

IN THE HIGH COURT FOR ZAMBIA

2013/HP/0808

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA
(Civil Jurisdiction)



BETWEEN:

JOHN TEMBO

PLAINTIFF

AND

ELIZABETH TEMBO

1ST DEFENDANT

**ALL ILLEGAL SQUATTERS ON THE REMAINING
EXTENT OF LOT NO. 2660/M, LUSAKA**

2ND DEFENDANT

Before the Hon. Mrs. Justice F. M. Chisanga on the day of..... 2016

For the Plaintiff: Dr. O. M. Banda, Messrs OMM Banda and Company

For the Defendant: Mr. K. Kaunda, Ellis & Company

R U L I N G

Cases referred to:

- 1. Attorney General vs Tall 1995/77 ZLR P. 54**
- 2. Zulu vs Avondale Housing Project (1982) ZR 172**

This matter was reserved for judgment after the parties had closed their respective cases. Upon cogitating on the evidence, it has become apparent that

a Mrs. Wang purchased a portion of land from the plaintiff. That purchase is said to have included land claimed by the 1st defendant as hers, in respect of which the plaintiff was fined. According to the evidence, it was the said Mrs. Wang who paid the fine for encroachment.

This testimony suggests that Mrs. Wang is a person who may be affected by the decision of the court. This possibility brings the case of **Attorney General vs Tall¹** to mind. In that case, the trial judge had reserved the matter for judgment. Instead of delivering judgment however, she added the Attorney General to the proceedings. Aggrieved at that joinder, the Attorney General appealed against the said decision. It was held that the trial judge was entitled to add the Attorney General to the proceedings. This, the Supreme Court said, was necessitated by section 13 of the High Court Act, which confers jurisdiction on the court to determine all matters in controversy between the parties in order to avoid a multiplicity of litigation.

The Supreme Court referred to **Zulu vs Avondale Housing Project²** where Ngulube DCJ said:

“I would express the hope that trial courts will always bear in mind that it is their duty to adjudicate upon every aspect of the suit between the parties so that every matter in controversy is determined in finality. A decision which, because of uncertainty or want of finality, leaves the doors open for further litigation over the same issues between the same parties can and should be avoided.”

This injunction obligates a trial court to ensure that all issues arising in an action are properly dealt with by seeing to it that all parties whose interests may be affected by the determination of an issue are brought before court. Proceeding in such a way as would leave questions raised on the evidence unresolved because a necessary party was not added and heard is untidy and would lead to further litigation. I am therefore duty bound to add the said Mrs. Wang to these proceedings as 2nd plaintiff. I accordingly add Mrs. Wang to these proceedings in that capacity. She will be served with the writ of summons and the defences within 14 days from the date of delivery of this ruling and is at liberty to plead her case accordingly. I thus re-open this matter for the possible receipt of further evidence after the joinder of Mrs. Wang and will fix the date of trial in due course.

Dated the.....16th.....of.....December.....2016



F. M. CHISANGA
HIGH COURT JUDGE