

IN THE SUPREME COURT OF ZAMBIA

APPEAL NO. 42 OF 2002

HOLDEN AT LUSAKA

(Civil Jurisdiction)

B E T W E E N:

**DAVID LASTON TEMBO**

APPELLANT

AND

**VIOLET KAMBOLE TEMBO**

RESPONDENT

**CORAM:** Chibesakunda, Silomba and Mushabati, TI, JJS  
On 21st June, 2006 and 31<sup>st</sup> January, 2008.

For the Appellant: Mrs. L. Mushota, Mushota & Associates

For the Respondent: Mr. Mwenye, Sharpe Howard & Mwenye

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**R U L I N G**

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**SILOMBA, J.S., delivered the ruling of the Court.**

By notice of motion, the respondent has applied to the Court, under Rule 78 of the Supreme Court Rules, Chapter 25 of the Laws, for the correction of a clerical error at paragraph 2 of page J13 of the judgment delivered by the Court on the 21<sup>st</sup> June, 2004.

The respondent (hereinafter to be called "the applicant") filed an affidavit in support of the motion on which he relied. The motion is opposed. The appellant, now respondent for purposes of these proceedings, filed an affidavit in opposition on which she relied.

In support of the motion, the oral submission of Mr. Mwenye, counsel for the applicant, was that the learned Deputy Registrar had ordered that Stand No. 1001, Lilanda in Lusaka, should be given to the applicant. However, when the respondent (appellant in the main appeal) appealed to a Judge at chambers the order of the learned Deputy Registrar was reversed: the learned trial Judge at chambers ordered that the stand be sold and the proceeds there-from be shared equally.

Mr. Mwenye submitted that on appeal to the Court we, in paragraph 2 at page J13 of the judgment, ordered that Stand No. 1001, Lilanda, would revert to the respondent (appellant) as ordered by the learned Deputy Registrar. He submitted that after reinstating the order of the learned Deputy Registrar, it was a clerical error to grant the stand to the respondent instead of the applicant. He accordingly prayed for the correction of the error.

In response to the submission of counsel for the applicant, Mrs. Mushota, counsel for the respondent, submitted, with reference to page J11 of the judgment of the 21<sup>st</sup> June, 2004, that the respondent (appellant in main appeal) understood the judgment to mean that she was awarded the house on Stand No. 1001, Lilanda, in lieu of the order of the High Court ordering the applicant herein to build a house for the respondent. As far as counsel was concerned, this was not a misdescription of the Lilanda stand. For the foregoing reasons, she prayed the Court to dismiss the motion with costs.

In reply, Mr. Mwenye submitted that counsel for the respondent had not addressed the issue of a clerical error being made by the Court. With regard to the respondent's prayer for costs, Mr. Mwenye stated that these did not arise.

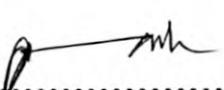
We have duly considered the Affidavit evidence of the parties and the subsequent submissions of counsel in support of and in opposition to the notice of motion. We have taken note that at page 164 of the main record of appeal the learned Deputy Registrar ordered that Stand No. 1001, Lilanda, be given to the applicant. The respondent appealed to a Judge at chambers against the award of the learned Deputy Registrar.

We further note that at chambers, the learned trial Judge reversed the award of the learned Deputy Registrar and ordered that the stand be sold and the proceeds shared equally, between the parties. On appeal to this Court we reversed the order to have the stand sold and instead restored the learned Deputy Registrar's award. This being the case it was indeed a clerical error or accidental slip for the Court to have awarded Stand No. 1001, Lilanda, to the respondent herein instead of the applicant.

The mistake is corrected and the order of the Court is: Having restored the award of the learned Deputy Registrar, Stand No. 1001, Lilanda, is awarded to the applicant.

There will be no order for costs.

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L. P. CHIBESAKUNDA  
SUPREME COURT JUDGE

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S. S. SILOMBA  
SUPREME COURT JUDGE

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C. S. MUSHABATI  
SUPREME COURT JUDGE