

**IN THE HIGH COURT FOR ZAMBIA**

**2023/HP/0080**

**THE PRINCIPAL REGISTRY**

**HOLDEN AT LUSAKA**

**(CIVIL JURISDICTION)**



**BETWEEN:**

**KELVIN MOONO**

**AND**

**BILLY NKUNIKA**

**ANDREW NKUNIKA**

**PLAINTIF**

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

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

**BEFORE THE HONOURABLE MR. JUSTICE I. M. MABBOLOBOLO IN CHAMBERS ON THE 8<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**For the Plaintiff:** *Ms. E Sikombwa & Mr. B. Mwanza – Mesdames Mushipe Associates*

**For the Defendants:** *Mr. Robert Chipeta – Messrs Nkunika and Chipet Legal Practitioners*

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**RULING FOR REMOVAL OF CAVEAT**

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**A. CASES REFERRED TO:**

1. *Corpus Legal Practitioners v Mwanadani Holdings Limited- SCZ Judgment no. 30 of 2014;*
2. *Frank Bwalya (suing on behalf of himself and in his capacity as Executive Director of Change Life Zambia Limited) v Attorney General Katele Kalumba (sued in his capacity as the secretary General of the Movement of the Multi-Party Democracy), William Banda (2008) Z.R. 354;*
3. *Anti- Corruption Commision v Barnett Development Corporation (2008) Z.R. 69;*
4. *Construction and Investments Holdings Limited v William Jacks and Company (Z) Limited (1972) Z.R. 66;*
5. *Lenton Holdings Limited v Moyo (1984) Z.R. 55;*

6. *Sobek Lodges Limited v. Zambia Wildlife Authority* 2008/HP / 668; and
7. *Dashan Hal Gamhirand and Another v Ireen Tembo and other* SCJ No. 30 of 2011

## **B. LEGISLATION REFERRED TO:**

8. *The Constitution of Zambia as amended by Act No. 2 of 2016*
9. *The High Court Act, Chapter 27 of the Laws of Zambia*
10. *The Lands and Deeds Registry Act Chapter 185 of the Laws of Zambia*

## **C. OTHER WORKS REFERRED TO:**

11. *Robert Megarry, Sir William Wade, William Wade, The Law of Real Property, Stevens, 2nd Edition 1959.*

## **1.0 INTRODUCTION**

- 1.1. This is a Ruling on the Defendants Application for Removal of Caveat.
- 1.2. The Application by the Defendants was filed on 10<sup>th</sup> July, 2025 accompanied by an Affidavit in Support and Skeleton Arguments filed on even date.
- 1.3. The Plaintiff opposed the Application by filing an Affidavit in Opposition accompanied by Skeleton Arguments on 5<sup>th</sup> August, 2025.

## **2.0 BACKGROUND**

- 2.1. The Matter was commenced by way of Writ of Summons and Statement of Claim on 20<sup>th</sup> January, 2023.
- 2.2. In the said Writ of Summons and Statement of Claim the Plaintiff is claiming for:

- 2.2.1. *An Order for Specific Performance of Contract of Sale relating to a Subdivision of Sub 9 of Farm 288A in the extent of 1.2140 Hectares made on 13<sup>th</sup> March, 2021, Between the Plaintiff and the Defendants for the sale of Land.*
- 2.2.2. *An Order for the immediate possession of Sub 9 of Farm 288A by the Plaintiff.*
- 2.2.3. *An Order that the Plaintiff is entitled to ownership of a Subdivision of Sub 9 of Farm 288A in the extent of 1.2140 Hectares made 13<sup>th</sup> March, 2021 between the Plaintiff and the Defendants for the Sale of Land.*
- 2.2.4. *An Order that the Plaintiff be issued with Certificate of Title in respect to a Subdivision of Sub 9 of Farm 288A in the extent of 1.2140 Hectares made on 13<sup>th</sup> March, 2021, the Plaintiff and the Defendants for the Sale of Land.*
- 2.2.5. *An Order for Damages for fraud*
- 2.2.6. *An Order for cancellation of the Deed of Moiety for fraud*
- 2.2.7. *Damages for breach of Contract of Sale dated 13<sup>th</sup> March, 2021 made between the Plaintiff and the Defendants in the sum of One Million (ZMW 1,000,000.00)*
- 2.2.8. *Alternatively, an Order compelling the Defendants to account and refund the sum of Seven Hundred*

*and Fifty Thousand (ZMW 750,000.00) being the amount so far paid towards the Purchase Price.*

*2.2.9. Damages for loss of use of the said monies under claim 2.2.8*

*2.2.10. Compensation for unwarranted costs incurred in pursuit of the matter in the sum of One Hundred and Fifty Thousand Kwacha (ZMW150,000.00).*

*2.2.11. Interest on the aforementioned claims.*

*2.2.12. An Order for Costs incidental to the Proceedings.*

2.3. The Defendant filed the Defence and Counter-Claim on 3<sup>rd</sup> February, 2023.

2.4. The Defendant Counter-Claims the following:

*2.4.1. Damages for breach of Contract of Sale;*

*2.4.2. Damages for mental strain;*

*2.4.3. Interest for the unpaid balance of the Purchase Price up to the date of rescission according to the LAZ General Conditions;*

*2.4.4. Damages for Defamation for the malicious and false claim of Fraud against the Defendants by the Plaintiff;*

*2.4.5. Costs incidental to the proceedings; and*

*2.4.6. Any other relief the Court might deem necessary and just.*

### **3.0 AFFIDAVIT EVIDENCE**

- 3.1 The Affidavit in Support of the Application was deposed by Billy Simon Clement Nkunika and Andrew Nkunika the Defendants herein.
- 3.2 They deposed that, the First Defendant is a retiree and the Second Defendant is an Advocate. That they are the Defendants herein and thus are duly authorised to Swear to the Affidavit from facts personally known to them.
- 3.3. It was averred that, the 1<sup>st</sup> Defendant and his now deceased wife entered into a Contract of Sale with the Plaintiff on 13<sup>th</sup> March, 2021, and the terms and conditions included a requirement to pay the full purchase price within five (5) Months of the Contract signing.
- 3.4. An averment was made that by Contract of Sale made between the Plaintiff and the Defendants on 13<sup>th</sup> March, 2021 for a Subdivision 9 of Farm 288A Makeni, Lusaka. Thst it was an express term of the Contract under paragraph 3 of the Special Conditions that the Period fixed for completion was within two weeks of the signing of the contract.
- 3.5. It was also averred that the contract further under paragraph 5 of the Special Conditions stated that Title would Commence with the Certificate of Title.

- 3.6. Further, that the contract provided in paragraph 7 of the Special Conditions that the purchase price was to be paid as a deposit of Four Hundred and Fifty Thousand Kwacha (ZMW 450,000.00) and a balance of Four Hundred and Fifty Thousand Kwacha (450,000.00) on completion and that at no time would the period for completion exceed five months from the date of signing the contract
- 3.7. The Defendants made an averment that the Plaintiff failed or neglected to complete the sale transaction despite it being a condition of the contract that the payment should have been completed within five (5) months through the payment of instalments agreed in the contract and the Plaintiff rescinded the contract as a consequence on 13<sup>th</sup> December, 2022.
- 3.8. It was averred that the Plaintiff filed a caveat in respect of the entire property which included property which had been in the possession of a third party and which did not comprise the extent of land which was comprised in the proposed Subdivision, following a rescission of the Contract on 13<sup>th</sup> December, 2022.
- 3.9. It was further averred that the Plaintiff has no claim to the property as intending purchaser and therefore the caveat placed on the property should be immediately removed.
- 3.10. The Affidavit in Opposition to the Application was sworn by Kelvin Moono, the Plaintiff herein.
- 3.11. It was deposed that pursuant to Special Condition 7 of the Contract of Sale, the agreed purchase price of ZMW 900,000.00

was to be paid in two equal monthly instalments of ZMW 450,000.00 each, the first instalment being payable upon execution of the contract and the second upon completion.

3.12. Further that, at the execution of the contract, pursuant to Special Condition 7, the Plaintiff proceeded to make the first instalment payment in the sum of ZMW 450,000.00 in cash to the Defendants and the same was paid at Cosmopolitan mall in Makeni, Lusaka.

3.13. The Plaintiff averred that the balance of ZMW 450,000.00 remained outstanding pending payment at completion stage which was anticipated to be within five (5) weeks from the date of the Contract of Sale as per Special Condition 7 of the Contract of Sale.

3.14. Further, that Special Condition two (2) of the Contract of Sale expressly required the Defendants to obtain State Consent to Assign, together with any other necessary licences, within six (6) weeks from the 13<sup>th</sup> day of March, 2021. That the Defendants wilfully failed, neglected, or refused to apply for State Consent, thereby committing a direct and material breach of Special Condition 2 of the Contract.

3.15. An averment was made that Special Condition 12 of the Contract of Sale placed the responsibility on the Defendants to bear all costs associated with obtaining State Consent to Assign, Subdivision, Marking off and the settlement of any outstanding ground rent. That however, to date, the Defendants have failed and/or refused to provide any proof of having made

an Application for State Consent, in further breach of their contractual obligations.

3.16. Further, that the Defendants, despite being fully aware that the balance of the purchase price was only payable upon completion, began making premature demands for payment of the outstanding sum of ZMW 450,000.00. That the Plaintiff accordingly declined to accede to their demands. That however, relying on the Defendants' assurance that the requisite documents necessary to complete the conveyance would be released, the Plaintiff proceeded to make a payment of ZMW 300,000.00 leaving a balance of ZMW 150,000.00. That to the Plaintiff's dismay, the said documents were never availed to the Plaintiff, despite the partial payment made in good faith.

3.17. A deposition was made that the Plaintiff declined to pay the outstanding balance of ZMW 150,000.00 out of the agreed purchase price of ZMW 900,000.00 due to the Defendant's failure and/or refusal to fulfil their contractual obligations in bad faith. That these obligations, clearly stipulated in the executed Contract of Sale and were essential to the completion of the transaction. That as a result of the Defendants' breach, the completion contemplated under the Contract has become impossible.

3.18. It was averred that as a result of the foregoing, the Plaintiff commenced an action against the Defendants in this Court by way of Writ of Summons and Statement of Claim filed on 20<sup>th</sup>

January, 2023, in a quest to protect and enforce his legal and equitable interest in the property in question.

- 3.19. It was also averred that the Plaintiff caused a caveat to be lodged against the Title of the Property in question at the Ministry of Lands, as a protective measure to secure his interest therein, pending the final determination of the contentious and triable issues currently before this Court.
- 3.20. An averment was made that the Defendants without the knowledge of the Plaintiff or that of his advocates on record, clandestinely filed an Application before this Court on 10<sup>th</sup> July, 2025, seeking the removal of the said caveat. That the said Application was not served on the Plaintiff's Advocates, who only become aware of its existence upon receipt of a Notice of Hearing issued in respect of the Application. Reference was made to exhibit marked "**KM/1**" being a copy of the said Notice.
- 3.21. Further, that in light of the foregoing, the Plaintiff respectfully seeks the indulgence of this Court to dismiss the Defendant's Application with Costs, as it is not made in good faith but constitutes a calculated attempt to circumvent the due process of the law and undermine the authority of this Court. That the Application is designed to defeat the purpose of the pending proceedings and to unjustly prejudice the Plaintiff of his legally protected interest in the property, contrary to the principles of equity and natural justice.
- 3.22. Further, that should the said caveat be removed, the Plaintiff's interest in the property will be severely prejudiced, and any

favourable outcome in the main matter may be rendered nugatory. That there exists a real and substantial risk that the Defendants may dispose of or otherwise deal with the property in a manner that defeats the purpose of these proceedings and frustrates the ends of justice.

#### **4.0 SKELETON ARGUMENTS**

- 4.1 In the Skeleton Arguments, the Defendants referring to the case of **Corpus Legal Practitioners v Mwanadani Holdings Limited**<sup>1</sup>, where the claim was for removal a caveat and for cancellation of Title, submitted that the Supreme Court in that case noted that the correct mode of proceeding for removal of a caveat is by Originating Summons. That however, it held that the trial judge was not at fault to allow an amendment of pleadings, which were commenced by way of Writ of Summons to include the relief of an Order for removal of a caveat.
- 4.2 It was submitted by the Defendant that the caveat registered by the Plaintiff is void as it was purportedly done after the rescission of the contract as an afterthought following the Plaintiff's breach of the Contract of Sale.
- 4.3 The Defendant also relied on the case of **Frank Bwalya (suing on behalf of himself and in his capacity as Executive of Change Life Zambia Limited) v Attorney General Katele Kalumba (sued in his capacity as the Secretary General of Movement of Multi-Party Democracy), William Banda**<sup>2</sup> and

submitted that the Petitioner has legal standing as a party directly affected by the violation of the Constitution by the Defendant.

- 4.4 It was stated by the Defendants that the removal of the caveat will result in the Defendants being unlawfully deprived of their use of the land as a result of this illegal caveat.
- 4.5 Lastly it was submitted that in light of the Respondents' legal standing, the potential harm posed by the illegal caveat and failure to grant appropriate remedies to the Petitioner, it is essential for this Court to make the necessary Orders based on the appropriate consideration of the applicable Constitutional provisions.
- 4.6 In the Skeleton Arguments in Opposition filed by the Plaintiff, relying on **Section 76 of the Lands and Deeds Registry Act<sup>10</sup>**, the case of **Construction and Investments Holdings Limited v William Jacks and Company<sup>4</sup>** as regards the nature and effect of caveats and the Supreme case **Lenton Holdings Limited v Moyo<sup>5</sup>** submitted that for a caveat to be valid and effective, it must disclose a lawfully claimed and justifiable interest as stipulated under **Section 76 of the Lands and Deeds Registry Act<sup>10</sup>**. That the Plaintiff has met this requirement as follows:

- i. The Plaintiff has asserted that he lawfully purchased the property in question and has

produced a valid Contract of Sale to substantiate his interest.

- ii. The Plaintiff caused a caveat to be lodged against the Title of the said property at Ministry of Lands as a protective measure pending final determination of the contentious issues before Court.

4.7 It is contended that the Defendants, without notice to the Plaintiff or his legal representative, clandestinely filed an Application on 10<sup>th</sup> July, 2025 seeking removal of the caveat. That the Plaintiff's Advocates only become aware of this Application upon receipt of a Notice of Hearing.

4.8 Further, that in light of the above, the Plaintiff prayed that this Court dismisses the Defendants' Application with costs on the basis that it is not bonafide, but a calculated attempt to circumvent due process and undermine this Court's authority. That the Application is clearly intended to prejudice the Plaintiff's legally protected interest and defeat the purpose of the pending proceedings, contrary to the principles of equity and natural justice.

4.9 It was also submitted that should the caveat be removed, the Plaintiff's interest in the property will be severely prejudiced and any favourable outcome in the main matter may be rendered nugatory. That there is a real and substantial risk

that the Defendants may dispose of or otherwise deal with the property, frustrating justice and the pending proceedings.

- 4.10 Relying on the case of **Anti-Corruption Commission v Barnett Development Corporation Limited** submitted that the Defendants Application fails to disclose any reasonable cause and cannot be expected to succeed.

## **5.0 HEARING**

- 5.1. At the hearing held on 6<sup>th</sup> August, 2025, Mr. Chipeta, Counsel for the Defendants stated that the Application is based on what was filed on 10<sup>th</sup> July, 2025, supported by an Affidavit and Skeleton Arguments pursuant to **Order 30 of the High Court Rules**<sup>9</sup> which permits interlocutory relief in appropriate cases such as this. That it is read together **Order 3 Rule 2 of the High Court Rules**<sup>9</sup>.
- 5.2. It was stated that the caveat lodged by the Plaintiff is not supported by any existing interest in land but rather that it was an afterthought lodged by the Plaintiff after the rescission of the Contract of Sale dated 13<sup>th</sup> December, 2022.
- 5.3. It was the Defendant's argument that the Plaintiff's claim was extinguished after the Notice of Rescission to the extent that all the actions thereafter such as the caveat and any Injunction were based on a non-existent legal relationship. That the 1<sup>st</sup> caveat was placed in December, 2022 and it was legally cancelled and confirmed by the Chief Registrar. That later on, the 2<sup>nd</sup> caveat again was placed on 6<sup>th</sup> February, 2023 based on

an Injunction which was later discharged and the transaction it purported to protect had already been rescinded.

- 5.4. That the above position was based on the Ruling of this Court dated 30<sup>th</sup> September, 2024, which made it clear that the Injunction no longer existed after 2<sup>nd</sup> March, 2023.
- 5.5. Reliance was placed on the case **Construction and Investment Holding Limited v William Jacks and Company**<sup>4</sup> and it was stated that based on that, the contract between the parties was void for failure of consideration on the part of the Plaintiff (Respondent's) part. That the Plaintiff can not now seek to tie up the property by way of a caveat after the collapse of a contractual relationship.
- 5.6. Further that, the Applicants (Defendants) being the registered and beneficial proprietors of the land have been directly and adversely affected by this caveat that has been placed. That it has caused actual harm to them in terms of their property rights guaranteed under **Article 16 of the Constitution of Zambia**<sup>8</sup> which protects the right to property and prohibits arbitrary deprivation. Furthermore, that the Plaintiff seeks to freeze the whole land without a current contractual or equitable right which the Defendants argue that the restriction offends both Public Policy and natural justice.
- 5.7. Mr. Chipeta also stated that the caveat that has been placed by the Plaintiff operates as an obstacle to the Applicant's exercise of Title thereby frustrating any transaction or use of the property.

5.8. In conclusion it was stated that the Defendants having neither a contractual nor equitable standing, improperly relying on the injunction that was properly discharged by this Court and the transaction having been rescinded on 13<sup>th</sup> December, 2022, the caveat has no leg to stand on and must be removed without delay. It was prayed that this Court Makes:

- i. An Order for the immediate removal of the Caveat Registered by the Plaintiff on a Sub 9 of Sub A of Farm 288A, Lusaka District.
- ii. Costs for the Application to be borne by the Respondent in line that costs follow the event.
- iii. Any other relief that the Court may deem appropriate in the interest of Justice.

5.9. In opposing the Application, Ms E. Sikombwa, Counsel for the Plaintiff, relied on the Affidavit in Opposition of this Application and Skeleton Arguments dated 5<sup>th</sup> August, 2025, and also made oral submissions.

5.10. The Courts attention was drawn to the case of **Dashan Hal Gamhirand and Another v Ireen Tembo and other**<sup>7</sup>. In summing up the holding by that Court, it was stated that the Court emphasised that the onus is on the Respondent or Plaintiff in this case to prove to the Court why a Caveat should not be removed. That in that case, the Court did establish that payment of a deposit towards the purchase price by a party or

purchaser, created a special interest confirming why the caveat was placed and was not to be removed.

- 5.11. Further, that in this case, the Court record will show that as it stands the Plaintiff paid more than 50% of the purchase price to the Defendants and as such that establishes the Plaintiff's interest in the land. That as a result, the placing of the caveat was meant to ensure that the land in contention is protected from irreparable damage until the matter is determined.
- 5.12. It was emphasised that **Section 76 of the Lands and Deeds Act<sup>10</sup>** stated that a person claiming to be entitled to or beneficially interested in land or any state by virtue of any unregistered interest, may lodge a caveat to protect such interest.
- 5.13. Counsel for the Plaintiff did not agree with the Defendant's assertions that that the caveat placed by the Plaintiff has no standing. It was contended that the caveat placed by the Plaintiff is intended to protect the Plaintiff's interest in the land. That as the record will show, the Defendant is in breach of Clause 2 and 12 of the Contract of Sale for the purchase of Subdivision 9 Subdivision A of Farm 288A which required that the Plaintiff was to pay 50% of the purchase price upon signing the Contract of Sale and the balance of 50% on completion.
- 5.14. It was further, contended that the Defendant on the other hand in performing their obligation was supposed to apply for State Consent to Assign in line with Special Condition No. 2 of the said contract from the time the contract was signed in March

- 2021 to six weeks, estimated to be around April 2021. That due diligence conducted by the Plaintiff showed that the Defendants had not applied for State Consent to Assign which clearly shows that the Defendants were in direct breach of the contract.
- 5.15. Furthermore, that despite the Defendant's failure to fulfil their obligation of the contract, the Defendant continued to demand for payment of the purchase price despite the Plaintiff having paid 50% upon signing the contract.
- 5.16. A submission was made that to the Plaintiff's surprise, they received a Rescission Notice in December, 2022, from the Defendants claiming that the Plaintiff had not fulfilled the obligations of the contract when in fact the rescission was on the Defendant's fault by their failure to fulfil their obligation to the Contract of Sale.
- 5.17. That as the record will show, despite these ongoing proceedings, the Defendants have continued building on the property and the Plaintiff's placement of the caveat is intended not only to protect his interest but also the best interest of the property which is the bone of contention in this matter to ensure that the Plaintiff's property is protected in a good state until the matter is determined.
- 5.18. It was also stated that it is for that reason that the caveat placed by the Plaintiff on the property does stand on its own and show the Plaintiff's sufficient and special interest in the property. That having shown that the Plaintiff purchased the property and showed a valid contract to solidify his interest, the

Defendants Application to remove the caveat is not meritorious and is intended to deny the Plaintiff justice in this matter and is also intended to delay the proceedings before this Court from being determined.

5.19. Mr. Mwanza also acting for the Plaintiff submitted that it was their firm belief that the Defendants' attempt to make this Application *Ex-parte* would have been a breach of the rights owed to the Plaintiff as the caveat was registered in his name. That the Court by graciously making the matter *Inter-partes* has allowed the Plaintiff to protect his interest that was being threatened. That it's the Plaintiff's belief that the contract was done in good faith and with the intention to create legal relations.

5.20. Further that a rescission does not distinguish the rights in the property as the matter is ongoing before Court. That as such this Application to remove the caveat be dismissed with costs.

5.21. In replying to the submissions by opposing Counsel, the Defendants reiterated paragraph 9 and 10 of the Affidavit in Support of the Application filed on 10<sup>th</sup> July, 2025.

5.22. Further that, on the aspect of Rescission of Contract, the decision was based on Special Condition No. 8 which placed the vendor with the right to rescission on account of the purchaser failing to pay the purchase price. That on the issue of the buildings happening on the land, the Defendant stated that the Applicants herein have the proprietary right to build on their

land and that there is no need to seek permission from the Plaintiff especially that the building is being done elsewhere on the land belonging to the Defendants.

5.23. Furthermore, that on the aspect of the *Ex-parte* Application made by the Applicant herein, the Court has authority to entertain any Application and as such there has been no breach of any right on the Respondent herein.

## **6.0. CONSIDERATION AND DECISION OF THE COURT**

6.1. I have carefully considered the Application by the Defendants, the Parties' respective Affidavits, the Skeleton Arguments and authorities and spirited oral submissions. I am grateful for the industry by Counsel on behalf of the Parties.

6.2. In nutshell the Applicants (Defendants) herein as regards this Application have made assertion that a Caveat was entered by the Plaintiff in this matter regarding the property in issue and that the said caveat was based on an Injunction that was discharged by this Court.

6.3. Further that the Plaintiff herein had rescinded the Contract of Sale in December of 2022 and has no claims to the property being Subdivision 9 of Sub A of Farm 288A in Makeni Lusaka.

6.4. The Plaintiff's position on the other hand is that the caveat was placed in order to protect his interest in the property that he had acquired by reason of the Contract of Sale that was executed between the parties on 13<sup>th</sup> March, 2023. That by

virtue of the said contract he had acquired the status of beneficial owner.

- 6.5. It was stated that the Plaintiff was not the one at fault leading to the rescission of the Contract of Sale but that it was the Defendants herein who did not comply with the Special Conditions of the Contract of Sale.
- 6.6. From the onset it must be stated that the question of whose actions led to the rescission or failure of the Contract of Sale dated 13<sup>th</sup> March, 2021, is a question that must and can only be dealt with at trial and determined by this Court upon consideration of all the material evidence before it. I will therefore not consider those arguments and submissions by Counsel at this stage of the matter.
- 6.7. From the facts before me it is not in dispute that a caveat was placed by the Plaintiff herein. It is however contended by the Defendants herein that the same ought to be removed because the Court in its Ruling dated 30<sup>th</sup> September, 2024 declared that the Injunction dated 2<sup>nd</sup> February, 2023 had been discharged by the Court. That the caveat was based on the discharged Injunction.
- 6.8. **The Lands and Deeds Registry Act**<sup>10</sup> provides what the Registrar must consider before lodging a caveat. In **Section 76** of the same **Act** it is stated that:

***“ Any person***

***(a) Claiming to be entitled to or to be beneficially interested in any land or any estate or interest therein by virtue of any unregistered agreement or other instrument or transmission, or of any trust expressed or implied or otherwise, howsoever; or***

***(b) Transferring any estate or interest in land to any other person to be held in trust; or***

***(c) Being an intending purchaser or mortgagee of any land***

***may at any time lodge with the Registrar a Caveat in Form 8 in the schedule”***

6.9. From the foregoing it is clear what the Registrar Considers before lodging a caveat. It is not that one has an Injunction or not but whether or not any of the three (3) instances stated in the law cited above are existing at the time an Application to lodge a caveat is being made. This position was also stated in the case of **Sobek Lodges Limited v. Zambia Wildlife Authority**<sup>6</sup> that:

***"In deciding whether or not a caveat should be removed, a Court should bear in mind the provisions of section 76 of the Lands and Deeds Registry Act. That is the person intending to register a caveat must be entitled to the land; beneficially interested in the***

*land; in the process of transferring some interest in land to some other person; or should be an intending purchaser, or mortgagee of the land in issue."*

6.10. **Section 81 of the Lands and Deeds Registry Act<sup>10</sup>** provides that:

*"(1) Such Registered Proprietor or other interested person may, if he thinks fit, summon the caveator, or the person on whose behalf such caveat has been lodged, to attend before the Lands Tribunal, Court or Judge thereof to show cause why such caveat should not be removed.*

*(2) Such Court or Judge upon proof that such a person has been summoned, may make such order in the premises, either ex parte or otherwise, as to such Court or Judge seems meet."*

6.11. It is an established principle that the burden of proof in civil matters rests on the Plaintiff or the Party that is making the assertion. It is however clear from **Section 81 of the Lands and Deeds Registry Act<sup>10</sup>** that the burden to show cause why the caveat should not be removed shifts to the person who placed the caveat, the Plaintiff in this case. Though the Application to remove a caveat was made by the Defendants, the law mandates

the caveator to show cause why the caveat should not be removed.

6.12. From the foregoing it is clear that the Plaintiff herein bears the legal burden to show the Court why the caveat should not be removed. From the record it is clear as submitted by Counsel for the Plaintiff that a Contract of Sale exists between the Parties herein. It is also agreed by the Parties that Money was paid towards the Purchase Price . The Plaintiff in his claims in this matter has prayed for specific performance. The learned authors of the **Law of Real Property**<sup>11</sup> state at page 567 as follows:

*"If the purchaser is potentially entitled to the equitable remedy of specific performance he obtains an immediate equitable interest in the property contracted to be sold: for he is or soon will be in a position to call it specifically. It does not matter that the date for completion, when the purchaser may pay his money and take possession, has not yet arrived: equity looks upon that as done which ought to be done, and from the date of the contract the purchaser becomes owner in the eyes of equity (he cannot, of course become owner at law until the land is conveyed to him by deed. This equitable ownership is, as has been seen, a proprietary interest, enforceable against third parties."* (My Emphasis).

6.13. I have also considered the case of **Construction and Investment Holding Limited v. William Jacks and Company (Zambia) Limited**<sup>4</sup> the Court held that:

*"Only if a person has or purports to have an enforceable interest in land, may be justified on interfering with the rights of the registered proprietor by lodging a caveat. The caveators cause for lodging a caveat is dependent upon the claim to be entitled to an interest in land and that reasonable in this sense means justifiable."*

6.14. I also note that the Caveat in question has not been produced in Court. In this regard I follow the guidance given in the case of **Lenton Holdings Limited v Airforce Moyo**<sup>5</sup> where it was held that:

*"To be effective, a Caveat should disclose the interest claimed. Where a copy of the Caveat is not produced in Court to prove the interest claimed, its registration at the Lands and Deeds Registry will raise a presumption that it disclosed an interest in favour of the person lodging it."*

6.15. From the foregoing I am of the view that the Plaintiff has discharged his duty of showing why the caveat should not be

removed. As the purchaser of Sub 9, Sub A of Farm 288A, the Plaintiff has beneficial interest in that land and can protect that interest by placing a caveat on the said land.

**7.0. CONCLUSION**

- 7.1. In the final analysis, having found that the Plaintiff has beneficial interest in the property in accordance with **Section 76 of the Lands and Deeds Registry Act<sup>10</sup>** the Defendants' Application must fail.
- 7.2. I accordingly dismiss this Application by the Defendants
- 7.3. Costs for the Plaintiff.

**SIGNED, SEALED AND DELIVERED AT LUSAKA THIS 8<sup>TH</sup> DAY OF SEPTEMBER, 2025.**



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**I. M. MABBOLOBOLO**  
**HIGH COURT JUDGE.**