

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

2015/HP/0057

BETWEEN:

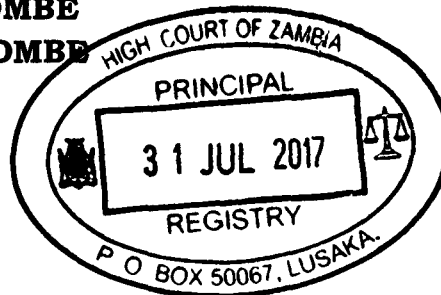
**DERRICK KAWENGA SICHILOMBE
MWINJI NAKAPONDA SICHILOMBE**

**1st PLAINTIFF
2nd PLAINTIFF**

AND

COL. NEWMAN LUHILA (RTD)

DEFENDANT



Before the Honourable Mrs. Justice M. C. Kombe

For the Plaintiffs : *Mrs. N. N. Mbao - Messrs Nkusuwila
Nachalwe Advocates*

For the Defendant : *Major C. A. Lisita - Messrs Central
Chambers.*

R U L I N G

Legislation and other work referred to:

- 1. The High Court Rules, Chapter 27 of the Laws of Zambia.**
- 2. A.S Hornby, Oxford Advanced Learner's Dictionary- Fifth (5th) Edition- Oxford University Press, 1995, London.**
- 3. Bryan A. Garner, The Black's Law Dictionary, Ninth (9th) Edition, 2009.**

The application before me stems from the Plaintiffs Notice of Intention to Raise an Objection to the Notice to Produce which was filed by the Defendant. The notice to raise an objection is made pursuant to **Order 5 rule 9 of the High Court Rules Chapter 27 of the Laws of Zambia.**

The Plaintiffs objection is based on the ground that:

'The Notice to Produce is improperly before court as the document produced does not bear the requisite formalities that are mandatory in the production of such public document and as such must be discarded by this court.'

At the hearing of the application learned counsel for the Plaintiffs, Mrs. N. N. Mbao referred the court to the skeleton arguments filed in support of their Notice to raise objection. Mrs. Mbao submitted that the Defendant sought to produce and have admitted in evidence a sketch map of an area that was purported to be the neighbourhood in which both the Plaintiffs and the Defendant resided. It was her contention that the sketch map was of no probative value whatsoever and therefore must not be admitted as evidence.

Mrs. Mbao further submitted that the Notice had been improperly brought to court as the requisite formalities regarding admission of public documents had not been adhered to and as such the Notice to produce should be discarded.

It was argued that Order 5 rule 9 of the High Court Rules Chapter 27 of the Laws of Zambia was clear and unwavering on the manner in which documents of a public nature could be brought before the court. Mrs. Mbao submitted that the said Order stated that any copy thereof or extract therefrom shall be admissible in evidence if it purports to be signed and certified as a true copy or extract by the officer in whose custody the original is entrusted.

In this regard, she submitted that the document that the Defendant sought to produce revealed that the document was neither certified nor signed by the relevant officer who as a requirement must be a custodian of the original document. That the document did not bear a Ministry of Lands or Lusaka City Council mark or insignia and as such it made it impossible to ascertain the authenticity of the same document. She added that Order 5 made it a staunch requirement that the document should be identified by way of being certified and signed by the custodian of the original document with requirements that had not been fulfilled.

In view of the foregoing, it was her contention that just a mere glance at the document in question, revealed that the document was erroneously filed.

Her prayer therefore was that the Notice to Produce should be dismissed or disallowed.

At the hearing, Mrs. Mbao reiterated what she had submitted in skeleton arguments.

In opposing the application, learned counsel Major Lisita relied on the skeleton arguments filed in court.

He submitted that the Plaintiffs objection was untenable as Order 5 rule 9 which the Plaintiff had relied on was not applicable law to the production of Area Maps in which litigants resided.

According to Major Lisita, the applicable law was Order 5 rule 8 of the High Court Rules. Counsel submitted that it was common ground that maps relating to the representation of and land allocation were made under the Ministry of Lands or the City Council, which were no doubt a government institution and a public municipal body respectively. He added that it was common ground that such maps were not made for the purpose of litigated questions but for the purpose of showing the manner in which the land in question was subdivided, after survey for the purposes of city or country planning.

He submitted that Rule 8 specifically alluded to 'all maps' and not 'book or other document' as Rule 9 did. It therefore followed that 'all maps' were to be construed under Rule 8 and not Rule 9.

To support this argument, counsel gave a definition of a map lest it was construed that the document that was sought to be produced was not a map. He submitted that the document in question was a plat map which could in

accordance with Rule 8 be given in evidence in ascertaining the position of the land without further proof which was a crucial point in this case.

Major Lisita also submitted that even supposing the document was not admitted which was not conceded they could still have the same certified and apply to the court to have the certified copy substituted for the current one.

Those were the submission by the parties which I have carefully considered in arriving at this decision.

The basis of the objection raised by the Plaintiffs in their Notice is that the document which the Defendant intends to produce does not comply with Order 5 Rule 8 of the High Court Rules as it has not been signed and certified as a true copy or extract by the officer to whose custody the original is entrusted.

In making a determination on the objection raised by the Plaintiffs, it is important to ascertain the nature of the document so that the applicable rule can be established.

Order 5 of the High Court Rules relates to rules on Evidence. Rules 3 to 10 specifically deal with the different categories of documentary evidence. Rule 9 on which the objection is anchored provides as follows:

'Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no Act or statute exists which renders its contents provable by means of a copy, any copy thereof or extract therefrom shall be admissible in evidence, if it purports to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted.'

It is clear from the above rule that the nature of the documents covered under this rule are books or any other document of a public nature. Therefore, in order for any copy or extract therefrom to be admitted in evidence, the same

should be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted.

The Defendant has argued that the Plaintiffs objection is untenable as Order 5 rule 9 relied upon by the Plaintiffs is not the applicable rule on the production of Area Maps in which litigants resides. It is contended that the applicable rule is rule 8. For the avoidance of doubt, the said rule reads as follows:

'All maps made under the authority of any government or of any public municipal body, and not made for the purpose of any litigated question, shall prima facie be deemed to be correct, and shall be admitted in evidence without further proof.'

What is evident from the foregoing provision and the marginal note is that the nature of the documents covered under rule 9 are public maps made under the authority of any government or any public municipal body.

According to the Oxford Advanced Learner's Dictionary, a map is defined as a:

'A representation on paper of the earth's surface or part of it showing countries, rivers, mountains, oceans, roads etc.'

It is further argued by the Defendant that the document it seeks to produce is actually a plat map. According to Garner's Black's Law Dictionary, a plat map is defined as:

'A document that gives legal descriptions of pieces of real property by lot, street and block number. A plat map is usually drawn after the property has been described by some other means such as a government survey. Once a plat map is prepared, property descriptions are defined by referring to the appropriate map.'

I have examined the document the Defendant seeks to produce. The said document does have some features of a plat map as it shows an area of land. I therefore accept the argument by the Defendant and I find that the applicable

rule which I have to consider is rule 8 and not rule 9 on which the objection is anchored.

However, it is not clear looking at the map what area of land is being shown as the document only has numbers in small prints but has no markings of roads or streets.

In addition, although counsel for the Defendant has argued that it is common ground that maps relating to the representation of land allocation are made under the Ministry of Lands or the City Council, the map in question does not show the source of the information contained on the document for me to state that the document is a public map given under the authority of any government or of any public municipal body.

The view I take is that if this map should *prima facie* be deemed to be correct and admitted in evidence without further proof, then on the face of it, it should show that it was given by the Lusaka City Council or the Ministry of Lands. In the absence of this vital information, it is difficult to ascertain whether it is a public map or not.

Based on the reasons I have highlighted above, I find that the document described by the Defendant in the Notice to Produce as 'Diagram of Area the litigants live in' cannot in its current form be classified as a public map and be admitted in evidence pursuant to Order 5 rule 8 of the High Court Rules. Consequently, I order that it be expunged from the record. Considering the circumstances of the case, I make no order as to costs.

Delivered at Lusaka this 31st day of July, 2017


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M.C. KOMBE
JUDGE