

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

2013/HP/0001

BETWEEN

GALAUNIA FARMS LIMITED

AND

JAMES T. MUCHENJE

ATTORNEY GENERAL



PLAINTIFF

DEFENDANT

THIRD PARTY

Before the Honourable Mrs. Justice M.C. Kombe

For the Plaintiff : Mr. M. Ndalameta- Messrs Musa Dudhia & Co.

For the Defendant : Mr. J. Zimba - Messrs Makebi Zulu Advocates

For the Third Party : No appearance

R U L I N G

Cases referred to:

1. William David v. E.F. Harvey Limited (1985) Z.R. 179.
2. David Nzooma Lumanyanda v. Chief Chamuka and others (1988-89) Z.R. 194.
3. Wallis Cayton Bay Holiday Camp Limited v. Shell-Mex and BP Limited (1979) 3 ALL ER 575.
4. George Wimpey and Co. v. John (1966) 1 ALL ER 232.
5. Daniel Mwale v. Njolomole Mtonga and the Attorney General –SCZ Judgment No. 25 of 2015.

6. **R.B. Policies at Lloyds's v. Butler (1949) 2 ALL ER 236.**
7. **Howard and others vs. Fawcett's and others (2006) UKHL 6.**
8. **Peter David Lloyd v. J.R. Textiles- SCZ/8/201/2011.**
9. **Zambia Telecommunications Company Limited v. Valson Pharma Zambia Limited (2010) Z.R. 142.**

Legislation and other work referred to:

1. **The Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia.**
2. **The Limitation Act of 1939.**
3. **The British Act Extension Act, Chapter 10 of the Laws of Zambia.**
4. **The Rules of the Supreme Court, (RSC) 1999 Edition.**
5. **Bryan A. Garner- The Black's Law Dictionary, Ninth (9th) Edition, 2009.**
6. **Judith- Anne Mackenzie & Mary Philips, Land Law, Ninth (9th) Edition, (Oxford University Press) United States of America, 2002.**

This is a Ruling on the 1st Defendant's application to raise a preliminary issue on a question of law. The application is made pursuant to Order 14A and Order 33 rule 3 of the Rules of the Supreme Court (White Book) 1999 Edition and Section 4(3) of the Limitation Act 1939 of the United Kingdom.

The 1st Defendant formulated the question of law for determination as follows:-

'The Plaintiff's originating process should be struck out as these proceedings were commenced outside the statutory period of Limitation as provided by Section 4(3) of the Limitation Act 1939 of the United Kingdom which bars the actions for recovery of land after the expiration of twelve (12) years from the date on which the right of action accrued to the Plaintiff. In the present case, the Plaintiff's right of action accrued on 21st November, 1982 when the Certificate of Title number 54639 relating to F/32a was issued in his favour.'

The application is accompanied by an affidavit of the same date deposed to by **JAMES T. MUCHENJE**, the 1st Defendant. He deposed that the Plaintiff alleged

in the Statement of Claim that it was the legal owner of Subdivision 4 of Subdivision F of Farm No. 32a, and Subdivision 9 of farm No. 32a both properties situated at Lusaka; that it surprisingly discovered about the Defendant's interest over the portion of land in contention on Subdivision 4 of Subdivision F of Farm 32a that he currently held possession of sometime in the year 2008.

He further deposed that contrary to what the Plaintiff alleged, he had been residing on the main property previously known as subdivision F of Farm 32a prior to and after the numerous subdivisions that had been created thereon from as early as the year 1968 after the European commercial farmers abandoned the entire portion of land; that he had over a period of forty seven (47) years developed the land in question to build his residential horticultural and agricultural requirements; that the Plaintiff through its company Executive Chairman then knew about his possession over the portion of property that he currently occupied as early as 1982 and not the year 2008 as alleged in the Plaintiff's Statement of Claim. To support this assertion, the Defendant produced copies of correspondence which was marked '**JM1a**', '**JM1b**', '**JM1c**' and '**JM1d**'.

He further explained that the properties which the Plaintiff had used as a basis of this action were merely subdivisions of the main property that the Plaintiff purchased from Lloyd Ray Hudson; that the Plaintiff only applied for separate Certificates of Title for Subdivision 4 on 9th June, 2006 and later for Subdivision 9 on 28th November, 2012; that he believed that the Plaintiff deliberately applied for separate Certificates of Title in an attempt to circumvent the application of laws relating to limitation of actions for the recovery of land as the Plaintiff's right of action accrued much earlier than when he acquired the titles to the above mentioned properties.

He added that he had undisturbed possession over the portion of land that he occupied to the exclusion of the Plaintiff and that he had exercised various acts of ownership over the same from as early as 1968; that he verily believed that the

Plaintiff's cause of action against him arose sometime in 1982 when the Certificate of title was issued; that he verily believed that the Plaintiff's right of action was barred by the law applicable in our jurisdiction on limitation of actions for recovery of land.

The Plaintiff opposed the application through its Executive Chairman **MICHAEL CECIL GALAUN**.

He explained that Subdivision 4 of subdivision F of Farm 32a and subdivision 9 of farm 32a which were central to these proceedings unquestionably belonged to the Plaintiff as the said subdivisions were part of farm 32a until the Plaintiff applied for separate Certificates of title; that subdivision F of farm 32a became the subject of a provisional Certificate of title number 2759 on or about November 1948 in the name of Johan Gottlieb Crick and that was the first time it was considered on its own on title.

He went on to explain that farm 32a was purchased by the Plaintiff from Mr. Rensburg Michael Amoldus James Van on 26th April 1978 and that this farm was subject of a final Certificate of title as far back as 1 April 1913 in favour of the British South African Company. He produced a copy of the physical lands register which was marked as '**MCG2**'.

The deponent explained that his father Abe Galaun did not know the Defendant's alleged possession of the portion of land he presently illegally occupied and did not know any of the squatters. He added that even assuming that his late father was aware, he had been advised that from 1st April, 1913, no title to the land that was subject of these proceedings or any right, privilege or easement in or upon or over the same land could be acquired by possession or be used adversely to or in derogation of the title of the registered proprietor.

He further explained that he had read through the correspondence exhibited as '**JM1a**' in the affidavit in support of the application and stated that the same was

merely a letter from the then District Governor seeking to secure the continued occupation of subdivision F of farm 32 by illegal settlers then existing; that soon after the purchase of the farm, the Plaintiff evicted all the squatters on the land and thereafter, there were no illegal settlers on the land and the Plaintiff had no reason to sue any of the illegal settlers; that even if the Plaintiff had sued the illegal settlers, the Defendant would not have been amongst them as he was not on the land at that time as his name did not appear on exhibit '**JM1d**' which listed those who were removed from the land.

The deponent further explained that he had been advised that there was no prescribed period of time within which an action to remove the Defendant could be brought in Zambia.

The Defendant filed an affidavit in reply in which he explained that the Plaintiff's Certificate of title was questionable as it had been fraudulently obtained by the Plaintiff as he had failed, neglected, ignored and disregarded his *bonafide* and genuine claim or interest when applying for the said title. He further explained that the Plaintiff through its then Chief Executive Chairman, Abe Galaun had actual notice of his possession of land and that he used to supply water from his dams to the Plaintiff's farm animals at the time and he had no issue with his interest in the portion of land that he had occupied since 1969.

He also added that the deponent's father was aware of his presence and other settlers on the remaining extent of subdivision F of farm 32a as he was the ranch Chairperson tasked to represent settlers therein and engage into discussions with the Plaintiff, the Commissioner of Lands and other interested government officials. He produced copies of correspondence among the Defendant, Plaintiff, Commissioner of Lands and other interested parties which were marked '**JM2a**' to '**JM 2d**'.

In relation to the contents of paragraphs 9 and 14 of the Plaintiff's affidavit, the Defendant deposed that in as much as the Plaintiff may have had title to the land which was subject of these proceedings, he was entitled to plead the statute of limitation as a defence.

He further deposed that he was not directly affected by the eviction exercise that the Plaintiff had carried out and that he was informed by Israel McDzengs one of the people tasked to remove settlers that he was not on the list of those removed as the Plaintiff had recognized his interest in the property. That is why he did not execute any agreement form regarding compensation.

In this regard, he denied the contents of paragraph 13 of the affidavit in opposition and deposed that the activity on the portion of land that he currently occupied was not illegal but an actual consequence of his genuine claim of interest on the said property that was recognized by the Plaintiff from time immemorial; that as a result he had over the years exercised various acts of ownership by building, carrying out farming activities, burying his late members of the family, constructing dams which to date he still used as supply of water for drinking, preparing food, bathing, washing clothes and other domestic use; that on this account he had a right to raise the issue of statute of limitation for the court to determine whether it had jurisdiction to entertain this action.

At the hearing of the application, learned counsel for the Defendant Mr. J Zimba relied on the Notice to raise issues in liminae and the affidavit in support and the affidavit in reply. He submitted that for an action relating to the recovery of land to subsist, the same had to be brought within the period of twelve (12) years from the time that the cause of action arose.

Mr. Zimba submitted that the Defendant in paragraph 10 of his affidavit had deposed that he had been on the land from as far back as 1982 when the issue of him being on the land arose and therefore the cause of action arose in 1982. He

referred to Section 4 (3) of the Limitation Act 1939 of UK and submitted that this section set time limits when an action could be commenced. In this regard, he argued that the Plaintiff had no cause of action as defined in the case of **William David v. E.F. Harvey Limited** ⁽¹⁾. He urged this court to dismiss the action.

In opposing the application, learned counsel for the Plaintiff Mr. M. Ndalameta relied on the affidavit in opposition to the Notice of intention to raise a preliminary issue. He submitted that the application and the issues raised fell squarely within the ambit of the case of **David Nzooma Lumanyanda v Chief Chamuka and others** ⁽²⁾ where the Supreme Court held that no rights by adverse possession could be acquired if land became the subject of Certificate of Title. He added that the reason for this was Section 35 of the Lands and Deeds Registry Act Chapter 185 of the Laws of Zambia to the extent that the section referred to a Certificate of Title, the Supreme Court extended this and declared that even where a provisional Certificate of Title was issued, no adverse possession was possible.

Mr. Ndalameta further submitted that it was clear that for the Defendant to succeed in the manner that he wished on this application, he would have to show evidence of adverse possession and all the other requirements under the Limitation Act of 1939 for twelve (12) years prior to the date that the land in issue became subject of the Certificate of Title. In this case, full title was granted to the land in question as far back as 1st April, 1913. The Defendant or even his alleged predecessors were nowhere on the scene at the time. On this basis alone, he submitted that the application ought to be dismissed.

Mr. Ndalemata argued in the alternative that if this court was of the view that the Limitation Act applied, his contention was that the relevant sections were Section 4(3), Section 5(1) and Section 10 (1). He submitted that assuming that the Defendant was in possession for as long as he claimed he had, he had not been in adverse possession.

On the argument by the Defendant that the cause of action arose in 1982, counsel submitted that the Limitation Act provided that time began to run when the Plaintiff was dispossessed or discontinued in possession of the land in question.

It was Mr. Ndalameta's contention that there was no evidence that the Plaintiff had been dispossessed. He stressed that the test could not simply be that the Defendant had been in possession for over twelve (12) years. In aid of his argument, he referred the court to the case of **Wallis Cayton Bay Holiday Camp Limited v. Shell-Mex and BP Limited** ⁽³⁾ where Ormond J stated that:

'Two things appear to be contemplated by that enactment. Dispossession and discontinuous of possession. If this is the right way to approach the problem, the question becomes: Has the claimant proved that the title holder has been dispossessed or has discontinued his possession of the land in question for the statutory period? Rather than has the claimant proved that he through himself or others on whose possession he can rely has been in possession for the requisite number of years.'

Counsel also added that Lord Denning in the same case stressed that possession by itself was not enough to give title. It must be adverse possession. Based on the same case, Mr. Ndalameta submitted that the case recognized that an owner such as the Plaintiff could hold land for developmental purposes which were the scenario as presented in the Statement of Claim and supported by the affidavit in opposition. A trespasser who used the land for however long did not thereby dispossess the true owner. Therefore in the scheme of the Limitation Act, time had never begun to run against the Plaintiff.

In his closing submissions, Mr. Ndalameta referred the court to the case of **George Wimpey and Co. v. John** ⁽⁴⁾ in which Harman L.J stated that the acts of a user committed upon land which did not interfere and were consistent with the purpose to which the owner intended to devote it did not amount to a

dispossession of him and were not evidence of discontinuous of possession by him within the meaning of the Limitation Act.

Counsel submitted that the relevance of this argument was that the Defendant had mentioned things like using of dams on the land, growing vegetables. However, these acts were not inconsistent with the Plaintiff's ownership.

Based on the foregoing, Mr. Ndalameta urged the court to dismiss the application with costs to the Plaintiff.

In reply, Mr. Zimba submitted that the documents produced by the Defendant in his affidavit in support and his affidavit in reply showed that he had put enough material which showed that the cause of action in this matter arose a long time ago suffice to say that it was outside the Limitation period.

Further that the Defendant had been on that part of the land which was his source of livelihood. Therefore to argue that time relating to the cause of action had not begun to run was not a correct position.

In relation to the argument on Section 35 of the Lands and Deeds Registry Act, he argued that the issue before this court related to the propriety of this cause of action. Mr. Zimba submitted that this provision did not address that question and the case of **David Nzooma** was a case that discussed Section 35 and not the propriety of this action. This was the position regarding all the English cases.

In sum, his reply was that this action was statute barred and the court should dismiss the action with costs to the Defendant.

I am indebted to counsel for their submissions which I have taken into account when arriving at this decision.

By this application made by the Defendant, I have been invited to determine whether the Plaintiff's action for the recovery of land against the Defendant which was commenced on 2nd January, 2013 is statute barred.

To begin with, the Garner's Black's Law dictionary defines the statute of limitation as:

'The law that bars claims after a specified period; a statute establishing a time limit for suing in a civil case based on the date when the claim accrued (as when the injury occurred or was discovered).'

The term 'accrue' has been defined in the same dictionary as:

'To come into existence as an enforceable right; to arise- the plaintiff's cause of action for silicosis did not accrue until the plaintiff knew or had reason to know of the disease.'

From this definition, it is clear that certain causes of action accrue only when the Plaintiff knows or discovers the injury because some injuries cannot be readily discovered. This issue is particularly important when considering the Limitation Act. Thus the Supreme Court in the case of **Daniel Mwale v. Njolomole Mtonga and the Attorney General** ⁽⁵⁾ stated that:

'In our understanding, time begins to run when there is a person who can sue and another who can be sued.'

The purpose and effect of statutes of limitation is to protect defendants. Therefore in the case of **R.B. Policies at Lloyds's v. Butler** ⁽⁶⁾, Streatfeild J. stated that:

'One of the principles of the Limitation Act 1939 is that those who go to sleep on their claims should not be assisted by the courts in recovering their property. But another equally important principle is that there shall be an end to these matters and that there shall be protection against stale demands.'

The underlying principle can also be discerned from the House of Lords case of **Howard and others vs. Fawcett's and others** ⁽⁷⁾ where it was observed that:

‘Statute of Limitation seeks to hold a balance between two competing interest; the interests of claimants in having maximum opportunity to pursue their legal claims and the interest of defendants in not having to defend stale proceedings.’

In this regard, the **Limitation Act of England of 1939** has been extended to our jurisdiction by virtue of Section 2 of **The British Act Extension Act, Chapter 10 of the Laws of Zambia** which states that the Acts of the Parliament of the United Kingdom (which include the Limitation Act of 1939) set forth in the Schedule to the Act shall be deemed to be of full force and effect within Zambia.

In the present case, the Defendant has argued that since this action for the recovery of land was commenced in 2013, then it was commenced outside the statutory period of twelve (12) years provided for under Section 4 (3) as the cause of action arose in 1982.

Section 4 (3) of the Limitation Act which the Defendant has relied on provides as follows:

‘No action shall be brought by any person to recover any land after the expiration of 12 years from the date on which the right of action accrued to him or if it first accrued to some person through whom he claims.’

Given the foregoing provision, two questions have to be considered when determining the preliminary issue raised in this matter.

- (i) *When did the right of action accrue to the Plaintiff?*
- (ii) *Does The Limitation Act of 1939 apply in this case?*

(i) When did the right of action accrue to the Plaintiff?

The Defendant contends that he had been residing on the main property prior to and after the numerous subdivisions had been created from as early as 1968 and that he had over a period of forty seven (47) years developed the land in question

to suit his residential, horticultural and agricultural requirements. He further contends that Mr. Abe Galaun had known about his possession over the portion of property he currently occupied as early as 1982 and not in 2008. In this regard, he has argued that the right of action arose in 1982.

On the other hand, the Plaintiff has disputed the foregoing and contends that there were no illegal settlers on its property in the year 1982 as they had been removed; that even if the Defendant contends that he was on the property at that time, his name did not appear on the list of the illegal settlers that had been removed. In this regard, the Plaintiff contends that it only became aware of the Defendant in 2008 when subdividing subdivision F of Farm 32a for its business purpose that the Defendant had wrongly entered and taken possession of a portion of the said property without its consent.

I have given careful consideration to the evidence adduced by the parties. To support his assertion, that he was in possession of the property as far back as 1969 and that the Plaintiff knew about his presence, the Defendant first produced correspondence marked '**JM1a**' '**JM1b**', '**JM1c** and '**JM1d**' to '**JM2d**' in the affidavit in support.

From the exhibit marked '**JM1a**' dated 11th April, 1983 which is a letter from the District Governor and the response to that letter which is '**JM1b**' it is not in dispute that there were some illegal settlers on Farm 32a.

Furthermore, exhibit '**JM1c**' which is a letter from the Commissioner of Police (Special duties), dated 30th August 1991 shows that the illegal settlers were evicted from the property in question and in that letter the Police Commissioner attached a list of the people who were evicted from the farm so that alternative land could be found for them.

As it has been pointed out by the Plaintiff in its affidavit in opposition, although the Defendant produced this correspondence as proof that Mr. Abe Galaun had

known about his presence on the property, it is very clear that the Defendant's name was not on the list of those who were evicted and so I find.

The Defendant's explanation why his name was not on the list of those targeted to be removed from the portion of land was that he had been informed by a man named Israel McDzengs, the person tasked to remove the settlers that the Plaintiff had recognized his interest in the property that he occupied. To this end, he produced correspondence which was marked '**JM2a**' to '**JM2d**' in the affidavit in reply.

I have carefully considered the contents of the said correspondence. '**JM2a**' is a letter dated 7th February, 1995 addressed to the Commissioner of Lands by R.M. Chongwe and Co. In this letter the author who was area Member of Parliament was reminding the Commissioner of Lands of the meeting which was supposed to be convened for the purpose of informing the Ulimi/Chamba Valley Settlers what had been discussed at a previous meeting.

On the face of it, this letter does not indicate who the settlers are and whether the Defendant was one of them. Furthermore, it does not indicate whether Mr. Abe Galaun was aware of the contents of the said letter as the letter was neither addressed to him nor copied to him.

'**JM2b**' is a letter dated 26th April, 1996 addressed to the Commissioner of Lands by the Mandevu Member of Parliament then Patrick Katyoka. This letter was confirming the discussions held in the Commissioner of Lands office on 1st April, 1996 and attended by the author and a delegation of three (3) resident representatives led by Mr. James T. Mchenje concerning the land dispute in Ulimi (Chamba Valley).

Although the letter refers to a land dispute, it is not clear who the title holders to the land in dispute are as the Plaintiff has not been mentioned in the letter.

Furthermore, there is no indication that the contents of the letter were brought to the attention of the Plaintiff through Mr. Abe Galaun.

'JM2b' are minutes dated 4th January, 2000 in relation to the land issue between the title deed holders and the sitting tenants. However, the letter does not show that the title deed holder is the Plaintiff and that the land being referred to is the land in question in this particular case.

'JM2c' is a minute from the Lands Department showing that the bearers were occupying Subdivision 1 of Subdivision F of Farm No. 32 (a). Although the land in question is subdivision 1 subdivision F of Farm No. 32 (a), it shows that the land in question belongs to the Lands Department and not the Plaintiff. Furthermore, the Defendant's name does not appear on the list of the residents of Ulimi.

In relation to **'JM2d'**, it is an incomplete minute in which the unknown author was complaining about the land which was allocated to them by the Lands Department. The letter also shows that the settlers received forms indicating different plot numbers and this led to a land dispute between the settlers and the Lands Department. However, the minute does not show whether the Defendant was one of the settlers and that Mr. Abe Galaun was aware of the land dispute referred to.

Based on the reasons I have outlined above, I find that prima facie, the correspondence I have referred to above is insufficient to prove that Mr. Abe Galaun knew about the presence of the Defendant as far back as 1982 as contended by the Defendant.

As I have already alluded to, certain causes of action accrue only after the injury has been discovered. In this regard, the Plaintiff's evidence is that it discovered that the Defendant had entered its property in the year 2008 when it started subdividing the property for its business purposes. In view of my finding that there is insufficient evidence to prove that the Plaintiff knew about the Defendant's

presence as far back as 1982, I find that the cause of action arose in 2008 when the Plaintiff discovered that the Defendant had entered on the property and not in 1982 as argued by the Defendant.

(ii) **Does the Limitation Act of 1939 apply in this case?**

The Plaintiff has argued that the Limitation Act does not apply since the Defendant is not in adverse possession. Furthermore, it has been argued that since the Plaintiff is a title holder it is protected against adverse possession by virtue of Section 35 of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia.

The Defendant on the other hand has argued that he is entitled to plead the Statute of Limitation because the issue is not about the applicability of Section 35 of the said Act but about the propriety of the action.

In answering the question I have posed, I have considered the provisions of Section 10 the Limitation Act. The said provision reads as follows:

‘No right of action to recover land shall be deemed to accrue unless the land is in possession of some person in whose favour the period of limitation can run (hereinafter in this section referred to as ‘adverse possession’) and where under the foregoing provisions of this Act any such right of action is deemed to accrue on a certain date and no person is in adverse possession on that date the right of action shall not be deemed to accrue unless and until adverse possession is taken of the land.’

The Supreme Court in the case of **Peter David Lloyd v J.R. Textiles Limited**⁽⁸⁾ explained the above section when it stated that:

‘By Section 10 of the Limitation Act, in order that a right of action should accrue thereby triggering the commencement of the limitation period, the land concerned must be in possession of some person in whose favour the period of limitation can run...It is fundamental to understand that the only way that the limitation period under

Section 4 (3) of the Limitation Act can start to run in favour of the respondents is if they were in adverse possession. Mr. Muchende's argument that there was no adverse possession is self-defeating if he has to rely on section 4(3).

Based on the foregoing, can it be said that the Defendant was in adverse possession of the property for him to rely on section 4(3) of the Limitation Act?

Judith- Anne Mackenzie & Mary Philips, the learned authors of the book entitled 'Land Law' state that the requirements for establishing title by adverse possession are that the squatter must take possession of the land either by dispossessing the owner or entering at some time after the owner had discontinued his own possession.

Thus in the case of ***Wallis Cayton Bay Holiday Camp Limited*** which counsel for the Plaintiff has referred to, the court stated that there should be dispossession and discontinuance of possession.

The affidavit evidence adduced by the Defendant is that he has a genuine claim of interest in the land which the Plaintiff has recognized since time immemorial and that he has over the years exercised various acts of ownership by building, carrying out farming activities, burying his late family members and the construction of dams. That notwithstanding, there is no evidence that these activities which were carried out were inconsistent with the Plaintiff's ownership of the property and that they were carried out with the intention of dispossessing the Plaintiff of its property. Furthermore, there is no evidence that the Defendant entered the property after the Plaintiff had discontinued its possession of the property.

In this regard, I find that the Defendant there is insufficient evidence to show that the Defendant was in adverse possession of the property in question.

Moreover, Section 35 of the Lands and Deeds Registry Act provides as follows:

'After land has become the subject of a Certificate of Title, no title thereto, or to any right, privilege, or easement in, upon or over the same shall be acquired by possession or user adversely to or in derogation of the title of the Registered Proprietor'

This provision received judicial interpretation in the case of **David Nzooma** cited by counsel for the Plaintiff. The Supreme Court observed that a person cannot continue to acquire a right under the Limitation Act by adverse possession where even a provisional certificate of title has been issued. This position was re-echoed in the case of **Zambia Telecommunications Company Limited v Valson Pharma Zambia Limited** ⁽⁹⁾.

Furthermore, in the case of **Peter David Lloyd** which I have referred to above, the Supreme Court in particular reference to its holding in the case of **David Nzooma** went further and stated that:

'What it means is that adverse possession cannot in itself extinguish the registered proprietor's title at the Lands Registry and it becomes immaterial whether the registered proprietor has made any attempt within the prescribed 12 years to commence legal proceedings for the purpose of terminating the squatter's or trespassers possession.'

It is not in dispute that farm 32a has always been on title since 1913 and that the subdivisions 4 and 9 of subdivision F of farm 32a (which are subject of these proceedings) were a part of subdivision F of farm 32a until the Plaintiff applied for separate Certificates of title. The Defendant in paragraph 10 of his affidavit in reply has acknowledged that the Plaintiff may have a Certificate of Title in this case but he contends that that does not stop him from pleading the Statute of Limitation.

However, the view I hold based on Section 35 of the Lands and Deeds Registry Act and the above Supreme Court authorities is that the Defendant cannot set up the Statute of Limitation against the Plaintiff who is a registered proprietor.

Furthermore, it is clear that for as long as the Plaintiff in this case is a registered proprietor, it is immaterial if it has not made any attempt within the prescribed twelve (12) years to commence legal proceedings for the purpose of terminating the Defendant's possession of land.

For the reasons I have highlighted above, I find that the Limitation Act does not apply in this case.

The net result of my findings is that this action commenced by the Plaintiff is not statute barred as Limitation Act is inapplicable on the facts of this case. Consequently, the Defendant's application to raise a preliminary issue to strike out these proceedings fails. I accordingly dismiss it with costs to the Plaintiff.

DELIVERED at Lusaka this 25th day of September, 2017.



**M. C. KOMBE
JUDGE**