

**IN THE HIGH COURT FOR ZAMBIA  
A T THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**

*(Civil Jurisdiction)*

**2018/HP/0140**

**IN THE MATTER OF: SECTION 11 (2), 81 (1) AND (2) OF THE  
ZAMBIA LANDS AND DEED REGISTRY ACT,  
CHAPTER 185 OF THE LAWS OF ZAMBIA**

**AND IN THE MATTER OF: REMOVAL OF CAVEAT PLACED ON 7<sup>TH</sup>  
MARCH, 2003 ON STAND NO. 6099/CL/4  
LUSAKA**



**BETWEEN:**

**DAVID SILWAMBA** (suing as Administrator  
of the Estate of the late Joseph Silwamba)

**APPLICANT**

**AND**

**ZELESI NYONI**

**RESPONDENT**

**CORAM: HONOURABLE MR. JUSTICE MWILA CHITABO, SC**

*For the Applicant: Mr. G. Pindani of Messrs Chonta, Musaila  
& Pindani Advocates*

*For the Respondent: N/A*

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**R U L I N G**

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**Legislation referred to:**

1. *Lands and Deeds Registry Act Chapter 185 of the Laws of Zambia*

This is an application by the Applicant by mode of originating summons for removal of caveat placed on stand no. 6099/CL/4 Lusaka by the Respondent.

The application is anchored under Section 81 of the Lands and Deeds Registry Act<sup>1</sup>.

The application is supported by an affidavit filed on 4<sup>th</sup> January, 2018 deposed to by **David Silwamba** the Administrator. Skeleton arguments were also filed into Court on 23<sup>rd</sup> March, 2018.

At the hearing of the application, learned Counsel Mr. Pindani informed the Court that the Respondent had been duly served with process by substituted service as evidence by affidavit of service filed on 23<sup>rd</sup> of March, 2018.

I was therefore satisfied with the proof of service and allowed the presentation of the application.

The gravamen of learned Senior Counsel's submission was to the effect that reliance be placed on the affidavit and exhibits collectively marked as "DS2". It was demonstrated that the late Joseph Silwamba was the registered owner of the property and holder of a certificate of title having purchased the same from the Government of the Republic of Zambia.

It was revealed that the Respondent together with several other persons had maintained a class action in Cause No. SCZ/Judgment No. 8 of 2006 Abel Mulenga & 36 others v. Mabvuto Adan Avuta Chikambi and the Attorney General which was dismissed by the Supreme Court. An application to stay execution of the Judgment

was declined in Cause No. SCZ/8/8/124 of 2007 (same parties) stamped 27 August, 2007.

The caveat had been lodged on the property on 7<sup>th</sup> March, 2003. The action having failed the Respondent yielded vacant possession in the year 2009 but omitted to remove the caveat.

In the circumstances, there does not exist any legal equitable or justifiable interest for the continued placement of the caveat.

On the impeccable evidence featured in the supporting affidavit and exhibits, I am satisfied that there is no reason to justify the continued placement of the caveat on the property.

I therefore invoke the provisions of Section 81 of the Lands and Deeds Registry Act<sup>1</sup> and I order that the caveat placed on the property subject to these proceedings be removed forthwith.

The evidence discloses that the Respondent yielded civil vacant possession in the year 2009. In my view this then is a fit and proper case that I make no order as to costs.

**Delivered under my hand and seal this 28<sup>th</sup> day of March, 2018**



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**Mwila Chitabo, SC**

**Judge**