

IN THE COURT OF APPEAL OF ZAMBIA

Appeal No. 170/2025

HOLDEN AT KABWE

(Civil Jurisdiction)



B E T W E E N:

**MUKAMUNYA HOMEOWNERS ASSOCIATION
TRUST REGISTREED TRUSTEES**

APPELLANT

AND

LESLIE SZEFTTEL

1ST RESPONDENT

MELODY ROBERTSON SZEFTTEL

2ND RESPONDENT

CORAM: Chashi, Ngulube and Banda-Bobo, JJA
On 15th, October, 2025 and 4th December, 2025.

For the Appellant:	Mr. C. Hamwela of Messrs Nchito and Nchito
For the 1st Respondent:	N/A
For the 2nd Respondent:	Mr. L. Mwamba with Ms. K. Bwalya and Mr. M. Chungu of Messrs Mwamba and Milan Advocates

JUDGMENT

Banda-Bobo, JA delivered the Judgment of the Court.

Cases referred to:

1. Naik and Naik Motors Limited v Chama (1985) SCZ Judgment No. 28 of 1985
2. Amchile Import and Export Limited and Others v Ian Chimanga (T/A Tawana Business Ventures) & Others – Appeal No. 43A of 2011
3. Zambia Revenue Authority v Professional Insurance Corporation Limited (2020) ZR, 391 (SC)

Legislation referred to:

1. The Landlord and Tenant (Business Premises) Act, Chapter 193 of the Laws of Zambia (The Act)
2. The Land (Conversion of Titles) Chapter 184 of the Laws of Zambia

1.0 INTRODUCTION

1.1 This appeal arises from the ruling of the High Court delivered by Hon. Mrs. Justice S. Chocho on 29th April 2025, in which the Appellant's claims were dismissed on the basis that the leased property was an agricultural holding and thus excluded from the protections of the Landlord and Tenants (Business Premises) Act Chapter 193 of the Laws of Zambia (The Act).

2.0 BACKGROUND

2.1 The brief background to this matter is that the Appellant commenced an action against the Respondents by way of Originating Notice of Motion on 17th December 2020 which was later amended on 18th July 2024 claiming the following reliefs:

- i) That the rent relating to the property, the subject matter of the cause herein, be determined in accordance with Section 28 of the Landlord and Tenant (Business Premises) Act (The Act) at a rate of One Thousand Dollars (US\$1000) which is the rent in the signed lease agreement;

- ii) That the various notices to terminate given to the Applicant by the Respondents are illegal for non-compliance with the law and therefore, ought to be set aside;
- iii) That the Applicant's tenancy is valid and the Applicant ought to continue to occupy the premises at the contractual rent of \$1000 per month until the lease terminates and have the option to review thereafter;
- iv) That in the alternative, the Applicant be given a new lease on terms similar to those already agreed and for a duration equal to or exceeding that already agreed in the current lease.

3.0 **DECISION OF THE LOWER COURT**

- 3.1 By a Ruling dated 29th April 2025, the lower Court dismissed the Appellant's matter in its entirety.
- 3.2 The lower Court found as a reason for its decision that the subject property was an agricultural holding, and that the Act is not applicable to the lease agreement between the parties.

4.0 **THIS APPEAL**

4.1 Unhappy with the Ruling, the Appellant launched this appeal, by way of Notice of Appeal and Memorandum of Appeal filed on 2nd May 2025, while the record of appeal was filed on 30th June 2025. Two grounds of appeal were fronted and couched thus: -

Ground One

The Court below erred in law and fact when it held that the property leased by the Appellant was an Agricultural Holding without evidence of any agricultural activity on the said property and in the face of clear evidence that the premises were leased as a social club.

Ground Two

The Court below erred in law and in fact when it held that the premises leased by the Appellant, namely, portions of Farm Numbers 299a and 300a, Lusaka, were agricultural holdings based on Certificate of Title relating to sub-divisions of the said properties (Sub-division No. 28 of Farm, 299 Sub-division No. 4 of Farm No. 300a Lusaka), not Certificate of Title actually relating to the leased properties.

5.0 **ARGUMENTS IN SUPPORT**

5.1 The Appellant filed heads of argument and a list of authorities on 30th June 2025.

5.2 On ground one, the Appellant argued that the trial Court was bound to consider the functional reality and mutual conduct of the parties in its categorization of the leased property. That the evidence presented before the lower Court demonstrated that the property was leased by the Respondents and utilized as a social club, encompassing facilities such as a restaurant, tennis courts, and swimming pools, indicative of commercial use.

5.3 Further that the Court erred by holding solely, on the strength of the Certificate of title that the premises were agricultural land without considering the actual use and intention of the parties both at the inception and during the subsistence of the lease.

5.4 Reference was made to Section 2 of the Act which defines 'business' as:

“a trade, an industry, a profession or an employment, and includes any activity carried on by a body of

persons, whether corporate or unincorporated, but does not include farming on land.”

5.5 It was further submitted that the Respondents allowed the building of a restaurant and other amenities at the Monkey - Pools, where the 2nd Respondent even worked. That, as such, the Respondents, by their conduct, acquiesced to the use of the land and cannot now claim breach. To buttress this proposition reference was made to Section 3 (2) (e) of the Act which provides that:

“premises or part of the premises comprised in a tenancy, in which a tenant is carrying on a business in breach of a prohibition (however expressed) of use for business purposes which subsists under the terms of the tenancy and extends to the whole of those premises, unless the immediate landlord or his predecessor in title has consented to the breach or the immediate landlord has acquiesced therein.”

5.6 We were also referred to the case of **Naik and Naik Motors Limited v Chama**¹, where the Supreme Court held as follows:

“Tenants who have the protection of the Landlord and Tenant (Business Premises) Act may rely on such protection and may apply for new tenancies despite the default of landlords in failing to obtain Presidential Consent.”

5.7 It was argued that in the present case, the Appellant obtained a lease to conduct, and conducted business with the knowledge, participation, and acquiescence of the Respondents. That the landlord cannot now invoke alleged zoning irregularities or the absence of formal user change as a basis to oust statutory protection, when they are a party in default.

5.8 Under ground two, it was submitted that the trial judge misdirected herself by relying on Certificates of Title for subdivisions No. 28 of Farm 299a and Sub-division No. 4 of Farm 300a that do not correspond to the actual portions leased to the Appellant. It was argued that the Certificates of Title exhibited had not shown that they relate to the leased property. That the lease related to portions of Subdivisions of Farm 299a and 300a as appearing at page 780 of the Record of Appeal. That on the other hand, the Certificates of Title which the Respondents used to argue that the property was zoned agriculturally on the other hand, related to Sub divisions 28 of Farm No. 299a appearing at page 801 of the Record of Appeal and Sub-division No. 4 of Farm 300a

appearing at page 809 of the Record of Appeal, do not relate to the same portions of land. Also that the lease agreement has 12.574 and 29.2716 hectares as appear at page 809 of the Record of Appeal, whereas the Certificates of Title relate to portions of land shown in the diagrams that cover areas of 20.4370 and 7.7740 hectares.

6.0 **ARGUMENTS IN OPPOSITION**

- 6.1 In opposition, the Respondent filed Heads of argument dated 30th July 2025.
- 6.2 It was submitted that the Appellant's action before the lower Court was dismissed on the strength of the provisions of Section 3 (2) (a) of the Act. It was argued that the Act on which the Appellant's action was anchored is very clear as to the scope of its application. That it did not apply to agricultural holdings.
- 6.3 It was contended that the lower Court, after reviewing the evidence before it, made a finding that the subject properties Subdivision No. 28 of Farm No. 299a and Sub-division No. 4 of Farm No. 4 of Farm No. 300a are agricultural holdings.

- 6.4 It was further contended that the Appellants' assertion that the Court below should not have found that it was agricultural holding because there was no evidence that agricultural activity was misplaced because what determines the designation is the certificate of title or a successful application for change of use and not the activity.
- 6.5 It was argued that an Appellate court can only set aside factual findings where the findings were perverse or made in the absence of relevant evidence or misapprehension of facts. Reference was made to the case of **Amchile Import and Export Limited and Others v Ian Chimanga (T/A Tawana Business Ventures) & Others²** to buttress this argument. It was contended that in *casu*, the appellant has not provided any justifiable reason to warrant overturning this finding.
- 6.6 It was further submitted that the Appellant's argument that it cannot be denied the protections under the Act because there was no change of use of the subject property from agriculture to commercial was not pleaded, and was at variance with the ground of appeal. He argued that the decision in **Naik¹** was specific to the Landlord's failure to

comply with the provisions of Section 13 of the Land (Conversion of Titles) Act. That it did not stretch to “the landlord’s failure to regularize compliance with other land law requirements, as argued by the Appellant.

6.7 Under ground two it was submitted that the lower court was on *terra firma* when it held that the Certificates of Title relating to the sub-divisions classify or designate the subject property as agricultural holdings because the Monkey Pools or demised premises sit on Sub-divisions 299a and 300a.

6.8 It was submitted that when this issue was brought up before the lower Court, both Respondents by their Affidavits in Reply led uncontroverted evidence inter alia that since the Lease was signed, Farm No. 299a, Lusaka and Farm 300a, Lusaka, have been the subject of numerous subdivisions and which sub-divisions led to the creation of Sub-division No. 28 of Farm 299a, Lusaka and Sub-division No. 4 of 300a, Lusaka on which the Monkey Pools currently sit.

7.0 HEARING

7.1 In his submission on behalf of the Appellant, Mr. Hamwela relied on the Heads of Argument filed on 30th June 2025. He added that the Respondents issued a notice of termination under the Act, and the Respondent responded based on that notice.

7.2 It was further argued that the ruling of the lower court, which held that the premises in question are agricultural in nature and therefore not subject to the Act, contradicts the principle established in **Zambia Revenue Authority v Professional Insurance Corporation Limited**³. That this case prohibits litigants from taking inconsistent positions, or “criss-crossing,” in litigation. Mr. Hamwela contended that the Respondents relied on the Act and then turned around to argue that the Act does not apply.

7.3 He also referred to pages 808, 809, and 58 of the Record of Appeal (ROA), noting that the Certificates of Title indicate vastly different land sizes. It was submitted that there was no factual basis for the court to find that the land was agricultural.

7.4 In opposition, Mr. Mwamba relied on the Heads of Argument filed on 30th July 2025. He argued that the core issue is whether The Act applies. He argued that the lower court correctly held that parties cannot contract out of the Act. Reference was made to Section 3(2)(a) of the Act, which excludes agricultural land from its application. It was also argued that the owners confirmed they did not change the use of the land.

7.5 Regarding the two Certificates of Title, it was submitted that these were subdivisions of the main title. Sub-division 299A covers 20 hectares, while the other covers 7 hectares. Mr. Mwamba argued that judicial estoppel does not apply in this case.

7.6 In reply, it was submitted that clause 10 of the covenants clearly states the land is to be used for private amenities, and no private amenities of an agricultural nature existed on the premises.

8.0 **DECISION OF THIS COURT**

8.1 We have considered the record of appeal, the judgment of the Court below, and the detailed submissions of counsel on both sides.

8.2 The Court is called upon to determine whether the lower Court erred in its classification of the premises and in the reliance placed on Certificates of Title.

8.3 The first and most critical issue under ground one is whether the leased premises should have been characterized as agricultural holdings, thereby excluding the Appellant from statutory protection, or as business premises under The Act.

8.4 The Appellant contends that the premises have been used and treated throughout the lease period as a social club with facilities including a restaurant, tennis courts, and swimming pools. That this reflects a commercial, business use which, under Section 2 of the Act, qualifies for statutory protection. The Appellant further argues that the certificate of title should not be dispositive; rather, the actual use and mutual conduct between the parties must be considered.

8.5 We have considered the principle from **Naik and Naik Motors Limited v Chama**¹, relied upon by the Appellant, which protects tenants carrying on business on premises, notwithstanding a landlord's failure to obtain consents, emphasising tenant security and good faith in business leasing.

8.6 We further note the Respondents' argument that The Act expressly excludes agricultural holdings from its scope and that the certificate of title governs the land classification regardless of how the premises might have been used. The Respondent has emphasized that the trial Court's factual finding that the subject property is an agricultural holding should not be disturbed on appeal unless they are grossly unreasonable or unsupported. We agree that this is the principle in the case of **Amchile Import and Export Limited v Ian Chimanga (T/A Tawana Business Ventures) and Others**².

8.7 However, upon careful analysis, it is evident that the actual use of the premises as a social club with clear business activities cannot be ignored. The presence of commercial

amenities and the Respondents' acquiescence, in our view amount to a tacit agreement and recognition of business use.

8.8 We are of the view that the legislative intent behind The Act is to protect tenants engaged in business, and reliance solely on stale or generic land titles to deny those protections undermines this purpose, especially considering the fact that a tenant would not always be in the position to know what is contained in the title.

8.9 Correspondingly, the Constitutional and commercial fairness principles favour a practical approach prioritizing use and agreement over formality of land classification. Therefore, the Court finds the lower Court erred in excluding the premises from protection under The Act solely on the basis of the certificate of title.

8.10 The statutory definition of "business" in Section 2 of the Act excludes farming but embraces all other trade and industry activities. Furthermore, **Naik and Naik Motors Ltd v Chama**¹ held that tenants conducting business are

protected under The Act, despite landlord irregularities, emphasizing tenant protection.

8.11 We are also of the view that the principle of *substance over form* is well-recognised: actual use and mutual conduct inform the nature of property use. The certificate of title is *prima facie* evidence of land classification, but it may not conclusively determine the nature of tenancy rights vis-à-vis business activities. We are fortified in our view, as we observe, as the Appellant did, that the Respondents recognized this when they themselves used the Act to terminate the lease, and only later turned around to argue otherwise. This ground succeeds.

8.12 We now turn to the second question under ground two. This relates to whether the trial Court erred by relying on Certificates of Title referring to subdivisions that may not correspond accurately to the leased portions.

8.13 The Appellant identifies discrepancies between the land areas and descriptions in the lease agreement and those in the certificates relied upon by the lower Court. This creates uncertainty about the true nature and extent of the leased

property and whether it is correctly classified as agricultural.

8.14 The Respondents argue that the “Monkey Pools” property clearly lies within the agricultural subdivisions certified, and the trial Court was entitled to accept their evidence and the certificates as correct.

8.15 This Court recognises that precise and accurate identification of the leased land is fundamental to determining rights and obligations. The observed discrepancies call for a more thorough inquiry than what was apparently conducted. The trial Court gave undue weight to certificates without ensuring that they corresponded exactly to the leased premises. This was an error, as it materially affected the finding on the nature of the property and consequential application of The Act.

8.16 We are of the view that proof of land identification in leases generally requires accurate descriptions and alignment with registered titles. Courts rely on the documentary evidence and, where uncertified discrepancies arise, assess whether any party has suffered demonstrable prejudice. Appellate

courts respect factual findings unless clearly erroneous, or unless there was a misdirection in law or procedure.

- 8.17 The principle established in **Amchile Import & Export Limited v Ian Chimanga**² supports upholding well-founded trial Court findings on land classification unless shown otherwise.
- 8.18 Accordingly, the Court finds that the trial Court erred by relying on potentially mismatched certificates and that the matter requires reconsideration with accurate land identification.
- 8.19 Furthermore, the principle of judicial estoppel prevents a party from taking a position in litigation that contradicts a position previously asserted if the court accepted the earlier position. It is meant to preserve the integrity of the judicial process by prohibiting parties from "criss-crossing" or changing positions to suit their needs at different stages of litigation.
- 8.20 In the case **Zambia Revenue Authority v Professional Insurance Corporation Limited**³, the Supreme Court emphasised that litigants should not take inconsistent

positions. In that case, the ruling highlighted that a party relying on a particular statute cannot simultaneously argue that the statute does not apply to them, as that would be contradictory and undermine judicial consistency.

8.21 Thus, judicial estoppel insists that once a party relies on a legal provision, it cannot later deny its applicability to the same matter in the same litigation or appeal.

8.22 In the present matter, the Court finds that the Respondents are judicially estopped from altering the position previously adopted. Having successfully relied on the application of the relevant statute at an earlier stage of these proceedings, the Respondents cannot now contend that the same statute is inapplicable. To allow such contradictory assertions would compromise the integrity of the judicial process and frustrate the principle of consistency fundamental to fair adjudication.

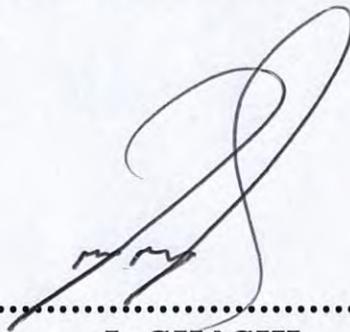
8.23 Accordingly, the appellant is precluded from changing their stance in a manner that is inconsistent with their earlier accepted position in this litigation.

9.0 **CONCLUSION**

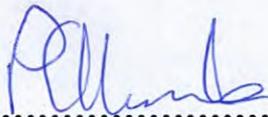
9.1 For the reasons stated, the appeal is allowed; the ruling of the High Court is set aside. The leased premises are to be treated as business premises covered by The Act, given the commercial use and parties' conduct.

9.2 The matter is remitted to the High Court for rehearing on the lease terms, rent determination, and entitlement to statutory protections before the same Judge. During rehearing, the High Court must ensure that the leased land is properly identified, consistent with the lease agreement and evidence.

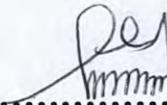
10.0 Costs of this appeal shall abide the out-come of the hearing in the lower Court.



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J. CHASHI
JUDGE COURT OF APPEAL



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P. C. M. NGULUBE
COURT OF APPEAL JUDGE



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A. M. BANDA-BOBO
COURT OF APPEAL JUDGE