therefrom to a Subordinate Court of the first or second class within whose area of jurisdiction such local court is situate.

(2) Any interested party who is aggrieved by any judgment, order or decision, including any order on review made with or without submissions under section fifty-four, in the case in which he was concerned, given or made—

(a) by an authorised officer in the exercise of his powers under section fifty-four, may appeal therefrom—

(i) in the case of an authorised officer who is a local courts officer or a magistrate empowered to hold

a Subordinate Court of the third class, to a Subordinate Court of the first or second class within whose jurisdiction the local court which heard the original proceedings is situate; or

(ii) in the case of any other authorised officer, to the High Court; or

(b) by the Director in the exercise of his powers under sections fifty-four and fifty-five, may appeal therefrom to the High Court; or

(c) by a Subordinate Court of the first or second class in the exercise of its appellate jurisdiction under this section, may appeal therefrom to the High Court; or

(d) by the High Court in the exercise of its appellate jurisdiction under this section, may appeal therefrom to the Supreme Court with the leave of a Judge or, when such leave is refused, with the leave of the Supreme Court.

(3) Any appeal under the provisions of this section shall be entered within thirty days of the judgment, order or decision appealed against.”

4.6 Having found as I have in 4.5 above, it follows that this Court has no jurisdiction or mandate to determine the Plaintiff's claims. The Plaintiff skipped a step in his litigation and this failure to follow procedure is fatal to his current case.

The Supreme Court of Zambia has made it clear and categorical that without jurisdiction a Court's Orders amount to nothing. The case of **Antonio Ventriglia and Another vs Finsbury Investment Ltd. SCZ Appeal No. 2 of 2019**¹ refers.

This matter is improperly before me and I shall not consider the merits or otherwise of the Plaintiff's claims.

5. **CONCLUSION**

- 5.1 For the foregoing reasons, **I HEREBY DISMISS** the Plaintiff's matter in its entirety as this Court lacks the requisite jurisdiction to hear and determine it.
- 5.2 Costs to the Defendant to be taxed in default of agreement.
- 5.3 Leave to appeal is granted.

DELIVERED AT LUSAKA THIS DAY OF 16TH DECEMBER, 2025



**S. CHOCHO
HIGH COURT JUDGE**

