

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

2014/HP/0665

BETWEEN:

KELVIN KAPELWA MUBITA

AND

LUSIYA NYONDO



BEFORE HON. MRS. JUSTICE G.C. CHAWATAMA
ON 30TH OCTOBER, 2017 - IN CHAMBERS

For the Plaintiff : *Messrs - Imasiku & Company*
For the Defendant : *Messrs - Legal Aid Board*

RULING

CASES REFERRED TO:

1. ***Covindbhal Baghabhal Patel and Vallabhal Patel V Monile Holding Company Limited***
2. ***Mwambazi v Morester Farms Limited***
3. ***Ladup V Siu (1983) unreported***
4. ***Nahar Investment Limited v Grindlays Bank International (Zambia) Limited (1984) Z.R. 81***

AUTHORITIES REFERRED TO:

1. ***Order 25 rule 1(6)***
2. ***Constitution of Zambia, Chapter 1 of the laws of Zambia*** directs in ***Article 118***

This is an appeal from the ruling of the Deputy Registrar dismissing an application by the Defendant to set aside a default judgment. The Deputy Registrar ruled that the Defendant had

not demonstrated a defence on the merit for the court to set aside the default judgment.

This matter was commenced by writ of summons and statement of claim filed on the 5th May, 2014 where the Plaintiff claims for-

1. *The sum of K60,000.00, being money paid towards the purchase of the property known as house number 647 Bulangililo, Kitwe.*
2. *Return of the sum of K34,404 paid on behalf of the estate administered by the Defendant.*
3. *Damages for breach of the agreement dated 9th September, 2013.*
4. *Damages for misrepresentation;*
5. *Costs*
6. *Any other relief the court will deem fit*
7. *Interest.*

The Plaintiff filed an affidavit of service on the 15th May, 2014 exhibiting a letter of acknowledgement signed by the Defendant acknowledging that he had received the writ of summons and statement of claim.

On the 11th August, 2014 the Plaintiff was granted Judgment in default of appearance and defence pursuant to **Order 12 Rule 1 (1) of the High Court Act Chapter 27 of the Laws of Zambia.**

