

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

CAZ Appeal No. 184/2021

BETWEEN:

AMISI MWANDEZI

AND

TAMMIE HAMWEEMBA

ERIC LUMUMBA



APPELLANT

1ST RESPONDENT

2ND RESPONDENT

CORAM : Chishimba, Sichinga and Ngulube JJA

On 29th September, 2023 and 27th October, 2023

For the Appellant : N/A

For the Respondents : Mr. M. Munansangu of Messrs Munansangu
& Co.

J U D G M E N T

Chishimba JA, delivered the judgment of the court.

CASES REFERRED TO:

- 1) Communication Authority v Vodacom Zambia Limited (2009) ZR 196
- 2) Gideon Mundanda v Timothy Mulwani, The Agricultural Finance Co. Ltd & S.S.S. Mwiinga (1987) Z.R. 29
- 3) Kalusha Bwalya v Chadore Porperities Limited & Ian Chamunora Haruperi SCZ Judgment No. 20 of 2015
- 4) BOC Gases Plc v Phesto Musonda (2005) ZR 119
- 5) Jonny's Trading Company Limited v Yewendweossen Mengistu SCZ Appeal No. 163 of 2018
- 6) Jonathan Van Blerk v Attorney General SCZ/08/02/2020



- 7) HIM Casualty and General Insurance v Chase Manhattan Bank (2003) 2 LLR 61
- 8) Eric Masowe Nhumba Nhandu and New Future Finance Company Ltd
- 9) Eva Chiboni v New Future Finance Company 2020/HCP/0776
- 10) Wilson Masauso Zulu v Avondale Housing Project Limited (1982) Z.R. 172
- 11) Kapembwa v Mainmbolwa & Another (1981) ZR 127
- 12) Nkongolo Farm Limited v Zambia National Commercial Bank Limited, Kent Choice (in receivership, Charles Haruperi) (2005 ZR 78
- 13) Nkhata & Others v The Attorney-General Of Zambia (1966) Z.R. 124
- 14) Wesley Mulungushi v Catherine Bwale Mzi Chomba (2004) ZR 96.
- 15) Jane Mwenya & Jason Randee v Paul Kaping'a (1993) ZR 2
- 16) Vincent Mijoni v Zambia Publishing Company Limited SCZ Appeal No. 10 of 1986 (unreported)
- 17) Sablehand Zambia Limited v Zambia Revenue Authority (2005) Z.R. 109
- 18) Rosemary Phiri Madaza v Awadh Keren Coleen (2008) 1 Z.R. 12
- 19) Bwaly Chishimba Kambwili v Great Wall Financial Appeal Number 028/2021
- 20) Sundeep Kentilal Ranchhold v Donovan Grey Appeal No 211/2020

LEGISLATION REFERRED TO:

1. The Statute of Frauds 1677

1.0 INTRODUCTION

- 1.1 This appeal assails the judgment of Justice E. M. Sikazwe dated 1st March, 2021, in which he dismissed the appellant's claims for specific performance of a contract of sale and damages for breach of contract. The appellant was further

ordered to return the Certificate of Title and national registration cards of the respondents.

- 1.2 The court below also ordered the 1st respondent to pay back the loan of K120,000.00 within agreed reasonable time. In the event of failure, the appellant “was to return to court and apply for Foreclosure” of the same Property.

2.0 **BACKGROUND**

- 2.1 The 1st and 2nd respondents are mother and son respectively. They are the registered property owners of Stand No.13739, Lusaka (herein after referred to as ‘the property’). The appellant alleged that he entered into a contract of sale with the respondents for the purchase of the property at a consideration of K200,000.00 and that a deed of assignment was duly executed. Thereafter, the respondents surrendered the Certificate of Title for the property. Despite the above, the respondents refused to complete the sale agreement.

3.0 **CLAIMS IN THE COURT BELOW**

- 3.1 Arising from these facts, the appellant commenced an action by way of writ of summons and statement of claim against the respondents, seeking an order of specific performance of the contract; damages for breach of contract; and costs.

4.0 **DEFENCE**

4.1 In their defence, the respondents averred that they did not sign any contract of sale or deed of assignment. That they borrowed the sum of K87,000 and pledged their certificate of title as security for the loan obtained from with the appellant. The respondent further averred that they never intended to sell the property in issue.

5.0 **EVIDENCE ADDUCED IN THE COURT BELOW**

5.1 The matter proceeded to trial. Amisi Mwandezi (PW1) testified that in March 2014, he informed Evans Matyola (PW2) that he was looking for land on which to build a house. A week later, Matyola introduced him to Tammie Hamweemba, the owner of the stand Number 13739. The Property had a complete house in a wall fence. After discussions, 1st respondent offered to sell the property to him for the sum of K200,000.00.

5.2 In May 2014, PW1, PW2 and the respondents met at Inter Market Bank where the appellant withdrew the sum of K250,000.00. A contract of sale, deed of assignment and payment voucher prepared by the appellant was executed. The respondents signed on the one hand. The appellant, his wife and Matyola signed on the other hand. The contract of

sale and deed of assignment were taken to Messrs. Kalokoni & Company for confirmation before being handed to Messrs. Mweemba and Company. Subsequently, the appellant received a call from Messrs. A. M. and Company advising him not to go to the property. He later commenced this action against the respondents.

5.3 PW1 explained that a copy of the Certificate of Title, contract of sale, deed of assignment, payment voucher together with his national registration card and that of the respondents, were handed to Messrs. Mweemba and Company. In cross-examination, he denied lending the 1st respondent the sum of K200,000.00.

5.4 Evans Matyola (PW2) told the court that around March 2014, the appellant told him that he was looking for a house to purchase. A few weeks later, he was approached by the 1st respondent who informed him that she had a house for sale in Chalala area. PW2 passed on the information to the appellant. Thereafter, the parties met to discuss the sale. After negotiations, the respondents settled on a purchase price of K200,000.00. A meeting was arranged between the appellant and the respondents with PW2 at Intermarket Bank where the parties executed copies of the contract of sale and

- deed of assignment. Upon execution, the respondents were paid the purchase price by the appellant.
- 5.5 PW2 escorted the respondents to the 1st respondent's place of work where he was paid the sum of K15,000.00 instead of 10% of the purchase price for 'his efforts' or as commission.
- 5.6 Tammie Mizinga Hamweemba (DW1) told the court that she sought to obtain a loan from the Zambia National Commercial Bank. She contacted two people who referred her to Mr. Matyola (PW2). Matyola requested her to bring along her Certificate of Title and took her and the 2nd respondent to the appellant. This was in June 2014. Later, the 2nd respondent took Matyola to view the property and showed him utility bills of the property to prove ownership.
- 5.7 The next day, Matyola took her to Intermarket Bank where he introduced her to the appellant a money lender who ran a company called Bomach Financial Services Limited. The appellant told her that he lent out money at 30% interest per month. After discussions, she obtained a loan in the sum of K120,000.00 which included a transaction fee of 5%. Matyola also told her that there was a fee of 10% for introducing her to the lenders.

- 5.8 DW1 and her son filled in application forms in duplicate, which they both signed. Matyola and Katongo signed on behalf of the lender company. The respondents were told to surrender their national registration cards. However, they were not given a copy of the signed form. They were told the form would be availed upon payment of the first instalment.
- 5.9 Thereafter, Matyola escorted the respondents to her place of work where he demanded for his fee and was given the sum of K13,000.00. DW1 denied signing the said contract of sale and deed of assignment, stating that the signatures on the purported documents are not hers.
- 5.10 In cross-examination, the 1st respondent stated that the first instalment for the loan was due on 11th July, 2014. That she did not pay back the said money. On the said date, the appellant changed the transaction from a loan to a contract of sale. She stated that the signature on the loan application form and the one on the contract of sale are different.
- 5.11 Eric Mizinga Lumamba (DW2) testified that on 11th June, 2014, he received a call from his mother that she had found a person who could lend her money. He found his mother at a place with a Mr. Matyola. The three of them proceeded to Intermarket Bank where they met the appellant and another

man. They were asked to read and sign some documents and to hand over their national registration cards. The documents were in respect of a loan application. When the respondents requested for a copy of the loan application form, they were told that the documents would only be furnished upon payment of the first instalment. Thereafter, they proceeded to the bank and to the 1st respondent's work place where Mr. Matyola was given some money as fees.

5.12 When shown the contract of sale and deed of assignment, DW2 denied signing the said documents. In cross-examination, he stated that though the signatures on the said documents are similar to his signature on the national registration card, he stopped signing in that manner a long time ago.

5.13 DW2 stated that PW1 had made it clear to them that the obtaining of the loan would be on condition of 'exchange' of a Certificate of Title or motor vehicle. That for the loan to be approved, DW1 was required to give collateral. In the event of failure to pay on time, interest would be added to the amount borrowed. The Certificate of Title was an assurance that the money would be paid back. The said loan was to be paid back six months from the date obtained.

6.0 **DECISION OF THE COURT BELOW**

6.1 The court below found that the parties dealt in a transaction of money. That what was in dispute was the type of transaction and its implications, the amount of money involved in the transaction and the correspondence which took place between them. The appellant on one hand stated that the transaction was for a sale of a house at the purchase price of K200,000.00 supported by a contract of sale, deed of assignment and payment voucher.

6.2 On the other hand, the respondents' position was that the transaction was a loan agreement in the sum of K120,000.00. Though the appellants signed two copies of a loan agreement form on headed paper for Bormack Financial Services, they were not given any copies to retain.

6.3 The lower court was not impressed with the manner the appellant proceeded to draft the contract of sale and assignment, and also with his failure to avail the respondents copies of the alleged transaction. The learned Judge wondered who the advocates of the vendor were and whether States Consent to assign was obtained. The court observed that the part for the consideration was blank.

- 6.4 The lower court further took issue with the manner in which the alleged sale was conducted *viz-a-viz* the appellant keeping the identity documents of the respondents; the failure by the appellant to avail the contract documents to the respondents and to disclose his intentions to the respondents. Further, whether the date of payment was 31st May, 2014 as per the appellant, or 11th June, 2014 as per the respondents. The learned Judge was of the view that Messrs. Kalokoni and Company had not approved the documents involved in the transaction in view of the errors observed and the fact that no advocate from the firm was called to testify.
- 6.5 For these reasons, the court below refused to accept the “*sham alleged transaction*” citing “*a lot of underhand transactions*” done by the appellant which had “*been brought to court to launder at the expense of the*” respondents. That the parties were not on the same wavelength, with “*one willing to sell and the other willing and wanting to buy the property*”.
- 6.6 Consequently, the lower court decided to revert the parties to their initial position. The 1st respondent having admitted receiving the sum of K120,000.00 from the appellant on 11th June, 2014, she was directed to pay back the principle

amount with interest at the Bank of Zambia ruling rate from 26th August, 2014 until the whole amount is paid. In the event of failure to repay the money and interest, the appellant would be at liberty “*to come back to court, now through a law firm of his own choice to come and apply for foreclosure, of the same property.*”

6.7 The court below ordered the appellant to return the certificate of title in respect of the property together with the national registrations cards of the respondents. The respondents were awarded costs to be taxed in default of agreement.

7.0 **GROUND OF APPEAL**

7.1 Dissatisfied with the judgment of the lower court, the appellant appealed, raising three grounds structured as follows:

- 1. The court below erred both in law and fact by not granting an order for specific performance in the presence of the evidence like the contract of sale, assignment and payment voucher;*
- 2. The court below erred in both law and fact by holding that the transaction was not a sale but a loan in the absence of any evidence or corroboration to support such a finding; and*
- 3. The learned Judge in the court below erred in both law and fact by giving a procedure to purchase land in Zambia which*

procedure is not contained in the Statute of Frauds Act, 1677 or any other law.

8.0 **APPELLANT'S HEADS OF ARGUMENTS**

8.1 The appellant filed heads of argument dated 11th August, 2021 in support of his appeal. Grounds one and two were argued together. The thrust being that the transaction between the parties was a sale and not a loan. Therefore, the lower court ought to have granted the remedy of specific performance.

8.2 Learned Counsel submitted that from the contract of sale and deed of assignment, the respondents sold and the appellant bought Stand No. 13739, Chalala, Lusaka at a consideration of K200,000.00. In this regard, the Court was referred to the case of **Communication Authority v Vodacom Zambia Limited** ⁽¹⁾ where it was held that:

The remedy of specific performance is an equitable remedy which is available in certain cases to the aggrieved party to a contract. It is founded upon the fact that the normal common law remedy for breach of a contract - damages - is not in all cases an adequate remedy.

8.3 The court was further referred to several cases on the remedy of specific performance, amongst them, **Gideon Mundanda v**

Timothy Mulwani, The Agricultural Finance Co. Ltd & S.S.S. Mwiinga ⁽²⁾ where the Supreme Court guided that:

A judge's discretion in relation to specific performance of contracts for the sale of land is limited as damages cannot adequately compensate a party for breach of a contract for the sale of land.

8.4 Counsel went on to refer to the general rule on extrinsic evidence that is inadmissible to add to, vary, subtract from or contradict the terms of a written contract. written agreements, having been freely and voluntarily entered into by the parties, should be enforced by the courts. The cases of **Kalusha Bwalya v Chadore Porperties Limited & Ian Chamunora Haruperi** ⁽³⁾ and **BOC Gases Plc v Phesto Musonda** ⁽⁴⁾ were cited as authorities.

8.5 Lastly, in ground three, counsel referred to **section 4 of the Statute of Frauds 1677**. And, submitted that while the lower court went to great length to describe the contract of sale and deed of assignment as poorly drafted, the law only looks for salient features to be present to uphold a contract of sale.

8.6 The court was referred to the case of **Jonny's Trading Company Limited v Yewendweossen Mengistu** ⁽⁵⁾ where it

was held that to satisfy **section 4 of the Statute of Frauds, 1677**, the agreement must be in writing; it must identify the subject matter; it must spell out the essential terms of the agreement such as consideration; and the agreement must include at a minimum, the signature of the party that is being charged. Counsel submitted that the contract of sale and deed of assignment herein contain all the elements above.

9.0 **RESPONDENT'S HEADS OF ARGUMENTS**

9.1 The respondents filed heads of arguments dated 14th September 2023. The respondents submit that the contract of sale and loan agreement adduced in evidence are fraudulent. The reason being that despite obtaining a loan of K120,000, the agreements indicated a figure of K200.000. Further, that the amount received by the respondent was K120, 000. The said contract of sale fell short of the requirements of the law. That the appellant attempted to buy the property in question dubiously. Reference was made to the case of **Jonathan Van Blerk v Attorney General** ⁽⁶⁾ where the Supreme Court defined fraud and misrepresentation. We were also referred to the case of **HIM Casualty and General Insurance v Chase Manhattan Bank** ⁽⁷⁾ where it was held

that once fraud is proved, it vitiates contracts and all transactions.

9.2 The respondents contends that the intention of the appellant was to make them execute documents meant to facilitate change of title in the event of default. We were referred to the case of **Kalusha Bwalya v Chadore Properties & Another**⁽³⁾ and **Eric Masowe Nhumba Nhandu and New Future Finance Company Ltd**⁽⁸⁾ to support their contention that they were tricked into signing a contract of sale as a condition for lending money. The High Court decision of **Eva Chiboni v New Future Finance Company**⁽⁹⁾ was cited where the High Court held that the transaction between the parties was a loan agreement and not a sale.

9.3 We were urged to dismiss the appeal and uphold the judgment of the lower court.

9.4 In response, the appellant relied on its arguments in reply dated 20th September 2023. We were urged to reverse the finding of fact that the transaction was a loan agreement and not a sale agreement. We were referred to the cases of **Wilson Masauso Zulu v Avondale Housing Project Limited**⁽¹⁰⁾ and **Kapembwa v Mainmbolwa & Another**⁽¹¹⁾ which laid down

principles to be followed by an appellate court before interfering with findings of fact made by a trial court.

9.5 As regards the alleged fraud, the appellant submits that fraud was not pleaded by the respondents. Further no evidence of fraud was particularized in the pleadings or adduced. Therefore, the respondents are *estopped* from pleading it on appeal. As authority the cases of **Nkongolo Farm Limited v Zambia National Commercial Bank Limited, Kent Choice⁽¹²⁾ and Sable Hand Zambia Limited (Supra)** were cited on the necessity of a party alleging fraud to clearly and distinctly particularise the claim and equally lead evidence to prove it on a higher standard of proof than on a mere balance of probabilities. We were urged to dismiss the appeal.

10.0 **DECISION OF THE COURT**

10.1 We have considered the appeal, the heads of arguments, and authorities cited by learned Counsel on record. The following facts are not in dispute, that the respondents were beneficial joint owners of the property in issue. The parties entered into a transaction. The respondents gave the appellant their Certificate of Title as security for the alleged loan. The dispute or contention being the nature of the transaction

entered into between the parties. The issues for determination as per grounds of appeal are as follows:

- (i) Whether the nature of the transaction between the parties was a contract of sale or loan agreement.*
- (ii) Whether the court below erred by not granting the remedy of specific performance.*
- (iii) Whether the contract of sale of property contained all the material terms of the contract or satisfied **Section 4 of the Statute of Frauds Act 1677***
- (iv) Whether fraud as alleged by the respondents was clearly and distinctly proved on the required a higher standard of proof.*

10.2 The evidence of the appellant supported by PW2, is that on 31st May, 2014, he entered into a contract of sale for Stand No. 13739/2 Lusaka in the sum of K200,000.00 with the respondents. That the sale is evidenced by a contract of sale, payment voucher and deed of assignment appearing at pages 46 to 53 of the record of appeal.

10.3 The respondents denied having sold their property to the appellant. The 1st respondent told the court that she obtained a loan of K120,000.00 from the appellant having signed two copies of a loan agreement form on headed paper for Bormack Financial Services. However, they were not given any copies of the said agreement. The respondents denied selling the

property to the appellant for K200,000.00 or signing the contract of sale, payment voucher or deed of assignment. In other words, they alleged fraud.

10.4 In this appeal, the appellant is challenging the finding of fact by the lower court that the transaction between the parties was in fact a loan agreement and not a sale in view of the documentary evidence on record. It is trite that an appellate court will only reverse findings of fact made by a trial court if it is satisfied that the findings in question were either perverse or made in the absence of any relevant evidence or upon misapprehension of the facts. See the case of **Wilson Masauso Zulu v Avondale Housing Project Limited** ⁽¹⁰⁾.

10.5 Further, in **Nkhata & Others v The Attorney-General of Zambia** ⁽¹³⁾ it was held that:

“A trial judge sitting alone without a jury can only be reversed on questions of fact if

(1) the judge erred in accepting evidence, or

(2) the judge erred in assessing and evaluating the evidence by taking into account some matter which he should have ignored or failing to take into account something which he should have considered, or

(3) the judge did not take proper advantage of having seen and heard the witnesses,

(4) external evidence demonstrates that the judge erred in assessing manner and demeanour of witnesses.”

10.6 A reading of the judgment shows that the learned Judge was not impressed with the manner in which the contract of sale was drafted by the appellant. He was not pleased that the appellant did not call any witness and/or advocate to confirm that he took the contract of sale and deed of assignment to Messrs. Kalokoni and Company for verification and accused the appellant of lying. The court below further took the view that the appellant did not explain to the respondents the nature of the transaction they were entering into. Further, the court took issue with the fact that the contract of sale does not indicate who the vendor's advocates are. The court took the view that the sale was "*... done under the table, or under dubious manners, or under duress.*"

10.7 The learned Judge further doubted whether State Consent to assign was obtained and took exception the fact that clause 8 was blank on the purchase consideration to be paid. The court wondered whether the transaction took place on 31st May, 2014 as per the appellant or 11th June, 2014 as told by the respondents. Consequently, the lower court found the appellant and PW2 to be untruthful and chose to believe the respondents.

10.8 From the foregoing, it is evident that the court below was not satisfied with the sufficiency or adequacy of the contract of sale and deed of assignment.

10.9 We shall start by determining the issue whether the contract of sale in issue contained all the material terms of contract or satisfied the provisions of **Section 4 of the Statute of Frauds 1677**. It is trite that for a note or memorandum to satisfy section 4 of the **Statute of Frauds 1677**, it must contain material terms of a contract such the names, subject matter and consideration. We refer to the case of **Wesley Mulungushi v Catherine Bwale Mizi Chomba** ⁽¹⁴⁾, where the Supreme Court followed its previous decisions in **Jane Mwenya & Jason Randee v Paul Kaping'a** ⁽¹⁵⁾ and **Vincent Mijoni v Zambia Publishing Company Limited** ⁽¹⁶⁾, and held that the contract of sale between the parties contained all the material terms of the contract. The Supreme Court guided that:

“For a note or memorandum to satisfy section 4 of the Statute of Frauds 1677, the agreement itself need not be in writing. A note or memorandum of it is sufficient, provided that it contains all the material terms of the contract, such as names, or adequate identification of the subject matter and the nature of the consideration.”

10.10 In this case, a perusal of the contract of sale appearing at pages 46 to 59 of the record of appeal shows that it contains all the material terms of the contract being the names of the vendors and the purchaser; the consideration of K200,000.00 and the particulars of the property to be sold. We are therefore, of the view that the contract of sale between the parties satisfied **Section 4** and is valid for all intents and purposes.

10.11 We will proceed to determine the issue raised by the respondents in the court below of fraud in that the signatures appearing on the contract of sale, payment voucher and deed of assignment are not theirs. The respondents in a nutshell alleged fraud and/or forgery. In the case of **Sablehand Zambia Limited v Zambia Revenue Authority** ⁽¹⁷⁾, the Supreme Court guided that:

- 1. Where fraud is an issue in the proceedings, then a party wishing to rely on it must ensure that it is clearly and distinctly alleged. Further, at the trial of the cause, the party alleging fraud must equally lead evidence, so that the allegations is clearly and distinctly proved.*
- 2. Allegations of fraud must, once pleaded, be proved on a higher standard of proof, than on a mere balance of probabilities, because they are criminal in nature.*

10.12 The above position of the law was re-echoed in the case of **Rosemary Phiri Madaza v Awadh Keren Coleen** ⁽¹⁸⁾ where it was held that:

“A defendant wishing to rely on the defence of fraud must ensure that it is clearly and distinctly alleged. At trial a defendant must lead evidence to clearly and distinctly prove the allegation.”

10.13 We have perused the defence filed by the respondents. Paragraphs filed by the respondents at page 7 of the record of appeal, shows that the respondents pleaded that they never executed the contract of sale and deed of assignment. The respondent averred that they only borrowed the sum of K87,000.00 from the appellant. The defence does not go further to state the particulars of the fraud. Further, at trial, no forensic evidence was called by the respondents to show that their signatures appended to the contract of sale were forged. The respondents merely denied ever executing the contract of sale, payment voucher and deed of assignment. The question that arises is whether the evidence led clearly and distinctly proved the allegation to the higher standard of proof.

10.14 The evidence led by the respondents merely denied executing the documents in issue and alleging that the signatures thereon were forged. This does not meet the required standard of proof, which is higher than on a balance of probability, to disprove the appellant's assertion that they did execute the documents in issue. We hold the view that the respondents did not lead evidence to clearly and distinctly prove the allegation of forgery.

10.15 We therefore hold that the learned trial Judge erred in assessing and evaluating the evidence before him by taking into account some matters which he should have ignored, and failed to take into account matters which he should have considered in arriving at a decision. Had he guided himself on the applicable law, he would have found that there was no basis upon which to disregard the contract of sale, and payment voucher. In these circumstances, the findings of fact by the lower court that the purchase of the property in issue is a sham and that the sale involved underhand transactions must be set aside.

10.16 The next issue to be determined is the nature of the transaction entered into between the parties. The evidence on record shows that the respondents executed a contract of

sale and not a loan transaction. The respondents failed to prove fraud in the execution of the contract of sale. We are of the view and find that the respondents did enter into a sale agreement for the property in issue evidenced by the contract of sale, payment voucher and deed of assignment. They did so with full knowledge of the nature of the transaction. Therefore, we hold that the nature of the transaction entered into was a contract of sale for Stand Number 13739 Lusaka on the purchase price was paid.

10.17 We refer to the cited case of **Kalusha Bwalya** (supra) where the Supreme Court held that the parties having chosen

“to embody their agreement in two documents namely the contract of sale and deed of assignment. They are bound by those documents in the absence of fraud etc....”

10.18 We also refer to our decisions in the **Bwalya Chishimba Kambwili v Great Wall Financial** ⁽¹⁹⁾ and **Sundeep Kentilal Ranchhold v Donovan Grey** ⁽²⁰⁾ in which we held that the transactions in dispute were in fact contracts of sale agreement and set aside the decision of the lower court to the contrary.

10.19 The last issue to be determined raised under is whether the appellant is entitled to the remedy of specific performance of

the contract of sale. Specific performance will be awarded by the court in circumstances where it will do more perfect and complete justice than an award of damages.

10.20 Where the matter in dispute is land, specific performance would do more perfect justice. See the case of **Wesley Mulungushi v Catherine Bwale Mzi Chomba** ⁽¹⁴⁾. Having found that there was a valid contract of sale and that the appellant paid the purchase price in full there is no basis why the respondents should not be compelled to perform their obligations to complete the sale. The appellant has been kept out of his money for more than nine years whilst the respondents continue to hold on to the property to his detriment.

10.21 In the circumstances, an award of damages would be inadequate. We hold the view that specific performance will do more perfect and complete justice, this being an action for land. We accordingly award specific performance of the contract of sale of Stand 13739 Lusaka to the appellant.

10.22 Having held that the transaction between the parties was a sale in light of the contract of sale, payment voucher and deed of assignment, we find merit in the appeal.

11.0 **CONCLUSION**

11.1 The judgment of the court below is hereby set aside in its entirety. We substitute it with an order of specific performance of the contract of sale between the parties. We award costs to the appellant to be taxed in default of agreement.



.....

F. M. Chishimba

COURT OF APPEAL JUDGE



.....

D. L. Y. Sichinga, SC

COURT OF APPEAL JUDGE



.....

P. C. M. Ngulube

COURT OF APPEAL JUDGE

