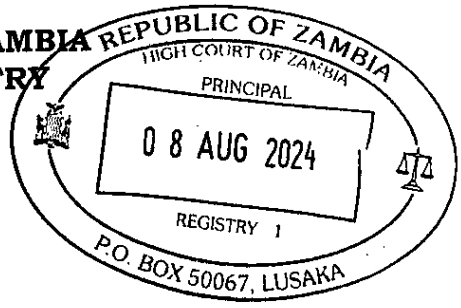
IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)



2023/HP/1613

BETWEEN:

BABRA NSOFWA KABWE **PLAINTIFF**
(Suing as Administrator of the estate of the late Henry Chama)

AND

LIFA ZULU **DEFENDANT**

BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 8th DAY OF AUGUST, 2024

For the Plaintiff : in person
For the Defendant : no appearance

JUDGMENT

CASES REFERRED TO:

1. ***David Howes and 8 others v Betty Butts Carbin (Sued in her capacity as Trustee of the estate of the Daisy Butts) SCZ No 5 of 2012***

LEGISLATION REFERRED TO:

1. ***The High Court Rules, Chapter 27 of the Laws of Zambia***
2. ***The Statute of Frauds 1677***

1. INTRODUCTION

1.1 Babra Nsofwa Kabwe suing as Administrator of the estate of the late Henry Chama commenced this action on 13th September, 2023 by Writ of Summons which was accompanied by a statement of claim and the other requisite documents claiming:

i. *An Order directing Lifa Zulu to execute the conveyancing documents relating to the property known as House No 57 which is situated in Matero in the Lusaka Province in the Republic of Zambia;*

ii. *In the alternative, that Babra Nsofwa Kabwe be at liberty to apply for a vesting Order directing the Registrar of the High Court to execute the deed of assignment on behalf of Lifa Zulu who was the principal vendor of the property;*

iii. *Any other relief that the Court may deem fit.*

2. STATEMENT OF CLAIM

2.1 The contention in the statement of claim was that Babra Nsofwa Kabwe is the Administrator of the estate of the late Henry Chama, who was her husband. She stated that Lifa Zulu sold the property known as House No 57 which is situated in Matero, to the Henry Chama on 19th July, 2010 at K10, 000, 000.00 (unrebased). Babra Nsofwa Kabwe's further averment was that the purchase price was paid in cash.

2.2 She contended that however, the conveyance was not completed, and the property was not transferred into the late Henry Chama's names, and that Lifa Zulu had relocated from the residence which was known by Babra Nsofwa Kabwe. It was also stated that efforts to locate Lifa Zulu had proved futile.

3. DEFENCE

3.1 Lifa Zulu did not enter appearance or file a defence in this matter. On record, is an affidavit of service which is dated 14th December, 2023, and which shows that Lifa Zulu was served the Court process by advertisement in the Daily Mail newspaper on 23rd and 24th November, 2023.

4. EVIDENCE LED AT TRIAL

4.1 At trial, only Babra Nsofwa Kabwe testified in support of her case, and Lifa Zulu did not appear, despite having been served the notice of hearing for trial, by advertisement in the Daily Mail newspaper on 26th and 27th May, 2024, as evidenced by the affidavit of service dated 27th May, 2024.

4.2 This Court proceeded to hear the matter in line with ***Order 35 Rule 3 of the High Court Rules Chapter 27 of the Laws of Zambia*** which provides that:

> ***"3. If the Plaintiff appears, and the Defendant does not appear or sufficiently excuse his absence, or neglects to answer when duly called, the Court may, upon proof of service of notice of trial, proceed to hear the cause and give Judgment on the evidence adduced by the Plaintiff, or may postpone the hearing of the cause and direct notice of such postponement to be given to the Defendant."***

PW1-BABRA NOSFWA KABWE

4.3 Babra Nsofwa Kabwe produced her witness statement as her testimony. In that witness statement, she testified that her

late husband Henry Chama bought the property known as House No 57 Matero, on an unknown date, at K10, 000, 000.00 (unrebased). It was also her evidence, that a written contract of sale was executed for the purchase of the property.

4.4 Babra Nsofwa Mulenga further testified that following the death of her husband Henry Chama, she was appointed Administrator of his estate, and that efforts to get in touch with Lifa Zulu, so that he could complete the conveyance of the property had proved futile.

5. DECISION OF THIS COURT

5.1 I have considered the evidence.

FACTS NOT IN DISPUTE

5.2 It is common cause that Babra Nsofwa Kabwe alleges that she is the Administrator of the estate of her late husband Henry Chama, who bought the property known as House No 57 Matero Lusaka, from Lifa Zulu, on an unknown date at the sum of K10, 000, 000.00. It is also not in contention that Babra Nsofwa Kabwe claims that her late husband Henry Chama paid the purchase price in full, and that the conveyance of the property was not concluded.

5.3 It is also a fact that Babra Nsofwa Kabwe claims that efforts to locate Lifa Zulu so that he can complete the conveyance of the property have proved futile as he cannot be located.

FACTS IN CONTENTION

5.4 It is in contention whether Babra Nsofwa Kabwe is entitled to an Order that Lifa Zulu should be directed to complete the

conveyance of the property known as House 57 Matero Lusaka, and in the alternative, whether the Registrar of the High Court should complete the conveyancing documents on behalf of Lifa Zulu.

ANALYSIS

5.5 A review of the evidence that is on record, shows that Babra Nsofwa Kabwe testified that her late husband Henry Chama bought the property known as House No 57 Matero, from Lifa Zulu at K10, 000, 000.00 (unrebased) and that he paid the purchase price in full. She also stated that the conveyance of the property was not completed, and that efforts to locate Lifa Zulu so that he could complete the conveyance had proved futile, as he could not be found.

DECISION

WHETHER BABRA NSOFWA KABWE IS ENTITLED TO AN ORDER DIRECTING LIFA ZULU TO COMPLETE THE CONVEYANCE OF THE PROPERTY?

5.6 It has been seen that Babra Nsofwa Kabwe claims that her late husband Henry Chama bought the property known as House No 57 Matero from Lifa Zulu on an unknown date, and that he paid the purchase price of K10, 000, 000.00 (unrebased) in full.

5.7 It is trite that contracts for the sale of land must be evidenced in writing. In that regard, ***Section 4 of the Statute of Frauds 1677*** provides that:

> ***"No Action shall be brought upon any contract for the sale or other disposition of land or interest in***

land unless the agreement upon which such action shall be brought or some Memorandum or Note thereof shall be in writing and signed by the parties to be charged therewith or some other person thereunto by him lawfully authorized."

5.8 In giving effect to that provision, the Supreme Court in the case of ***David Howes and 8 others v Betty Butts Carbin (Sued in her capacity as Trustee of the estate of the Daisy Butts)*** [1], held that:

"It is well settled that the memorandum required by the Statute of Frauds need not be in any particular form and may be constituted by two or more documents which are clearly connected by reasonable inference.

For a note or memorandum to satisfy Section 4 of the Statute of Frauds 1677, the agreement itself need not be in writing. A note or memorandum of it is sufficient, provided that it contains all the material terms of the contract, such as names, or adequate identification of the subject matter and the nature of the consideration."

5.9 In this matter, at page 1 of Babra Nsofwa Kabwe's bundle of documents is a contract of sale, which is dated 19th July, 2010. That contract shows that Lifa Zulu sold Henry Chama the property known as House No 57 Matero at K10, 000, 000.00 (unrebased). Therefore, there is evidence in writing of

the sale of the property, as required by ***Section 4 of the Statute of Frauds 1677***.

5.10 Then at page 2 of Babra Nsofwa Kabwe's bundle of documents, are letters of Administration which show that Henry Chama, the purchaser of the property, House No 57 Matero from Lifa Zulu, died on 10th July, 2021. The letters of Administration further show that Babra Nsofwa Kabwe was appointed as Administrator of the estate of the late Henry Chama.

5.11 There being a contract of sale for the property House No 57 Matero, and the evidence showing that the conveyance of the property was not completed, Babra Nsofwa Kabwe, as Administrator of the estate of the late Henry Chama, is entitled to an Order that Lifa Zulu, the vendor of the property executes the assignment and all other necessary documents so that the property, House No 57 Matero can be conveyed into her names.

5.12 She accordingly succeeds on that claim.

WHETHER BABRA NSOFWA KABWE IS ENTITLED TO A VESTING ORDER DIRECTING THE REGISTRAR OF THE HIGH COURT TO EXECUTE ALL THE CONVEYANCING DOCUMENTS ON BEHALF OF LIFA ZULU?

5.13 From the statement of claim and her testimony, Babra Nsofwa Kabwe's contention was that Lifa Zulu did not complete the conveyance of the property, House No 57 Matero to the late Henry Chama. She also stated that Lifa

Zulu cannot be located, as he had relocated from his last known address.

5.14 ***Section 14 of the High Court Act, Chapter 27 of the Laws of Zambia*** provides that:

> ***"14. Where any person neglects or refuses to comply with a Judgment or order directing him to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the Court may, on such terms and conditions, if any, as may be just, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the Court may nominate for that purpose, and a conveyance, contract, document or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it."***

5.15 I have found that Babra Nsofwa Kabwe is entitled to an Order that Lifa Zulu executes the assignment for the property House No 57 Matero and all other documents which are necessary to convey the property House No 57 Matero to Babra Nsofwa Kabwe as Administrator of the estate of the late Henry Chama.

5.16 Babra Nsofwa Kabwe shall therefore advertise the Judgment of this Court which has granted her the said Order, in a daily

newspaper that enjoys wide circulation in the country, and call upon Lifa Zulu to come forward and execute the assignment and all other documents that are necessary to complete the conveyance of the property.

5.17 Upon the lapse of Thirty (30) days of advertising the Judgment as directed, and if Lifa Zulu would not have come forward to complete the conveyance, and upon Babra Nsofwa Kabwe filing an affidavit of service showing that the Judgment was served on Lifa Zulu, the Registrar of the High Court shall execute the deed of assignment and all other documents which are necessary to complete the conveyance of the property House No 57 Matero to Babra Nsofwa Kabwe on behalf of Lifa Zulu.

6. CONCLUSION

6.1 Babra Nsofwa Kabwe therefore succeeds on her claims, and she is awarded costs of the action, which shall be taxed in default of agreement. Leave to appeal is granted.

DATED AT LUSAKA THE 8th DAY OF AUGUST, 2024

Skaunda

S. KAUNDA NEWA
HIGH COURT JUDGE

