

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

**2017/HP/0354**



**B E T W E E N :**

BIDWELL SIAME  
LOMAZI BANDA

**1<sup>ST</sup> PLAINTIFF  
2<sup>ND</sup> PLAINTIFF**

**AND**

REGINA CHIPITAMBILI

**DEFENDANT**

**Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on the  
16<sup>th</sup> day of November, 2017**

*For the Plaintiffs : Ms. M. Mushipe, Madames Mushipe & Associates*  
*For the Defendant : Mr. D. Kasonde, Messrs Chifumu Banda & Associates*

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**J U D G M E N T**

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**Cases Referred To:**

1. *Anti-Corruption Commission v Barnet Development Corporation Limited*  
(2008) ZR 69 Volume 1 (SC)

**Legislation Referred To:**

1. *Lands and Deeds Registry Act, Chapter 185*
2. *Lands Survey Act, Chapter 188*

By way of Writ of Summons, the Plaintiffs seek the following reliefs:

1. *A declaration that the Plaintiffs are beneficial owners of all that piece of land known as Lot No. 6284/M.*
2. *An injunction restraining the Defendant from:*
  - (i) *Entering and remaining on Lot No. 6284/M, Lusaka, Zambia.*
  - (ii) *Interfering with the Plaintiffs' peaceful enjoyment of Lot No. 6284/M, Lusaka, Zambia.*
  - (iii) *Carrying out of any further developments, construction of any building or buildings.*
  - (iv) *Selling any piece of land on Lot No. 6284/M, Lusaka, Zambia.*
  - (v) *Demarcating and allocating land on Lot No. 6284/M.*
3. *Damages for trespass*
4. *Compensation for loss of the demolished four properties at a total value of K560,000.00.*
5. *Costs of the action should be borne by the Defendant.*
6. *Any other reliefs that the Court may deem fit.*

The particulars given in the Statement of claim are that the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs are legal owners of Lot No. 6284/M, Lusaka, Zambia. The Defendant illegally encroached, trespassed and demarcated their property Lot 6284/M, Lusaka and demolished four properties valued at of K560,000. The Plaintiffs claim that the Defendant illegally allocated plots on their property and sold portions of it to unknown persons.

The Defendant settled a Defence where she denies the Plaintiffs' claims. The Defendant states in her counterclaim that she is the legal and bonafide owner of the property known as Lot 6284/M, Lusaka West and has title. She was allocated the property by Kafue District Council and it was later surveyed by the Surveyor General. Title was subsequently issued by the Commissioner of Lands in January, 2014.

The Defendant states that the Plaintiffs have always been her neighbours and are fond of selling portions of land on properties, which they do not possess. The Defendant further states that due to their arrogance, the Plaintiffs have dragged her to the local Court over the same property, which was dismissed.

The Defendant states that the Plaintiffs have not resurveyed their property in order to obtain genuine title deed but have obtained what looks like a fake title deed. She avers that the Plaintiffs are the ones who are trespassing on her property and have been selling pieces of land illegally where structures were built and later demolished by the Government for illegality.



The Defendant avers that the property that the Plaintiffs claim to have been demolished was on her farm and they purposely built a house on a reserve road instead of their land.

The Defendant counterclaims:

- (i) *An order that the Plaintiffs stick to their perimeters of Lot No. 6284/M, Lusaka West and leave alone Lot No. 6285/M belonging to the Defendant.*
- (ii) *An order that Lot No. 6284/M and 6285/M are different as they have different numbers and hectares.*
- (iii) *Any other relief this Court may deem fit.*
- (iv) *Costs.*

At trial the Plaintiffs called two witnesses. **PW1** was **Lomazi Banda**, who testified that she acquired Plot 6284 in 2014 from the Ministry of Lands. She called a surveyor from the Ministry of Lands to survey her property and a diagram was prepared. A Certificate of Title was issued in 2015.

According to PW1, in 2015, the Defendant engaged Kayo surveyors who encroached on their farm. The Defendant took police officers to her property and they destroyed a dwelling house without any Court documents. PW1 stated that after the incident,

she went to the Ministry of Lands to get a site map of the whole area and the Ministry officials told her that the surveyor did not follow instructions. She testified that the Defendant showed her another site map of the area insisting that hers was not genuine.

PW1 testified that the Defendant obtained her property after her and she once sued the Defendant in the local Court for defamation and not land ownership. She also testified that she was not in the habit of selling other peoples' land. She tried to resolve the dispute with the Defendant with the intervention of the Ministry of Lands, but was unsuccessful. PW1 testified that she had a genuine Certificate of Title and she obtained it from the Ministry of Lands.

In **cross-examination**, PW1 testified that she lived in the area known as Maloni village for twenty-eight years. The area was surveyed in 2014 when 105 plots were created and given to the members of the community. The Defendant is her neighbour and there is no road reserve between their properties.

PW1 stated that she applied for her plot from Kafue District Council and it recommended her to the Ministry of Lands, which issued her title. PW1 stated that she did not attend the meeting called by Mr. Kayo. In reference to page 3 of the Defendant's Bundle, PW1 testified that she built houses on plot 6285/M, which belongs to the Defendant. She also built houses on plot No 6278/M, which is not hers. She built the houses because she believed that the Ministry of Lands gave her the land.

It was PW1's evidence that her survey diagram was drawn in May, 2014, while the Defendants in January, 2014. She testified that the survey diagrams were authentic and both her and the Defendant were given land.

The witness was not **re-examined**.

**Ruth Siame**, PW1's daughter testified as **PW2**. Her evidence was that in November, 2015, she saw the Defendant and her surveyors encroaching her parents' farm when it had beacons and



title. PW2 stated that her parents reported the Defendant to Westwood Police Post.

PW2 testified that on 10<sup>th</sup> December, 2015, at 07.40 hours, police officers led by Mr. Misheck Chisasa and the Defendant went to her parents' house and destroyed houses. She showed the police officers the Certificate of Title but the Defendant told them that it was not genuine. She testified that she asked for a Court order but the police ignored her and went on to destroy the houses.

In **cross-examination**, PW2 stated that Mr. Chisasa was the most senior police officer on duty on the material date. The police officers told her that PW1 encroached on the Defendant's farm. She conceded that her parents' houses were built on the Defendant's farm after the land was surveyed and title given to her.

The witness was not **re-examined**.

The Defendant called three witnesses. She testified as **DW1**. Her evidence was that she has lived in Maloni village since 1973. In

2002, she applied to Kafue District Council for land and was given a letter of recommendation in 2005 to take to the Ministry of Lands. In 2014, the Ministry of Lands gave her an offer letter and she paid the survey fees to Kayo surveyors, a Government approved firm that surveyed her property and placed beacons.

According to DW1, when the land was surveyed, it was discovered that the Plaintiffs encroached her land before they were given title. She added that there was a lot of encroachment on the farms and the members of the community decided to report the matter to the police.

She stated that she owned Plot 6285 while the Plaintiffs own Plot 6284. There was no road reserve between her property and the Plaintiffs. She was a member of the Committee that lodged a complaint at the Police Headquarters and later a team led by officer Chisasa destroyed the illegally built houses. DW2 stated that she led the police to the illegally built houses on her plot. She prayed for the reliefs stated in her counterclaim.



In **cross-examination**, DW1 testified that her Certificate of Title was issued on 2<sup>nd</sup> December, 2015, while the Plaintiffs' title was issued on 9<sup>th</sup> November, 2015. She was however, the first to be given an offer letter.

In **re-examination**, DW1 stated that her lease was effective from January, 2014 just like the Plaintiffs.

**DW2** was **Chisala Raphael Kayombo** who testified that he is a registered land surveyor under the Survey Control Board. He has worked in the industry for thirty years. It was his evidence that there was confusion in the Maloni Village area and there was no consistency in the land surveys carried out by different surveyors. DW2 testified that the Surveyor-General called for a meeting where he was appointed as the only land surveyor for Maloni Village and he was given the approved site plan.

DW2 further testified that he surveyed DW1's property and confirmed that the beacons were correct. The Council initially demarcated the plots but did not carry out a survey. He added that

in surveys, surveyors followed a site plan, while demarcations are temporal measurements and because of that he did not follow the Council's demarcations. DW2 stated that the site plan was drawn by the Government.

DW2 went on to state that after the survey, DW1's diagrams were approved and submitted to the Ministry of Lands. He also stated that he tried to survey the Plaintiffs' plot but they refused and it was surveyed, then it was done dubiously because he was the only authorized surveyor for the area. According to DW2, once a survey is done, another surveyor cannot work on the surveyed property.

DW2 testified that people had built indiscriminately in the Maloni Village area. He stated that he prepared the lay out plan at page 3 of the Defendant's Bundle, which was supposed to show the situation on the ground. It was his evidence that the Plaintiffs wrongly built on DW1's property.

It was his further evidence that the Surveyor-General numbered the lots and it is upon that information that survey diagrams were drawn. He pointed out that the Plaintiff's survey diagram at page 21 of the Defendant's Bundle was not signed when it is a requirement of law for survey diagrams to be signed.

The witness was not **cross-examined**.

**DW3** was **Daniel Banda** who testified that he owned Farm No. 6238 in the area. In 2014 Kafue District Council demarcated plots and gave them to the members of the community. He stated that they were subsequently given offer letters and the Surveyor-General called them to a meeting where he told them not to follow the beacons laid by the Council. Further, that he appointed Kayo Surveyors as his authorized representative.

In **cross-examination**, DW3 stated that there were other surveyors on the ground in 2002, who placed beacons. However, in 2014, only Kayo Surveyors was authorized to survey the area.



In **re-examination**, DW2 reiterated that the Surveyor-General told the meeting that he had appointed Kayo Surveyors.

**DW4** was **Alfred Nawa** whose testimony was that in August 2015, the Zambia Police received a report from some farmers in Lusaka West, who complained of land encroachment at the hands of alleged PF cadres. DW4 testified that the reports were received at the Lusaka Division, which conducted investigations. He stated that one farmer was beaten to death and the other farmers approached the Ministry of Home Affairs to resolve the issue. The matter was elevated to Police Headquarters, which instituted investigations and discovered that most of the land owners were chased away by squatters and their land demarcated and sold.

DW4 stated that in November 2015, an Operation Order was prepared by the police to guide officers on how to react to the situation. Police officers were taken to the site but the squatters refused to leave the land until the police resorted to its paramilitary unit and Lusaka Division to demolish the illegal structures. Several

squatters were arrested and charged with various offences including criminal trespass and conduct likely to cause breach of peace.

DW4 testified that DW1 did not lead the police to the operation as the officers already had full information after their investigations. He stated that PW1 was one of the farmers involved in the area.

In **cross-examination**, DW4 stated that he was not well versed with land issues. The police reacted because a report was given and recorded in the Occurrence Book (OB). He testified that other than the OB, the Order of Operation authorized the police to act on a report. He could not recall the names of the complainants. He did not have a copy of the Operation Order but could produce it if the Court ordered. DW4 was not aware that PW2 lodged a complaint on the demolition of her structures and encroachment by DW1. He stated that the operation was headed by then Commissioner of Operations, Mrs. Chikwanda.

DW4 stated that Mr. Chisasa was one of the operatives but did not the head of the operation. He was mentioned as one of the

officers in the Operation Order. DW4 was not aware if a Court order was obtained before the demolition exercise. He added that police can enter property without a Court order.

DW4 further stated that he was aware that the police carried out investigations but he did not have the report. He testified that whenever a demolition exercise was carried out, persons would claim to be property owners when they were not. He could not remember being shown a title by PW2 during the operation and all property demolished belonged to squatters.

DW4 stated that the operation took place on 20<sup>th</sup> November, 2015 and three hundred structures were demolished. He stated that before demolition, the officers asked for documentation from the persons found on the ground. DW4 stated that he did not see the Plaintiffs and was not aware that they reside on the affected property. DW4 testified that several officers were involved in the exercise and some farmers were present when the police carried out its operations



In **re-examination**, DW4 stated that the farmers' complaint was made to Lusaka Division, Matero Police Station, Ministry of Home Affairs and Police Headquarters. He explained that any complaint lodged at a police station was entered in the OB. He stated that a number of peasant farmers and squatters were found on the material date. He could not remember the Plaintiffs nor the Defendant.

The parties undertook to file written submissions, however, at the time of writing judgment, they had not settled the same.

I have anxiously considered the pleadings and evidence adduced. It is common cause that the Plaintiffs and Defendant own neighbouring farms in Maloni Village, Lusaka West, namely Lot 6284/M, Lusaka and Lot 6285/M, Lusaka respectively. The Ministry of Lands issued them certificates of title for their properties following recommendations made by the Kafue District Council in 2015. It is also incontrovertible that the Plaintiffs built structures on the Defendant's property, Lot 6285/M, Lusaka, which were subsequently demolished by the Zambia Police. In my view, the

issue to be determined is whether the Defendant encroached the Plaintiff's property?

Section 33 of the Lands and Deeds Act provides that:

**"33. A Certificate of title shall be conclusive as from the date of its issue and upon and after the issue thereof, notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the President or otherwise, which but for Parts III to VII might be held to be paramount or to have priority; the Registered Proprietor of the land comprised in such Certificate shall, except in case of fraud, hold the same subject only to such encumbrances, liens, estates or interests as may be shown by such Certificate of Title and any encumbrances, liens, estate or interests created after the issue of such Certificate as may be notified on the folium of the Register relating to such land but absolutely free from all other encumbrances, liens, estates or interests whatsoever."**

In the case of **Anti-Corruption Commission v Barnet Development Corporation Limited<sup>1</sup>**, the Supreme Court held *inter alia* that:

**"1. Under section 33 of the Lands and Deeds Registry Act, a certificate of title is conclusive evidence of ownership of land by a holder of a certificate of title. However, under section 34 of the same Act, a certificate of title can be challenged and cancelled for fraud or reasons of impropriety in its acquisition."**

The dispute in *casu* is anchored on the boundaries of the parties' properties, which are both on title. During the course of

trial, the parties both established that they had title although the Plaintiffs averred that the Defendant had encroached their property.

Section 2 of the Land Survey Act, defines a diagram as:

**“A document containing geometrical, numerical and verbal representations of one or more parcels of land, the boundaries of which have been surveyed by a land surveyor, and which document has been signed by such surveyor or which has been certified by a Government surveyor as having been compiled from approved records of a survey or surveys carried out by one or more land surveyors, and includes any such document which at any time prior to the commencement of this Act, has been accepted as a diagram in the Registry or in the office of the Surveyor-General or his predecessors.”**

According to section 2 of the Survey Act, a survey diagram, contains geometrical, numerical and verbal representations of a parcel of land and confirms the description of a property. Once certified by a government Surveyor, it becomes the authoritative description of a property.

PW1 testified that her property was surveyed by the Ministry of Lands and her survey diagram prepared in May, 2014, while DW1's diagram was prepared in January, 2014. She also testified that she engaged her own surveyor from the Ministry of Lands and



not Kayo Surveyors. DW2 testified that his firm Kayo Surveyors was the only firm appointed by the Surveyor-General to conduct all surveys in Maloni Village, Lusaka West. The Plaintiffs did not allow him to survey their property and no other surveyor could undertake the works in that area following the Surveyor-General's directives. DW2 further testified that he drafted the lay out plan for the area, which showed the location of the plots and upon which beacons were placed. Both PW1 and DW2 testified that the Plaintiffs illegally built houses on DW1's property based on the lay out plan.

I have considered DW1's certificate of title and find that she is the legitimate owner of Lot No. 6285/M Lusaka. On the other hand, the Plaintiffs are the legitimate owners of Lot No. 6284/M, Lusaka. According to the lay out plan, the perimeter of each property is clearly defined. It also shows that the Plaintiffs structures are built on DW1's property. It is, therefore, perplexing that DW1 was sued by the Plaintiffs over houses, which they built without her consent. In my view, had the Plaintiffs yielded to Kayo Surveyors, then they could have avoided their crisis. PW1 testified that a surveyor from the Ministry of Lands drew her survey diagram

but did not convince me that it was sanctioned by the Surveyor-General.

DW2 testified that no other surveyor was authorised to conduct surveys in Maloni Village area except for his firm. My view therefore, is that the Plaintiffs' survey diagram is not genuine and, cannot be relied on in asserting the perimeter of their property.

It is undeniable that the Plaintiffs illegally built other structures on neighbouring properties according to the lay out plan. In my view, their indiscriminate building was as a result of their failure to recognise their boundary. They have been under a delusion that they own land, which belongs to others and is secured by title. They only own Lot No. 6284/M and must therefore conduct their activities within that property.

In consequence, I find nothing wrong with the action taken by the Zambia Police to demolish all illegal structures in the Maloni Village area, based on the evidence of DW4. He was a neutral witness and I found much value when he testified that only the

illegal structures constructed by squatters in Maloni Village area were demolished.

DW4's evidence was corroborated by that of DW2 who testified that there was confusion in the Maloni village area because there was no consistency in the land surveys and people had built indiscriminately. Had the Plaintiffs allowed Kayo Surveyors to survey their property, they would have probably prevented themselves from encroaching DW1's property, but this is not the case. Instead, they trespassed DW1's property at their own peril and without her consent. They were liable to be evicted without any compensation.

In the result, I find that the Plaintiffs' claims lack merit and their action accordingly fails.

In the counter-claim, the Defendant seeks an order to confine the Plaintiffs to the perimeters of their property. I have no hesitation in making the order in view of the reasons I have stated above.



I award the Defendant costs to be taxed in default of agreement.

Leave to appeal is granted.

Dated this 16<sup>th</sup> day of November, 2017.

*M. Mapani*

M. Mapani-Kawimbe  
**HIGH COURT JUDGE**