

IN THE HIGH COURT FOR ZAMBIA
AT THE DISTRICT REGISTRY
HOLDEN AT KITWE
(Civil Jurisdiction)

2017/HK/46

BETWEEN:

ALLAN ARMENGOL

1ST APPLICANT

BICOLANDIA LIMITED

2ND APPLICANT

AND

ANGELA CHISHALA CHISHIMBA

RESPONDANT



BEFORE: The Honourable Mrs. Justice P.Lamba in Open Court on the 24th Day
of July, 2017.

For the Applicant : Mr . Nyirongo, Messrs Nyirongo & Co.

For the Respondent : None Appearance.

JUDGEMENT

Legislation referred to:

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

This is a matter for judgment in which the applicants by way of an originating summons issued on 26th January 2017 seek the following reliefs:

- i) An order for removal of the caveat lodged on 3rd November 2015 stating that it was wrongfully and illegally lodged in view of the consent judgment on admission of 14th February 2014 as well as an amendment order of 29th September 2016 both under cause number 2013/HK/453;

- ii) An order for the respondent to pay damages for the inconvenience the applicants have suffered in failing to register the property in the purchaser's name.
- iii) Further or other relief as the Court may deem just and;
- iv) Costs of the application.

The summons is made pursuant to sections 81 and 82 of the Lands and Deeds Registry Act.

When the matter came up for hearing, the respondent was not in attendance. However the matter proceeded accordingly on the Court being shown proof of service of notice of hearing of the matter by way of advertisement in the local newspaper and the respondent not excusing her absence.

In the affidavit in support of the application deposed to by the 1st applicant, it is stated that there was a judgment on admission entered by consent in which the applicants were entitled to sell property which is Stand no 319 Chipata whose certificate of title had been deposited with the applicants as security for the judgement debt in their favour. The said property was sold pursuant to the consent judgment but they have failed to obtain state consent to assign because the respondent placed a caveat on.

The exhibited consent judgement on admission of 11th February 2014 under paragraph 4 and 5 confirms the above position of the applicants getting the property as security and with liberty to sell on failure of the respondent to liquidate her indebtedness to the applicants. The property was accordingly sold to one Dorothy Ndhlovu Phiri as shown by the contract of sale exhibited in the affidavit.

I have noted the submission by counsel to the applicants and have perused the affidavit supporting the application. No affidavit opposing it was filed into court. It is clear from the affidavit evidence that there was a consent judgment entered in which the property in issue was mortgaged to the applicants and the same was later sold. The date of the order is 11th February 2014 which is clearly prior to the date the caveat in issue is said to have been lodged, that is, 3rd November 2015.

In view of the foregoing, I am satisfied that sufficient cause has been shown as to why this application should be granted and as such it is granted. It is hereby ordered that the caveat lodged on 3rd November 2015 be and is hereby removed for having been lodged wrongly and illegally in contravention to the consent judgment of 11th February 2014. Further, an order for damages is granted to the applicants to be assessed by the Registrar who will also determine the rate of interest thereon.

Costs follow the event.

Leave to appeal is granted.

Delivered this 24th Day of July 2017.


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HIGH COURT JUDGE.

