

**IN THE COURT OF APPEAL OF ZAMBIA
HOLDEN AT LUSAKA**

App No. 218 of 2021

(Civil Jurisdiction)

BETWEEN:

DEMETRE VANGELATOS



APPELLANT

AND

ARISTOGERASSIMOS VANGELATOS

RESPONDENT

**Coram: Chishimba, Sichinga, and Ngulube, JJA
on 22nd September, 2023 and 1st November, 2023**

For the Appellant

*: Mr. C. Sianondo of Messrs Malambo and
Company*

For the Respondent

*: Mr. M. Tembo and Mr. M. Mweene of Messrs GN
Legal Practitioners*

JUDGMENT

Sichinga, JA delivered the Judgment of the Court.

Cases referred to:

- 1. Charles Kajimanga v Marmetus Chilemya SCZ Appeal No. 50 of 2014*
- 2. Becmos Limited Vs Aon Zambia Limited and Goldman Insurance Limited
(2012) 2 ZR1*
- 3. Savenda Management Services Limited v Stanbic Bank Zambia Limited
and Gregory Chifire – SCZ selected Judgment No. 10 of 2018*
- 4. Aristogerassimos Vangelatos & Another Vs Metro Investments & Another -
SCZ selected Judgment No. 113 of 2016*

5. *Worker's Compensation Control Board Appellant v Chaplin Sawono- Appeal No. 11/2017*
6. *Nkongolo Farms Limited v Zambia National Commercial Bank Limited and others SCZ No. 19 of 2007*
7. *Anne Scott v Oliver Scott (2007) ZR 17*
8. *Sylvester Musonda Shipolo v Isaac Maipande SCZ Appeal No. 1 of 2016*
9. *Christopher Lubasi Mundia v Sentor Motors Limited (1982) ZR 66*
10. *Rakir Hussein Motala v Jabir Ali Bux CAZ Appeal No. 158 of 2018*
11. *Anti-Corruption Commission v Barnett Development Corporation Limited SCZ No. 5 of 2008*

Legislation referred to:

1. *The Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia*

Other works referred to:

1. *Osborn's Concise Law Dictionary, 12th edition*

1.0 Introduction

- 1.1 This is an appeal against the judgment of the High Court (F. M. Lengalenga, J, as she then was) dated 17th March, 2021 pursuant to which the learned Judge ordered cancellation of Certificate of Title issued in the name of the appellant relating to the remaining extent of Subdivision 3 of Subdivision B of Subdivision 15 Farm 488a Lusaka.

2.0 Background

- 2.1 According to the statement of claim filed by the plaintiff in the lower court, the appellant herein alleged that the parties, being joint tenants of Subdivision 3 of Subdivision "B" of Subdivision 15 of Farm 488a Lusaka in the Republic of

Zambia (the subject property), entered into a verbal agreement to benefit in equal shares from the income, profit and rentals received from the subject property. To that effect, the appellant invested the sum of Twenty Thousand United States Dollars (US\$20,000) into the refurbishment and renovation of the said property, which sum was to be recovered by the appellant from the rentals to be received.

- 2.2 The appellant asserted further that in 1999, the residential house situated on the subject property was let out to a third party and the respondent solely received monthly rentals to the exclusion of the appellant and has continued to lease out the property.
- 2.3 The appellant averred that the respondent had never rendered an account of rentals received and kept such details out of the appellant's reach and failed and/or neglected to remit statutory obligations payable by both parties, and the respondent remains indebted to the plaintiff in the amount of Twenty Thousand United States Dollars (US\$20,000) spent on renovations. The appellant particularized the monthly rentals due from 1999 to 2016 at a monthly rate of US\$3,500, the total being \$714,000 and claimed half of the amount, that is; US\$357,000.

2.4 The appellant made the following claims:

- i) An account of rentals, incomes and profits for the period 1999 to 2016 received by the respondent in respect of the subject property;*
- ii) An order for production of a rent book comprising records of the lease agreements in terms of standard rent charged, rent paid and dates thereof;*
- iii) An order for payment of all sums found due from the respondent as the plaintiff's share as a joint tenant;*
- iv) A declaration that the plaintiff is entitled to an equal share of incomes, profits and rentals of the subject property as joint tenant;*
- v) An order for payment into Court of all incomes, profits and rentals of the subject property pending determination of the matter and apportionment of the aforesaid incomes, profits and rentals;*
- vi) An order restraining the defendant from collecting, receiving, demanding payment and removing from the jurisdiction and otherwise dealing or handling of any income from the subject property;*
- vii) Damages;*
- viii) Interest;*
- ix) Costs; and*
- x) Any other relief that the court may deem fit.*

- 2.5 In his defence, the respondent asserted that he and the appellant were tenants in common in equal shares. The appellant obtained a subdivision of the property and registered it in his name without the knowledge of the respondent. He added that he refurbished House No 15B Twin Palm Road Kabulonga, where he lived from 1999 to 2007, at approximately US\$15,000. That he only rented out the said house in 2007 when he had no source of income.
- 2.6 It was also the respondent's assertion that the parties should reconcile their accounts for rentals received; the appellant for House No. 15B Serval Road Kabulonga and the respondent for House No. 15B Twin Palm Road Kabulonga as both houses are built on the subject property in which each of the parties have a 50% share.
- 2.7 The respondent averred further in his defence that in 2003, the appellant informed him that he had decided to lease No. 15B Serval Road, Kabulonga to the Angolan Embassy because of challenges he was having with the Zambia Revenue Authority and asked the respondent to release his name and 50% shareholding from No. 15B Serval Road, Kabulonga, to which the respondent agreed on condition that the appellant would also release his name and shareholding from No. 15 Twin Palm Road, Kabulonga Lusaka. That contrary to this oral agreement, the appellant subdivided the property without the respondent's knowledge and fraudulently registered No. 15B

Twin Palm Road as Subdivision No.3 of Subdivision 15 of Farm No. 488a, Lusaka.

2.8 The respondent counterclaimed the following reliefs before the lower court:

- i) An declaration that the plaintiff and defendant are registered tenants in common in equal shares of the subject property;
- ii) An order that the Lands Register be rectified by cancellation of Certificate of Title issued in the name of the plaintiff in respect of the subject property;
- iii) An order that the plaintiff accounts to the defendant for all the income and profit received from House No, 15B Serval Road Kabulonga Lusaka and pay 50% thereof to the defendant namely US\$717,250;
- iv) An order that the plaintiff produces copies of lease or tenancy agreements which he entered into with the Angolan Embassy, the European Union or with any other person or authority from 1999 to date;
- v) Damages;
- vi) Interest at a bank rate on sums found to be due and payable to the defendant; and
- vii) Costs.

3.0 Decision of High Court

3.1 The trial Judge summed up the undisputed facts as follows:

- i) On 2nd December 1998, the parties herein acquired subdivision 3 of Subdivision B of Subdivision 15 Farm

- 488a Lusaka from Professional Services Limited and an assignment was executed by both parties and entered in the Lands Register;
- ii) A Certificate of Title was subsequently issued in the parties' names as joint tenants;
 - iii) The acquired property had a house accessible from Twin Palm Road, known as House No. 15B Twin Palm Road Kabulonga, Lusaka;
 - iv) In January 2004, a Certificate of Title for subdivision 3 of subdivision B of Subdivision 15 Farm 488a Lusaka was issued to the appellant and respondent as joint tenants;
 - v) In April 2004, the remaining extent of Subdivision B of subdivision 15 Farm 488a Lusaka was transferred to the appellant by deed of transfer and a Certificate of Title was issued to the appellant;
 - vi) The appellant built a house on the remaining extent of subdivision B of Subdivision 15 Farm 488a Lusaka, now known as House No. 15B Serval Road Lusaka; and
 - vii) The respondent has lived at and rented out House No. 15B Twin Palm Road Kabulonga, Lusaka.

3.2 The trial Judge made the following findings:

- i) Since land held under joint tenancy is indivisible, the appellant should not have subdivided the subject property without the defendant's agreement, even though the two agreed for a house to be built thereon. That even though fraud was not conclusively proved against the

appellant, there was misrepresentation of facts in the way he acquired the Certificate of Title relating to the remaining extent of Subdivision B of Subdivision 15 Farm 488a Lusaka by treating the land as though held by tenants in common. The court therefore ordered that the Lands Register be rectified by cancellation of Certificate of Title number 26912 issued to the appellant on 12th April 2004 for the remaining extent of Subdivision B of Subdivision 15 Farm 488a Lusaka and for the same to revert to the original title to be held as a joint tenancy;

- ii) That as joint tenants the appellant and respondent are beneficially entitled in equal shares to profits, income and rentals from both houses. As such, the Judge upheld the appellant's claim for half of rentals, incomes and profits in respect of House No. 15B Twin Palm Road Kabulonga and the respondent's counter-claim for half of rentals in respect of House No. 15B Serval Road Kabulonga, save for the declaration that the parties are registered tenants in common in equal shares of subdivision B of subdivision 15 of Farm 488a, Lusaka.
- iii) On the issue of damages claimed by both parties, the Judge ruled that the case of **Charles Kajimanga v Marmetus Chilemya**¹ is instructive that *mesne* profits recoverable represent damages.

4.0 The Appeal

4.1 Dissatisfied with the Judgment of the High Court, the appellant launched this appeal, raising four grounds as follows:

1. *The Court below erred in law and fact in finding that the respondent did not agree to subdivide the land contrary to the pleading and evidence and thereby reaching a wrong decision of cancelling the title in the name of the appellant;*
2. *The Court below erred in law and fact by opining that there was misrepresentation by the appellant contrary to the evidence and pleadings;*
3. *The Court below erred in law and fact by opining that there was mistake contrary to the evidence and pleadings;*
4. *In the alternative, the Court below erred in law and fact in holding that the parties are beneficiary entitled in equal shares to the rentals, income and profits from both houses despite a finding of fact that the appellant built the house on the remaining extent of Subdivision B of Subdivision 15 of Farm 488a, Lusaka.*

5.0 Appellant's Heads of Argument

5.1 At the hearing, Mr. Sianondo, learned counsel for the appellant, relied on heads of argument filed on 17th September, 2021. It was stated in support of the first, second and third grounds of appeal that contrary to the lower court's finding, the parties agreed to subdivide the subject property, as evidenced by the respondent's pleadings wherein he stated at paragraph 20 of his defence that:

“In 2003, the Plaintiff and Defendant agreed that the property which they owned as Tenants in common would be subdivided so that the Plaintiff would be registered on a subdivision on which House No. 15113 Serval Road is built and the Defendant would be registered on a subdivisions on which House No. 15113, Twin Palm Road is built.”

5.2 Several cases were cited to the effect that a party is bound by their pleadings, including ***Becmos Limited Vs Aon Zambia Limited and Goldman Insurance Limited***². In addition, our attention was drawn to affidavit evidence on record where the respondent deposed that the transfer document relating to subdivision 3 of subdivision B bears his signature, as well as evidence in examination in chief where the respondent admitted that he appended his signature on a document he was shown. That in any event, the Judge found that fraud was not proved and consequently, all the arguments by the respondent relating to fraud allegations fell out of the picture, but the court went on to raise the issue of the land having been mistakenly subdivided due to misrepresentation. On this premise, it was argued that there is nowhere in the respondent’s pleadings where misrepresentation or mistake is pleaded and as such, the court below formulated a different case which was not advanced by the respondent.

5.3 It was the appellant’s contention that having discounted fraud, the lower court ought to have dismissed the counterclaim founded on fraud instead of formulating a case for the respondent. The case of ***Savenda Management Services***

Limited v Stanbic Bank Zambia Limited and Gregory Chifire³ was cited to this effect.

5.4 The appellant went on to cite the following from the judgment of the lower court:

“Even then I am of the view that the manner in which the subdivision was done seems to be rather shady and hence the Plaintiffs criminal prosecution.”

5.5 Based on the foregoing, the appellant argued that had the lower court taken notice of the acquittal, being a court document on record, even the recasting of the case on the unfounded ground of misrepresentation would not have arisen.

5.6 Moving on to the fourth ground of appeal, the appellant argued in support thereof that the court below found as a fact that the house on the remaining extent of subdivision "B" of Subdivision 15 of Farm 488(a) which is known as House No. 15 B, Serval Road, Lusaka in the name of the appellant was built with the assistance of Metro Investments at approximately more than half a million dollars. The case of ***Aristogerassimos Vangelatos & Another v Metro Investments & Another⁴***, of which we were requested to take judicial notice, was cited to the effect that Metro Investment, which assisted the appellant to develop, belongs to the appellant and the respondent does not have shares in that company. As such, it would be inequitable and unjust enrichment towards the respondent for the court to ignore the more than US\$500,000.00 which was spent by the appellant.

- 5.7 It was argued that the only equitable way is that the appellant's receives what is known to have been spent on his account being more than US\$500, 000.00 before an order of equal shares of the rentals. The case of ***Worker's Compensation Control Board v Chaplin Sawono***⁵ was cited on the principle of unjust enrichment, as the respondent would be benefitting from the expenses incurred in the development of the house at more than half a million United States of America Dollars without him contributing anything.
- 5.8 In his oral submissions, Mr. Sianondo referred us to the Certificate of Title in the appellant's and respondent's name at page 126 and the assignment in respect of the subject land at page 207 of the record of appeal. He explained that later a subdivision occurred in favour of the appellant. That the parties executed a deed of transfer as shown at page 215 of the record of appeal.
- 5.9 He stated that the respondent was arguing that he did not agree to the transfer in the appellant's name. He referred us to the deed of transfer at page 219 of the record of appeal which was executed in 2004 by both parties. Counsel submitted that in his pleadings the respondent conceded that he agreed to subdivide the subject property. Reliance was placed on the documents at pages 219, and paragraph 20 at page 196 of the record of appeal.
- 5.10 Mr. Sianondo also referred us to an affidavit sworn by the respondent at paragraph 5 of page 92 of the record of appeal

to show that the appellant signed the deed of transfer. He submitted that the lower court ought to have sustained the appellant's claim.

6.0 Respondents' Arguments

6.1 In opposing this appeal, Mr. Tembo, counsel for the respondent, relied on the respondent's heads of argument dated 21st October, 2021 and submitted therein in response to the first ground of appeal that the learned trial Judge was on firm ground when she arrived at the decision to cancel the subject title in the name of the appellant and revert to the original title, as this finding was supported by pleadings. It was argued that the portion of the respondent's defence cited by the appellant to advance the assertion that the parties agreed to subdivide the property should not be read in isolation, as there was a condition precedent which the appellant did not adhere to. To this effect, the respondent cited a portion of his defence as follows:

"22. The Defendant says that he agreed to release his name and his 50% share on No, 15B Serval Road, Kabulonga on condition that the Plaintiff would also release his name and 50% share on 15B Twin Palm Road, Kabulonga, Lusaka."

6.2 That as a result of the breach or failure to satisfy the condition set out preceding to the actualization of the oral agreement, evidence shows that the subdivision was made in favour of the appellant while the other portion was still held under joint tenancy. On this premise, counsel contended that all matters

in controversy between the parties were adequately dealt with by the learned trial Judge and that the pleadings clearly outlined a sequence of the claim including the intended agreement which could not be valid for failure to honour a pre-condition.

- 6.3 As regards the second ground of appeal, the respondent argued that fraud and misrepresentation are interchangeable terms as they both fundamentally share common elements. This was in response to the appellant's contention that the court below erred in law and fact that misrepresentation was not pleaded. To this effect, counsel contended that the court will always grant a plaintiff any general or other relief to which he is entitled provided it be not inconsistent with that relief that is expressly asked for. The case of ***Nkongolo Farms Limited v Zambia National Commercial Bank Limited and others***⁶ was cited with regards to what constitutes particulars of fraud and misrepresentation in pleadings.
- 6.4 On this premise, it was submitted that the court below was on firm ground to make a finding of misrepresentation as the relief was properly sitting or consistent with the pleading of fraud.
- 6.5 In opposing the third ground of appeal, the respondent referred to the ***Osborn's Concise Law Dictionary, 12th edition*** at page 281 where mistake is defined as follows:

"In contract law a mistake may nullify consent, e.g. the parties' contract on a fundamental mistaken basis or negative consent, mistake may negative consent if as to the intention

or promise of one party known to the other party (Webster v Cecil (1861) 30 Beav. 61), at common law, mistake makes a contract void".

6.6 Our attention was drawn to the finding of fact by the lower court that the appellant caused land held under joint tenancy to be subdivided when the same is indivisible. Counsel submitted that it is on this premise that the court below proceeded to state that the subject property was mistakenly subdivided due to ignorance. Reference was made to the case of **Anne Scott v Oliver Scott**⁷ where the Supreme Court said as follows;

"Land held under joint tenancy is indivisible as between the joint holders and this is to be contrasted from land held in common and distinct shares."

6.7 That the finding of the mistake by the lower court resulted into the contract or an agreement a nullity and is thus supported by the final decision.

6.8 In response to the alternative fourth ground of appeal, counsel submitted that the court below was on firm ground to order that the rental, income and profits from houses be equally shared as the guiding principle is that the said houses are on the same title which property is indivisible.

6.9 In his oral submissions, Mr. Tembo advanced that the pleadings before the lower court are clear. He referred us to page 196 of the record of appeal. He submitted that the appellant and respondent were joint tenants of Subdivision 3

of Subdivision “B” of Subdivision 15 of Farm 488a, Lusaka. At page 223 of the record of appeal, and to the deed of transfer at page 215 he referred us to the Certificate of Title of the remaining extent. He argued that the schedule referred to at page 221 of the record of appeal did not correspond to the size of the land transferred. He further argued that the transfer of the property into the appellant’s name was subject to a precondition, which is revealed at paragraph 20 of the document at page 196 of the record of appeal.

6.10 Mr. Tembo submitted that there was a condition to be met for the properties to be subdivided. He contended that the lower court was on firm ground to hold that land held jointly should not be subdivided. Reliance was placed on the case of ***Sylvester Musonda Shipolo v Isaac Maipande***⁸.

7.0 Appellant’s submissions in reply

7.1 In reply to the respondent’s submissions, the appellant filed heads of argument in reply on 26th September, 2023. Mr. Sianondo submitted that the respondent was not disputing that there was an agreement to transfer the remaining extent into the appellant’s name. He argued that the respondent’s contention was on the remaining extent. Mr. Sianondo submitted that the appellant spent a sum of \$500,000 to develop the remaining extent. That there would have been a document produced in evidence if there was agreement for the respondent to retain an interest in the remaining extent.

7.2 Regarding the size of the land, Mr. Sianondo submitted that Mr. Tembo omitted to refer to the diagram at page 224 of the record of appeal.

7.3 On the respondent's reliance on the **Sylvester Musonda Shipolo** case, Mr. Sianondo submitted that the said case involved a contract between the parties. That in the present case there was a pleading that the Court could consider. Counsel ended on this note.

8.0 Our considerations and decision

8.1 We have considered the pleadings and the evidence on record adduced in the lower court, the judgment of the court below, and the submissions by counsel. The appellant has argued grounds one, two, and three together as in a sense they are all interrelated in so far as they relate to the learned Judge's findings. In our view, they amount to saying that the learned Judge misdirected herself when she misapprehended the evidence and came to erroneous conclusions. Our task is to determine whether on the evidence presented, this Court upon an analysis of the evidence before the lower court may reverse the findings of fact.

8.2 At the core of this appeal is the finding by the lower court that the respondent did not agree to subdivide the land in issue. The lower court went on to find that the land was mistakenly subdivided due to misrepresentation of the facts by the appellant.

8.3 The trial court approached the issue of the subdivision from one stand point, that land held under joint tenancy is indivisible as between the joint holders. She drew this principle from the case of **Anne Scott v Oliver Scott** *supra*. The case involved a dispute in property settlement following the dissolution of a marriage between the parties. Among the properties in contention was the matrimonial house held under a joint tenancy and the sharing of rentals. The Supreme Court went ahead to make the following statement:

“However, the point must be made that if the evidence was clear enough the appellant would have qualified for a share of the rentals on the Kalundu stand on the principle that the stand was held on a joint lease.”

8.4 In the present case, the learned Judge rightly cited the holding of the Supreme Court, but neither had recourse to the evidence nor the pleadings before her to ascertain the intentions of the parties. She stated that even though the appellant and the respondent agreed for a house to be built on the subject property, the appellant ought not to have subdivided it and obtained title without the respondent’s agreement. She went on to find that fraud had not been conclusively proved against the appellant. Further, that the appellant had mistakenly subdivided the land due to his own misrepresentation of the facts or by ignorance.

8.5 The evidence before the trial court as stated by the respondent went as follow:

“Our agreement from day one was that I get the house facing Twin Palm Road and the other one not facing Serval Road that time it was empty, no house inside.

So we agreed to build a new house that is supposed to go under his name, my brother Demetre with money from Dar Farms.

Then on the other side on Twin Palm on the old house it was supposed to be in my name. That is 50/50 one plot each.

(Page 400 of the record of appeal refers).

8.6 Further, in his defence and counter-claim to the amended statement of claim found at page 194 to 199 of the record of appeal, the respondent stated at paragraph 20 on page 196 as follows:

20. In 2003, the Plaintiff and the Defendant agreed that the property which they owned as Tenants in common would be subdivided so that the Plaintiff would be registered on a subdivision on which House No. 15B Serval Road is built and the Defendant would be registered on a subdivision on which House No. 15B, Twin Palm Road is built.”

8.7 The appellant argues that the lower court came to a wrong conclusion when it cancelled the appellant’s Certificate of Title on the finding that there was no agreement between the parties. The respondent does not deny the agreement between the parties, save that it was a condition precedent that either of the holders would abdicate their portions of interest in the

respective portions of land. This submission is backed by the respondent's pleading at paragraph 22 of his defence and counter-claim to the amended statement of claim at page 196 of the record of appeal. It states as follows:

"The Defendant says that he agreed to release his name and his 50% share on No. 15B Serval Road, Kabulonga on condition that the Plaintiff would also release his name and 50% share on No. 15B Twin Palm Road, Kabulonga, Lusaka."

8.8 In our view, there was sufficient evidence before the lower court to make a finding that the appellant and respondent agreed to subdivide Subdivision B of Subdivision 15 of Farm 488a, Kabulonga, Lusaka also known as No.15B Twin Palm Road. We accept Mr. Sianondo's submissions that the respondent was bound by his evidence and pleadings. Reliance is placed on the cases of ***Becmos Limited v Aon Zambia Limited and Goldman Insurance Limited*** *supra*, ***Christopher Lubasi Mundia v Sentor Motors Limited***⁹ and ***Rakir Hussein Motala v Jabir Ali Bux***¹⁰.

8.9 Further, the respondent deposed at paragraph 5 of his Further Affidavit in Opposition to Summons for an Order of Interim Attachment of the rentals and an Order for the Payment of Rental Income and Profits into Court filed into court on 13th July, 2012 as follows:

"5. That the transfer document relating to Subdivision 3 of Subdivision B bears a signature of mine. A copy of the aforesaid Certificate of Title is now produced and shown

to me marked as exhibit "AV1" which was used to transfer the said property into the Plaintiff's sole name in 2004."

8.10 A reading of the defence and counter-claim to the amended statement of claim at pages 194 to 199 of the record of appeal does not reveal a pleading of misrepresentation or mistake. The lower court found as a fact that the respondent had failed to prove fraud, which he pleaded. There was no evidence led by the respondent on the basis of a pleading of either misrepresentation or mistake. There was therefore, in our view no basis upon which the learned Judge was persuaded to cancel Certificate of Title No. 26912 relating the remaining extent of Subdivision B of Subdivision 15 of Farm 488a, Lusaka. In the absence of proof of fraud and or mistake, we reverse the order for cancellation of the said Certificate of Title. Reliance is placed on the case of ***Anti-Corruption Commission v Barnett Development Corporation Limited***¹¹ and ***section 33 of the Lands and Deeds Registry Act***¹.

8.11 We note that the learned Judge did not consider that a joint tenancy could be severed. Where land is held by way of a joint tenancy, for instance, by two people, it means they both own the whole of the property, and ownership automatically transfers to the other if one of them dies. Whilst such tenancy may be advantageous in harmonious times, it may become unsustainable where the relationship between the co-owners has broken down.

8.12 In the present case, the evidence before us is that the parties are brothers. There is further uncontested evidence that both parties agreed to sever the joint tenancy. They took active steps to subdivide Subdivision No. 3 of Subdivision 'B' of Subdivision No. 15 of Farm No. 488a also known as 15B Twin Palm Road, Kabulonga, and together created the remaining extent of Subdivision B of Subdivision No. 15 of Farm 488a also known as No. 15B Serval Road, Kabulonga.

8.13 In view of the forestated, we find merit in grounds one, two and three of the appeal.

8.14 The fourth ground is argued in the alternative. Since we have upheld the first three grounds of appeal, the fourth ground presented is rendered otiose.

9.0 Orders

9.1 In view of our findings, we set aside of the lower court's order cancelling Certificate of Title No. 26912 in the appellant's name.

9.2 Having found that there was agreement to terminate the joint tenancy of Subdivision 3 of Subdivision 'B' of Subdivision 15 of Farm 488a (15 B Twin Palm Road, Kabulonga), we order the rectification of Certificate of Title No. 25666 in the respondent's sole name.

9.3 On the claim for rentals, we find that the appellant is entitled to rentals received on 15B Twin Palm Road Kabulonga from

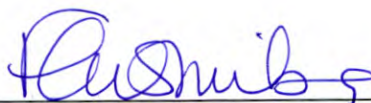
1999 when the property was leased up to 23rd April, 2004 when the subdivision was effected. We refer this to the Registrar of the Court for assessment.

8.4 In like manner, we find that the respondent is entitled to the rentals received from the property at 15B Serval Road, Kabulonga, if any, with effect from 2003 when it was leased out up till 23rd April, 2004 when the subdivision was effected. We refer this to assessment.

8.5 The rentals to be assessed by the learned Registrar of the Court and such sums found due will attract interest at the rate of six per centum (6%) per annum from the date of judgment in the lower court till the date of settlement.

9.0 Conclusion

9.1 The net result being that both parties having relative success from their claims in the lower court, we order that each party bears own costs.



F.M. Chishimba

COURT OF APPEAL JUDGE



D.L.Y. Sichinga, SC

COURT OF APPEAL JUDGE



P.C.M. Ngulube

COURT OF APPEAL JUDGE