

IN THE COURT OF APPEAL FOR ZAMBIA
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)

APPEAL/212/2019
CAZ/08/231/2018

BETWEEN:

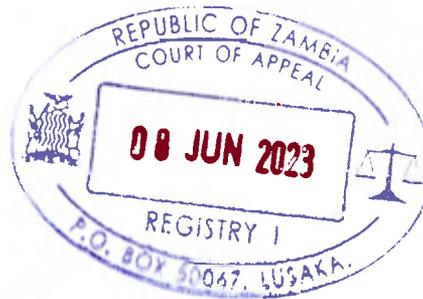
CHAILE KAPAMBWE

APPELLANT

AND

CLEMENT JONAZI

RESPONDENT



CORAM: KONDOLO SC, MAKUNGU, MAJULA JJA

On 16th March, 2022 and 8th June, 2023

For the Appellant: Mrs. I. Suba of Messrs Suba, Tafeni & Associates

For the Respondent: Mr. B. Katuta of Messrs Loboko Chambers

J U D G M E N T

KONDOLO SC, JA delivered the Judgment of the Court.

CASES REFERRED TO:

- 1. Attorney General v Achiume (1983) ZR 1**
- 2. Communications Authority of Zambia v Vodacom Zambia Limited (2009) ZR 196 p211**
- 3. Wilson Masauso v Avondale Housing Project Limited (1982) ZR 172 (S.C)**

4. **Zambia Revenue Authority v High-Tech Trading SCZ NO. 40 of 2000**
5. **Justin Chansa v Lusaka City Council (2007) ZR 185**
6. **Sablehand Zambia Limited v Zambia Revenue Authority 2005 ZR 109**
7. **Mususu Kalenga Building Limited and Another v Attorney General (1999) ZR 27**
8. **Barclays Bank Zambia plc v Zambia Union of Finance Institutions and Allied Workers SCZ NO. 12 of 2007**

LEGISLATION REFERRED TO:

1. **Order 39 rule 1 of the High Court Act Cap 27 of the Laws of Zambia**

1. BACKGROUND

- 1.1. This is an appeal against the Judgement of the High Court delivered on 23rd December, 2015 by Lady Justice M. S. Mulenga.
- 1.2. This appeal follows a dispute between the Appellant and Respondent over Stand No. 36890 Lusaka in which they were both claiming ownership of the land.
- 1.3. In the High Court, the Appellant was the Defendant and the Respondent was Plaintiff.

2. Plaintiffs Claim

- 2.1. The Plaintiff commenced an action in the High Court seeking the following relief;

- a. A declaration that the Plaintiff is the beneficial owner of all that piece of land known as Stand 36890, Lusaka.**
- b. An Order that the Defendant do deliver vacant possession of Stand 36890 Lusaka to the Plaintiff.**
- c. General Damages for trespass by the Defendant on the said Plaintiff's land being Stand 36890 Lusaka.**
- d. Interest.**
- e. Costs**

2.2. The Plaintiff's statement of claim averred that he purchased the said property in January 2008 for K10,000 from Beaven Kapitolo who was the holder of an offer letter from the Council to the said property and the beneficial owner at the time. That upon purchasing the said property the Respondent commenced procedure with the Ministry of lands to have the property registered in his name.

2.3. However, to his surprise, he discovered that other persons unknown, without license and authority, had entered upon and begun developing the said property.

2.4. The Plaintiff stated that despite continuous requests to the Defendant to vacate the premises and despite showing her the

land documentation the Defendant continued to occupy the said property, building a house over the foundation that the Plaintiff had constructed.

3. Defence

- 3.1. In her defence the Defendant claimed that Stand number 36890 Lusaka was allocated to her mother as one of the Ng'ombe displaced people under a Presidential decree and directive to the Commissioner of Lands to allocate land to Ng'ombe displaced persons in 2002 and that the said property was allocated by the chairman of the Ng'ombe displaced people.
- 3.2. The Defendant further alleged that the Plaintiff had actually bought the property from an MMD cadre, one Mr Beavan Kapitolo who had grabbed land from innocent eligible owners and was using forged land documents from the Lusaka city Council and the Ministry of Lands.

4. HIGH COURT PROCEEDINGS

4.1. Plaintiffs Witnesses

The Plaintiff called two witnesses PW2 and PW3.

- 4.2. PW2 testified that he witnessed the signing of the contract in which the Plaintiff purchased the land from Mr. Beavan Kapitolo at the price of K10,000. He confirmed signing as a

witness to the letter of sale and that the Plaintiff was given all documents to the said property including the letter of offer.

- 4.3. PW3 was the Chief Lands Officer at Ministry of Lands who was subpoenaed as a witness. He told the Court that the current record at the Ministry of Lands has an offer letter to Mr. Beavan Kapitolo together with survey diagrams.
- 4.4. In cross-examination, PW3 explained that government de-gazetted a piece of land, some of which was to be given to Ng'ombe Displaced Persons, the Forestry Department and others and the Council was given the right to recommend people to be offered the said land. That only 150 Ng'ombe Displaced Persons received offer letters and those without offer letters were asked to leave the area.
- 4.5. He testified that after receiving a land audit report, the Minister of Lands told the Commissioner of Lands to suspend the issuance of title deeds. He was not aware that any letters of offer were cancelled.
- 4.6. **Defendants Witnesses**
- 4.7. The Defendant called four witnesses.
- 4.8. **DW1, Fost Muzumara**, the secretary of the Ng'ombe Committee testified that there were over 700 Ng'ombe Displaced Persons. That the Committee was not registered by the Registrar of

Societies but was only recognised by those who told them to form it, including the District Administrator and the Member of Parliament for Mandevu.

4.9. That no land was given to the Defendant but the Committee gave the subject land, property No. 36890, to Valesi Phiri the Defendant's mother who was one of the Ng'ombe Displaced Persons. He was aware that the Defendant had had erected a house on the subject plot.

4.10. He stated that he did not know Kapitolo, the person who sold the land to the Plaintiff but had heard that he was one of the MMD cadres who used to harass them and who connived with the Ministry of Lands to be given offer letters.

4.11. Further, that his committee created a list of people whom they recommended to the Ministry of Lands for offer letter including the Defendants mother who was allocated Stand 36890 by the committee but that to date the Ng'ombe displaced residents do not have offer letters.

In cross-examination, DW1 testified that he was aware that plot 36890 was on offer to Mr. Kapitolo, but he was not aware that the said letter was not withdrawn. He reiterated that the Defendant did not have an offer letter but that he was aware that the Defendant had erected a house on plot 36890 and

maintained that the Defendants mother Valesi Phiri was the owner of the plot.

4.12. **DW2 Valesi Phiri** the Defendants mother testified that she was allocated Stand No. 36890 by the chairman of the Ng'ombe displaced people, Stephen Luduka when their houses built on the catholic land were demolished in Ng'ombe. That, at the time, President Mwanawasa promised them land at SOS near the Petroda filling station.

4.13. She stated that she did not know Mr Kapitolo and was not aware that the land was offered to someone else when she offered the Defendant, her daughter, to build on the land as she had no means to do so herself.

In cross-examination, DW2 stated that she did not have an offer letter or any documentation of ownership to the land in dispute.

4.14. **DW3 Paul Venancio Sakala** a committee member mainly parroted the testimony of DW1 but added that the government gave the committee a map and plot numbers and plot 36890 was allocated to Valesi Phiri the mother to the Defendant.

4.15. He informed the Court that Valesi Phiri informed the Committee that her daughter Chaile Kapambwe, the Defendant, wanted to build on the land they had given her.

The committee met the Defendant who confirmed her intention to build on the subject land.

4.16. DW3 stated that the Plaintiffs name was strange to him and Mr. Kapitolo's name was not in the Committees register.

4.17. He further stated that all letters of offer given to cadres and members of staff at the Ministry of Tourism, which included the offer letter given to Mr. Kapitolo had been cancelled and that there would soon be a land audit for the purpose of finishing problems such as the one before court.

4.18. The Plaintiff testified as DW4 who testified that her mother asked her to build on the subject land in 2010 or 2011 because she was being bothered by people who wanted to grab the land from her.

4.19. DW4 proceeded to build three two-bedroom flats on the property.

4.20. DW4 stated that her mother did not show her any offer letter from the government. She saw Mr. Kapitolo's offer letter in the Plaintiffs bundle of documents but was surprised to see that the Plaintiff was not Kapitolo and her mother knew neither of the two.

4.21. In cross-examination, she stated that the Commissioner of Lands had cancelled Kapitolo's offer letter and the proof was in her bundle of documents.

5. DECISION OF THE HIGH COURT

- 5.1. The trial Judge determined that the questions before her were whether the Plaintiff had proved his claim as beneficial owner of Stand 36890 Lusaka and the status of the Defendants, claim with regard to ownership of the subject property.
- 5.2. The trial Judge noted that the Plaintiff had exhibited a letter of offer from the Council to the said property in the names of Mr. Beavan Kapitolo and the letter of sale which was witnessed by PW2. The Plaintiff also submitted survey diagrams and receipt of payment of development charges and other charges paid to Lusaka City Council in the name of Mr. Beavan Kapitolo.
- 5.3. The trial Judge found, on the other hand, that the Defendant exhibited no documents of ownership but that she was merely given permission to build on the said property by her mother DW2 who is said to have been allocated the land by the committee Chairman of Ng'ombe displaced people in a verbal allocation.
- 5.4. The lower Court found that the offer letter by the Plaintiff was valid as there was no evidence to the contrary. The Defendant did not prove the allegations of fraud. The trial Judge held that the Plaintiff proved his case and granted him an order of declaration as beneficial owner having purchased the same

from Mr Beavan Kapitolo and also issued an order for vacant position against the Defendant.

6. APPEAL

6.1. Aggrieved with the decision of the High Court the Appellant appealed on fourteen grounds, as follows;

- 1. The Honourable Court below erred in law and in fact in its judgement at page J 13 line 5 when it held that the plaintiff is the beneficial owner of plot 36980 Lusaka contrary to the evidence on record to the effect that there was a dispute that was being investigated by the Ministry of Lands relating to the validity of the Letters of Offer issued in relation to the Ng'ombe Displaced Persons on one hand and other factions within that group as well as party cadres resulting into the suspension of issuance of Certificates of Title, Letters of Offer as well as cancellation of some Certificates of Title.**
- 2. The Honourable Court below misdirected itself in law and in fact at page J13 line 22 when it upheld that the Letter of Offer to one Mr. Beavan Kapitolo thereby disregarding the evidence contained in the letter dated 26th November 2014 which letter**

communicated the cancellation of all the letters of authority that had earlier been issued in relation to offers for Ng'ombe Forest No. 28 Lusaka West.

3. The Honourable Court erred in law and in fact by believing the evidence of the Plaintiff and its witnesses while disbelieving that of the Defendant and its witnesses without a thorough analysis of the evidence and the documents placed before it and without giving reasons for doing so.
4. The Honourable Court below erred in law and in fact when it held that the allocation of the plots by the city council was in conformity with circular No. 1 of 1985 while in doing so, the Court missed the issue at stake which was that the allocation of the site to the Ng'ombe displaced persons was a presidential degree [sic] or directive which was given directly to the Commissioner of Lands and therefore did not have to go through a lower organ of government but was exercisable only through the Commissioner of Lands.
5. The Honourable Court below erred in law and fact when it failed to direct the Commissioner of lands

to place before the Court the most crucial documents such as:

- a. A copy of the presidential directive.
 - b. A complete list of the Ng'ombe Displaced Residents.
 - c. A complete list of the plots that were created for the benefit of the Ng'ombe displaced residents and the respective recommended Offeres or recommended persons by the committee.
 - d. Failing to obtain information from the Commissioner of Lands as to how the conflict relating thereto was finally resolved more so when it held that the lists upon which the Ministry of Lands acted have not been produced to show that Mr. Beavan Kapitolo's name did not appear.
 - e. Failing to take judicial notice of the government gazette degazetting Forest No. 28 Lusaka West in favour of the Ng'ombe residents or failing to call for its placement before the Honourable Court.
6. The Honourable Court below erred in law and fact when it held that the Plaintiff had proved its case by producing the purported letter of offer, receipts for ground rates, survey diagrams and a payment

authorising development without taking judicial notice of the fact that there is rampant illegal land transactions in Zambia more especially involving the Ministry of Lands where members of the public collude with officials from the Ministry of Lands.

7. The Honourable Court below erred in law and in fact when it failed to find that the intended interpleader namely, Valesi Phiri had an equitable right to Plot No. 36890 which right she did pass on to the Defendant.
8. The Honourable Court below erred in its Ruling at page R3 when it took into consideration the fact that every person who had land in the area was recommended by the committee members after inspecting the property including the Appellants property.
9. The Honourable Court below fell in grave error in its Ruling at page R8 line 6 when it did not consider paragraph 5 of the Affidavit in Support of interpleader filed into court on 1st November 2016 to the effect that the plot was given to the interpleader and other Ng'ombe displaced residents

by the President and by objecting on the withdraw of offer letters to Valesi Phiri as new evidence.

11. The Honourable Court below erred in law and fact when it denied an application for inter-pleader in relation to one Valesi Phiri and Beavan Kapitolo the purported vendor in the purported sale of the above property to the Plaintiff.

12. The Honourable Court below erred in law and fact in its Judgment when it glossed over the evidence of PW3 without taking into account the fact that at the witness's level of employment, he was not privy to the Presidential Directions to allocate the Land in issue to the Ng'ombe Residents which directive would officially be issued to a Minister of Lands or provincial Minister for implementation through the Commissioner of Lands only.

13. The Honourable Court below erred in law and fact when it made a determination on the ownership of the property in issue on insufficient and incomplete evidence without summoning both the Commissioner of Lands, the Minister of Lands or the Provincial Minister in charge of the Province for the purpose of verifying the evidence adduced by the

parties and also having to lay before it the official documentation regarding both the Presidential Directive and other documents dealing with how that directive was carried out and concluded.

14. The Honourable Court below erred in law and fact during the application for review of Judgment when it did not Order a Re-trial in spite of the new evidence adduced at the stage.

7. Appellant's arguments

- 7.1. The Appellant argued grounds 1, 2, 3, 5, 7, 12 and 13 together under which he accused the trial Judge of having placed too much reliance on the letter of offer from the Council to Mr. Beavan Kapitolo.
- 7.2. The Appellant contended that the Court arrived at several findings of fact that were either perverse or made in the absence of relevant facts and should therefore be overturned.
- 7.3. The case of **Attorney General v Achiume** ⁽¹⁾ was cited, in which the Court set out the circumstances in which an appellate Court can reverse findings of fact made by a lower Court. Also cited was the case of **Communications Authority of Zambia v Vodacom Zambia Limited** ⁽²⁾, in which it was held that an appellate Court will not reverse findings of fact made by

a trial Judge unless it is satisfied that the findings in question were either perverse or made in the absence of any relevant evidence or upon a misapprehension of the facts or that they were findings which on the proper view of the evidence no trial Court acting correctly can reasonably make.

- 7.4. With regard to the trial Court's alleged over-reliance on PW3's evidence to the effect that letters of offer were given and that subsequent service charges were paid, the Appellant urged the Court to consider the fact that the said letter of offer was cancelled by the Commissioner of Lands on 26th November 2014 way before PW3 had given his testimony on 3rd March 2015.
- 7.5. It was further pointed out that there was evidence to the effect that the property was part of forest 28 which was de-gazetted for the purpose of giving parcels of land to the Ng'ombe Displaced Persons.
- 7.6. It was in that regard argued that there was no evidence that Mr. Beavan Kapitolo was on the Ng'ombe Displaced Persons list. That in light of the stated facts, the trial Judge erred in relying heavily on the letters of offer to Mr. Beavan Kapitolo.
- 7.7. The Appellant raised a further argument that the Courts reliance on Circular No. 1 of 1985 was based on a misapprehension of facts because the offer letter was

fraudulently obtained as there is no evidence of Mr. Beavan Kapitolo being part of the Ng'ombe displaced persons.

7.8. That the trial Court erred when it chose to disbelieve PW3's evidence that neither the Respondents nor Mr. Beavan Kapitolo's names appeared on the Ng'ombe persons register simply because the said register or list was never produced before the Court.

7.9. Further, that it is the Court's duty to adjudicate upon every issue in controversy between parties and the case of **Wilson Masauso v Avondale Housing Project Limited** ⁽³⁾ was cited in aid. The Appellant submitted that the lower Court failed to adjudicate upon all the issues in controversy between the parties and that the failure was attributed to the fact that there is an absence of relevant facts that would have enabled the Court below to adequately adjudicate upon the issues in controversy which include the list of Ng'ombe displaced persons, the evidence from the Commissioner of Lands as to how the conflicts were resolved and the government gazette de-gazetting Forest Reserve No. 28.

7.10. The Appellant then proceeded to argue grounds 8, 9, 11 and 14 which are all in relation to the trial Judge's ruling of 28th August, 2018 following the Appellants applications for an

interpleader and for review of the judgement dated 23rd December 2015, the subject of this appeal.

7.11. We shall not reproduce the arguments under the said grounds for reasons that shall become apparent.

8. RESPONDENT'S ARGUMENTS

8.1. The Respondent filed heads of argument reacting to the Appellants submissions on the withdrawal of Mr. Kapitolo's offer letter by the Commissioner of Lands. It was submitted that the trial Court was on firm ground when it held that the offer letter from the Council which was issued to Mr. Beavan Kapitolo was not cancelled by the letter dated 14th November 2014 as, firstly, the letter was issued six years after the Respondent had purchased the plot, and secondly, it was issued after the High Court proceedings were already underway.

8.2. It was further submitted that the letter is too general and vague such that it does not imply that the offer to Mr. Beavan Kapitolo was cancelled.

8.3. It was, on the other hand, postulated that the testimony of PW3 clearly shows that, at present, the land is still on offer to Mr. Beavan Kapitolo.

- 8.4. The Respondent argued that the trial Court did not gloss over the evidence of PW3, the Chief Lands Officer, who competently stood in for the Commissioner of Lands. It was submitted that the Appellant did not state which part of the evidence was glossed over by the Court as it was not enough to simply state that his evidence had been glossed over. That the Appellant should have gone further to pinpoint evidence which was glossed over.
- 8.5. The Respondent opposed the Appellant's argument with regard to Circular No.1 of 1985 and stated that the trial Judge was simply pointing out the significance of the Council in the procedure for allocation of land.
- 8.6. That the procedure requires that an offer letter be issued by the Commissioner of Lands, meaning that, notwithstanding the Presidential decree, DW2 should have had an offer letter.
- 8.7. The Respondent argued that the Court was not obliged to direct the Commissioner of Lands to produce the documents mentioned in ground five of the appeal. That it is incumbent on a party who intends to rely on specific documents to *subpoena* the Commissioner of Lands to place the documents before the Court.
- 8.8. It was also argued that the discovery of the letter at page 131 of the Record of Appeal could not have affected the trial Judge's

decision because there was evidence at trial that as at 3rd March 2015 the said property was still on offer to Mr. Beavan Kapitolo and that this letter was strictly speaking not to a cancellation per se but a call to persons in possession of offer letters to show cause why the offer letters should not be withdrawn. It was not shown that any action as to cancellation was taken to withdraw the offer letter in question.

8.9. It was opined that the said letter is too vague and general to assume that the offer was directed at Mr. Beavan Kapitolo, this was therefore not a solid ground on which the Court could have reviewed its judgment.

8.10. In reaction to the Appellant's submissions and arguments *vis-à-vis* the Appellant's application for review, the Respondent referred to that specific ground of appeal as an absurdity. He assumed that position because he explained that this appeal is against the judgment of the lower Court dated 23rd December 2015 and not against the lower court's ruling declining the application for review. That the judgment and ruling are exclusive of each other and cannot be appealed concurrently. He supported his reasoning by citing **Order 39 (1) of the High Court Rules** which, according to him, provides that an appeal against a judgment and the review of a judgment cannot take place at the same time. That it is

common cause that where there is an appeal, there can be no review unless the appeal is withdrawn and vice versa.

9. CONSIDERATION AND DECISION OF THIS COURT

- 9.1. We have considered the record of appeal, the arguments filed in support and in opposition by both parties.
- 9.2. **We shall begin with grounds 8, 9, 11 and 14** which, as indicated earlier are all in relation to the lower Court's ruling of 28th August, 2018 on review and interpleader.
- 9.3. These grounds of appeal are quite perplexing because they are attacking the ruling of 28th August, 2018 which has not been appealed against. The appeal before Court is against the Judgment of 23rd December 2015.
- 9.4. As correctly argued by the Respondent, the said grounds of appeal are not sustainable for the simple reason that there is no appeal against the lower Court's ruling on review.
- 9.5. Grounds 8, 9, 11 and 14 are consequently dismissed.
- 9.6. **We shall now consider grounds 1, 2, 3, 5, 7, 12 and 13.** We note that these grounds of appeal, to a large extent, attack findings of fact made by the lower Court. We also note that though the substantive grounds of appeal are numbered up to ground No. 14, ground No. 10 is missing.

- 9.7. It is a well settled principle of law, in this jurisdiction, that an appellate court will generally not interfere with the findings of fact of a trial court unless the court is satisfied that the findings in question are either perverse or made in the absence of any relevant evidence or upon a misapprehension of the facts, or that they were findings which on a proper view of the evidence, no trial court acting correctly could reasonably make. The case of **Wilson Masauso Zulu v Avondale Housing Project Limited (supra)** is instructive in this regard.
- 9.8. We have reviewed the Judgment of the lower Court in which the trial Judge sought to determine who was the owner of the property in dispute based on the documents presented in evidence by the parties. The Appellant alleges that the trial Court made a decision without thoroughly analysing the evidence and documents placed before the Court and without giving reasons for doing so.
- 9.9. The Appellant also raised the issue of the Respondent's offer letter that was provided in evidence in the lower Court. The Appellant's argument is that the purported offer letter, receipts for ground rates and survey diagrams were not sufficient to prove that the Respondent is the beneficial owner of the property in question because they were disputed and an

- investigation on the validity of offer letters, carried out by ministry of lands, led to the cancellation of the offer letter.
- 9.10. Further, that the Court below failed to direct the Commissioner of Lands to place before the Court crucial documents such as the Presidential decree and complete copy of the list of all the people displaced from Ng'ombe.
- 9.11. We do not agree with the Appellant's argument that the trial Judge failed to analyse the evidence before it. In fact, the Judge's decision was mainly based on a thorough analysis of the documents filed in evidence and the consideration of the evidence of the witnesses that appeared before her.
- 9.12. The trial Judge also considered the fact that the Appellant had not filed any documents in evidence with regard to her ownership of the property save for a list, which she testified to but was never evidenced before the court.
- 9.13. The trial Judge further analysed the effect of the offer letter with regard to Circular No. 1 of 1985 and the Council's authority to participate in land administration. The Court also considered the Supreme Court case of **Justin Chansa v Lusaka City Council** ⁽⁵⁾ which determined that the Council has the power to make recommendations to the Commissioner of Lands who then makes offers to successful applicants. Finally, the evidence of PW3 was considered that according to

the records at the Ministry of Lands, the said land is still on offer to Mr. Beavan Kapitolo. It was on the totality of this evidence that the trial Judge arrived at her decision. We find that the lower Court did analyse the evidence thoroughly.

9.14. The Appellant referred to the Letter at page 131 of the Record of Appeal, which according to him was proof that the offer letter to the Respondent had been cancelled. The letter reads as follows;

REPUBLIC OF ZAMBIA

MINISTRY OF LANDS, NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

OFFICE OF THE COMMISSIONER OF LANDS
P. O. Box 30069, Lusaka.

26TH November 2014,

TO ALL COMMITTEES A SOS 28 FORESTRY MATERO NORTH
LUSAKA.

RE: WITHDRAW OF ONE HUNDRED AND FIFTY OFFERS FOR NGO'MBE AND TWO HUNDRED OFFERS MINISTRY OF TOURISM.

As per above subject matter. This office have immediately withdrawn these offers due to the confusion on the site and reallocated them somewhere within Lusaka.

You are hereby given 30 days from the date of dispatch of this letter in which you should show a cause as to why the same should not be withdrawn from you, failure to which I will affect the withdrawn without further resource to yourself.

Yours faithfully,

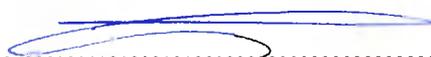

Barnaby B Mulenga
Commissioner of Lands

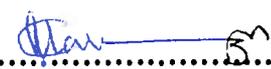
- 9.15. We find that the reproduced letter does not specifically refer to the Offer Letter of Mr. Beavan Kapitolo being cancelled and its effect cannot therefore be assumed.
- 9.16. We do not find any perversity in any of the lower Court's findings of fact nor has the Appellant demonstrated in what way the lower Court's findings misapprehended any factual situation on the ground.
- 9.17. The Appellant has further raised the argument that Mr. Beavin Kapitolo was an MMD cadre who obtained the offer letter fraudulently. The Appellant has however, not presented evidence to show that the offer letter or the land itself was obtained fraudulently.
- 9.18. In the case of **Sablehand Zambia Limited v Zambia Revenue Authority** ⁽⁶⁾ the court held that a party wishing to rely on the issue of fraud must clearly and distinctly plead it and must lead evidence which clearly and distinctly proves the fraud on a standard which is higher than a mere preponderance of probability.
- 9.19. The duty to present documentation that proves the Appellant's allegation of fraud therefore falls on the accuser. The Appellant's assertion that it is the duty of the Court to request for certain documents to be brought before the court is misconceived as the law places a duty to prove fraud

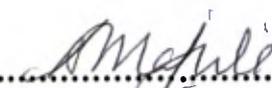
allegations on the Appellant. It is a general principal of law that he who alleges must prove. See the **Wilson Masausu Zulu Case (supra)**.

9.20. In the absence of any evidence to the contrary, we have come to the same conclusion as the trial Court.

9.21. We find no merit in this appeal and dismiss it with costs to the Respondent, to be taxed in default of agreement.

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M. KONDOLO SC
COURT OF APPEAL JUDGE

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C.K. MAKUNGU
COURT OF APPEAL JUDGE

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B.M. MAJULA
COURT OF APPEAL JUDGE