

IN THE COURT OF APPEAL OF ZAMBIA
HOLDEN AT LUSAKA
(Civil Jurisdiction)

APPEAL NO. 104/2020
CAZ/08/064/2020

BETWEEN:

MOLOSONI CHIPABWAMBA AND 12
OTHER DISPLACED VILLAGE OWNERS

APPELLANTS

AND

YSSEL ENTERPRISES LIMITED
KAITE JOHN KAKUNGU
BLUE VEIN INVESTMENTS LIMITED
BILLIS FARM LIMITED
ABRAHAM LODEWIKUS VILEOEN
SERENJE DISTRICT COUNCIL
THE ATTORNEY GENERAL
THE COMMISSIONER OF LANDS

1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT
5TH RESPONDENT
6TH RESPONDENT
7TH RESPONDENT
8TH RESPONDENT

Coram: Makungu, Sichinga and Siavwapa, JJJA

On the 17th November, 2021 and 21st day of April, 2022

For the Appellants: Mr. C. M. Sianondo & Ms. M. Siansulo of Messrs
Malambo & Co. and Mr. B. Siachitema of Lusitu
Chambers

For the 1st to 3rd Respondents: No appearance

*For the 4th & 5th Respondents: Ms. J. R. Mutemi of Theotis Mutemi Legal
Practitioners*

For the 6th Respondent: No appearance

For the 7th & 8th Respondents: Ms. B. Kafunya of Attorney General's Chambers

J U D G M E N T

MAKUNGU, JA delivered the Judgment of the Court.

CASES REFERRED TO:

1. *Sailas Ngowani & Others v Flamingo Farms Limited SCZ Appeal No. 15 of 2019*
2. *Duncan Silembo v Roman Shaloomov CAZ Appeal No. 44 of 2018*
3. *Village Headman Mupwaya & Another v Mbaimbi SCZ Appeal No. 4 of 1999*
4. *Pastor K. Akinlolu Akinduro v Alhaji Idris Alaya S.C. 296/2002*
5. *Trevor Limpic v Rachel Mawere & Others SCZ Judgment No. 121 of 2006*
6. *John Chisenga Kapabila & Others v Niko Nkalonga - Cause No. 2017/HP/2088*
7. *Julius Chilipamwawo Sinkala v Bornface Simbule & Others SCZ Appeal No. 153 of 2016*
8. *Socote International Inspection (Zambia) Limited v Finance Bank Zambia Limited SCZ Appeal No. 149 of 2011*
9. *Gilbert Kabwe v Wireless Chibuye - Cause No. 2018/HP/2083*
10. *Abdul Rigwara Simwaya v Commissioner of Lands & Others CAZ Appeal No. 92 of 2017*
11. *Mwananshiku & Others v Kemp & Mwananshiku (1990 - 1992) Z.R. 42*
12. *Henry Mpanjilwa Siwale & Others v Ntapalila Siwale (1999) ZR*
13. *Still Waters Limited v Mpongwe District Council & Others SCZ Appeal No. 90 of 2001*

LEGISLATION REFERRED TO:

1. *The Constitution of Zambia Chapter 1 of the Laws of Zambia*
2. *The Lands and Deeds Registry Act Chapter 185 of the Laws of Zambia*
3. *The Lands Act Chapter 184 of the Laws of Zambia*
4. *The Lands (Customary Tenure) (Conversion) Regulations, Statutory Instrument No. 89 of 1996*
5. *The Lands (Acquisition) Act Chapter 189 of the Laws of Zambia*
6. *The High Court Act Chapter 27 of the Laws of Zambia*

Other works referred to

1. *Halsbury's Laws of England Vol. 16, 4th edition.*

1.0 INTRODUCTION

- 1.1 This appeal is against the judgment of S. Kaunda Newa J of the High Court, dated 30th April, 2020 in which she held that the conversion of the land in dispute was null and void but that it would not be in the public interest to cancel the Certificate of Title. The lower court deemed the conversion as compulsory acquisition of land but ordered the 7th and 8th respondents to grant the appellants (Petitioners in the Court below) alternative land, and the 6th respondent to meet the relocation costs.

2.0 BACKGROUND

- 2.1 The background to this appeal is that the appellants were villagers who had settled in an area called Luombwa in Chief Muchinda's Chiefdom, Serenje District. There was evidence that some villages had existed as far back as 1969, but that the area was in 1997 designated as a farm block. On 22nd January,

1996, the 1st respondent applied for the land in dispute and was granted a 14-year right of occupancy of F/9597, Serenje District on 29th May, 1998. On 30th July, 1998, a Certificate of Title No. L 5161 was issued in favour of the 1st respondent.

2.2 The 1st respondent later sold the land in dispute to the 2nd respondent, who in turn sold it to the 3rd respondent. The 3rd respondent subsequently sold the land to the 4th respondent, who acquired a Certificate of Title No. 148726 with a 99-year lease from 1st August, 2009. The extent of the land acquired was 2071.35 hectares. The 4th respondent, through the 5th respondent, its Manager, began developing the land by establishing a commercial farm. The appellants were forced to vacate the land and they went and settled in the Musangashi Forest Reserve under very difficult living conditions.

2.3 The appellants filed a Petition in the court below on 15th December, 2017, claiming the following reliefs:

- i. *An order and a declaration that the taking over of the Petitioners' customary land without following the required procedure is unconstitutional and is therefore null and void.*