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

2023/HP/0391

{CIVIL JURISDICTION}

BETWEEN:

MAYONDI NYAMUWELA



PLAINTIFF

AND

ALLY SIMUTOWE
DAVID MWACHIPATA
ALINES FEMALE
MOSES CHAMA MULENGA
OTHER UNKNOWN SQUATERS

1ST DEFENDANT
2ND DEFENDANT
3RD DEFENDANT
4TH DEFENDANT
5TH DEFENDANT

For the Plaintiff : Mr. Wesley Sakutadika Pro Bono Counsel Legal Aid Board
For the Defendants: N/A

RULING

CASES REFERRED TO :

1. *ACC v Barnett Development Corporation 2008 ZR*

1. INTRODUCTION

1.1 The Applicant commenced this matter by way of Originating Summons on 7th March 2023. The Applicant claims amongst other reliefs, a declaration that the Applicant is the legal owner of the property known as Lot No. 6204/M, Lusaka West situate in the Lusaka Province of the Republic of Zambia, other reliefs are as tabulated in the said Originating Summons.

2. SUBMISSIONS

- 2.1 At the hearing on the 29th August 2023, only Counsel for the Applicant was present. There was no appearance from the Respondents. Counsel for the Applicant informed the Court that the Respondents were served with process a month ago and that as Counsel was approaching Court, he received a call from Counsel for the Respondents who informed him that he was running late.
- 2.2 Counsel for the Applicant went on to inform the Court that the Respondents were served with the notice of hearing on 20th July 2023. The Court proceeded to hearing the application.
- 2.3 Counsel in his submissions submitted that they did file into Court an Originating Summons and accompanying affidavit in support of the said Summons, on 7th March, 2023 in order to move this Court to pass an order for a declaration that the applicant is the legal owner of the property known as Lot Number 6204/M Lusaka West situate in Lusaka Province. Further that the Court makes a declaration that the Respondents and or their agents are illegally and unlawfully in occupation of the Applicant's premises, being Lot Number 6204/M Lusaka West.
- 2.4 The Applicant further sought an order for vacant possession of the aforesaid property. Counsel cited the authority upon which the application was premised, namely Order 113 of the Rules of the Supreme Court White Book 1999 edition, as well as Section 33 of the Lands Act. The Applicant also placed reliance on the case of **ACC V BARNETT DEVELOPMENT CORPORATION 2008**

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ZR¹, where the Supreme Court held that a Certificate of Title is the conclusive evidence of ownership of land.

- 2.5 It was therefore Counsel's submission that the applicant being in possession of the certificate of title in respect of the land in question, is conclusive evidence that the applicant is the owner of the said piece of land and that the Respondents are simply squatters, who have no legal right whatsoever to continue squatting on the said piece of land.

3. COURT'S DECISION

- 3.1 Upon reading the affidavit in support of the originating summons filed herein on 7th March 2023 and after hearing Counsel for the applicant's submissions. It is clear that the Applicant is indeed the title holder of the property known as Lot number 6204/M Lusaka West, as is evidenced from the Certificate of Title exhibited herein and attached to the affidavit in support of the application. This Court hereby orders as follows;

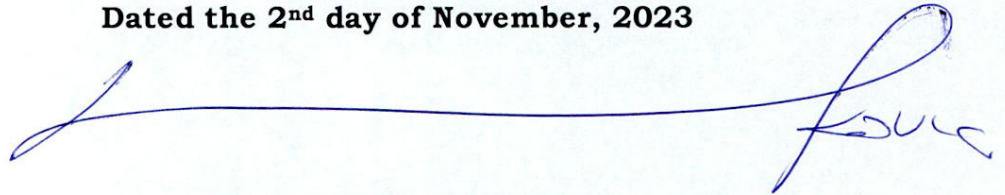
- 1. The court declares that the Applicant is the legal owner of the property known as Lot number 6204/M Lusaka West situate in the Lusaka Province of the Republic of Zambia***
- 2. The Court further declares that the Respondents and or their agents are illegally and unlawfully in occupation of the applicant's land.***

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3. It is further ORDERED that the Applicant herein takes vacant possession of the property known as Lot No. 6204/M, Lusaka West, Lusaka.

3.2 In making the aforesaid declaration the court is fortified by the fact that indeed possession of a Certificate of Title in the applicant 's name is conclusive evidence of ownership of the said land.

Dated the 2nd day of November, 2023



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**M. M. WINA
HIGH COURT JUDGE**