

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)**



**2013/HP/1785
2013/HP/1775
2015/HP/1691
2017/HP/1353**

BETWEEN:

PETER CHINDA

*(On behalf of the residents of surrounding
Villages in the Mumbwa Game Management Area)*

1ST PLAINTIFF

PETER MAINZA

*(On behalf of the residents of villages in the
Nansenga Area of Mulendema Chiefdom in
The Mumbwa Game Management Area)*

2ND PLAINTIFF

VICTOR BWATU (MALE)

*(On behalf of the residents of surrounding
Villages in the Mumbwa Game Management Area)*

3RD PLAINTIFF

AND

THE ATTORNEY GENERAL

DEFENDANT

**Before the Honourable Ms. Justice S. Chocho, on December 2nd, 2025
in Open Court.**

*For the Plaintiffs: Ms. M. Mwiinga and Ms. M. Phiri – Messrs PnP
Advocates*

*Mr. B. Mweemba and Mr. M. Kawaya – Messrs Keith
Mweemba and Advocates*

*For the Defendant: Ms. M. Katolo (Senior State Advocate) – Messrs
Attorney General Chambers*

J U D G M E N T

Cases Referred to:

1. ***Zambia Seed Company Limited vs Chartered Internal (Pty) Limited (1999) ZR 151¹.***
2. ***Fred M'mbmbe and Another vs Abel Moozi and Others CAZ Appeal No. 175/2019.***
3. ***Caroline Marsh vs L M Kristal Limited 2016 HPC.***
4. ***Attorney General vs D. G. Mpundu 1984 ZR 6 S.C.***
5. ***Justine Kapita and 3 Others vs Zambia Wildlife Authority and Another 2018/HK/381.***
6. ***Khalid Mohamed vs Attorney General (1982) ZR 48 (S.C)***
7. ***Kanoso vs Dasu and Another SCZ/86/2003.***

Legislation Referred to:

1. ***Article 16 of the Constitution of Zambia, Chapter 9 of the Laws of Zambia.***

1. **INTRODUCTION**

- 1.1 This Judgment is in respect of the four actions consolidated by Consent of all parties. The Consent Order is dated November 12th, 2018.
- 1.2 Despite the consolidation of the 4 matters, the Amended Writ of Summons and Statement of Claim dated April 17th, 2023, seems to be representative of only 3 under cause Numbers.;

- 2013/HP/1785
- 2015/HP/1691
- 2017/HP/1353

1.3 By the Amended Writ of Summons and Statement of Claim dated April 17th, 2023 the Plaintiffs claim the following;

- (i) An Order that the Consent Judgment between the parties herein issued on September 4th, 2013 by the Lands Tribunal under Cause No. LAT/24/2013 should be set aside as it was procured without the express or implied license, consent or authority of the Plaintiff and hence is null and void *ab initio*;
- (ii) An Order of Injunction restraining the Defendant's agents or servants or whomsoever from evicting the Plaintiff (s) from their current settlements;
- (iii) In the alternative, an Order that the Defendant provides adequate alternative land for the Plaintiff(s) within Mulendema's Chiefdom;
- (iv) Further in the alternative, an Order that the Defendant adequately and promptly compensate the Plaintiff(s) before resettling them as per the requirements of, *inter Alia*, **Article 16 of the Constitution and other statutory provisions of the Laws of Zambia**;
- (v) An order directed to the Defendant to allow the Plaintiffs to revert to their previous homesteads in Nansenga Area of Chief Mulendema's area;
- (vi) An Order of assessment for the value of over 1,788 homes destroyed by the Defendant's servants;
- (vii) Special damages in the sum of ZMW1,010,835.00 for loss of shops, school, homes, chickens, goats, pigeons, doves, maize, groundnuts, among others;
- (viii) A declaration that the purported decision by the Defendant's servants the Department of National Parks and Wildlife to evict

the residents of the Nansenga Area for the Mulendama Chiefdom in the Mumbwa Game Management Area does not conform with the provisions of **Article 16 of the Constitution of Zambia Act, Chapter 1, Volume 1 of the Laws of Zambia** and as such is not only illegal but also unconstitutional and void *ab initio*. Further, there being pending litigation on this matter before the Courts of law under cause number 2013/HP/1785 it is not only procedurally improper and unreasonable for the Zambia Wildlife Authority to issue a notice of eviction to the settlers in the Mumbwa and Namwala Game Management Areas;

- (ix) An Order by this Honourable Court quashing the said eviction notice;
- (x) An Order restraining the Defendant and its servants, agents thereof from illegally evicting the residents in the Nansenga Area of the Mulendama Chiefdom in the Mumbwa Game Management Area in the Central Province of the Republic of Zambia;
- (xi) An Order for stay of the decision to evict the Plaintiffs;
- (xii) Damages for trespass to property and persons;
- (xiii) Aggravated damages;
- (xiv) Exemplary damages;
- (xv) Any other relief that the Court may deem just; and
- (xvi) Costs.

1.4 The Defendant entered appearance and filed Defence and Counter-Claim on June 15th, 2023 by which Defence the Defendant denied the Plaintiff's claims, averring that the Plaintiffs are illegal settlers in Mumbwa Game Management Area.

1.5 By its Counter-claim, the Defendant claims as against the Plaintiff the following;

- (i) An Order that the Defendant be allowed to evict the illegal settlers from the Mumbwa Game Management area;
- (ii) Any other relief the court may deem fit.

1.6 The Plaintiffs filed Reply and defence to Counter-claim on June 29th, 2023. By their Reply the Plaintiffs denied being illegal settlers and joined issue with the Defendants on its defence.

1.7 The Plaintiffs by their defence denied counter-claim and averred that they are not adverse to being resettled in an alternative land provided they are given adequate farming land.

2. **TRIAL COURSE**

2.1 Trial was scheduled and heard on June 18th, 2024, March 5th, 2025 and site visit on April 11th, 2025 respectively.

2.2 The Plaintiff called 3 witnesses in aid of their case and the Defendant called 4 witnesses in aid of their case.

2.3 PW1 was one Victor Bwatu, the third Plaintiff herein who submitted witness statement dated January 24th, 2024 and gave evidence on oath in Tonga language.

- 2.4 By Order of the Court following objection from the Defendant, paragraph 7 and page 84 of the Plaintiff's bundle of documents were expunged from the record.
- 2.5 PW1 testified in chief that he represents residents of villages in the Nansenga area of Mulendema Chiefdom in Mumbwa and Namwala Game Management Area.
- 2.6 PW1 testified that the Plaintiffs have for many years and time immemorial settled in the subject area under a duly appointed Headman, referring the Court to page 30 of the Plaintiff's bundle of documents.
- 2.7 PW1 further testified that on or about August 26th, 2015 around 06:00 hours the Defendants (Department of National Parks and Wildlife – DNPW) forcibly and without lawful order evicted the Plaintiffs from various villages in Nansenga Area.
- 2.8 PW1 testified that during the eviction, the Defendant burnt homes, two shops, Nansenga Community School, granaries, beat up the Plaintiffs and confiscated livestock – referring to page 32 – 70 of the Plaintiff's bundle of documents.
- 2.9 PW1 testified that the Plaintiff's engaged the office of the Vice President of the Republic of Zambia to assist them.
- 2.10 PW1 testified that they under cause No. 2017/HP/1353 challenged the Defendant's purported Notice of Eviction.

- 2.11 PW1 further testified that around 1992 the Plaintiff's obtained an injunction against the Defendant under cause No. LAT/28/1997 consolidated with LAT/24/2013. That the matter was purportedly determined by Consent Judgment, the Plaintiff's claim their then Advocate had no instructions or mandated to sign the Consent Judgment.
- 2.12 PW1 testified that the Consent Judgment provided that the Plaintiffs would vacate the Mumbwa Game Management Area by November 30th, 2013.
- 2.13 PW1 further testified that the Plaintiffs challenged the said Consent Judgment under cause No. 2013/HP/1785.
- 2.14 Under cross examination, PW1 testified that he understood the boundaries of the Game Management Area.
- 2.15 PW1 conceded that some of the Plaintiffs/settlers came from other provinces. He further conceded that the problem or issue was there in 1997.
- 2.16 PW1 conceded that the documents at pages 60 – 64 of the Defendant's bundle of documents show the meeting attendance from the settlers from Chief Mulendema but not from the settlers or Plaintiffs in the Game Management Area.
- 2.17 PW1 testified that the Plaintiff's never saw the Eviction Notice at pages 70 and 72 of the Defendant's bundle of documents. That they

only saw the Eviction Notice at page 73 of the Plaintiff's bundle of documents.

- 2.18 PW1 conceded that the Consent Judgment was signed by the lawyer that represented the Plaintiffs but that he had no authorization or instructions to sign it.
 - 2.19 PW1 testified that the lawyer Mr. M. K. Achiume represented the Plaintiffs before the Consent Judgment but never part of the 3 consolidated matters.
 - 2.20 PW1 conceded that the Court would be unable to know whether the lawyer acted without instructions or not.
 - 2.21 PW1 denied that the Defendant ever offered the Plaintiffs alternative land.
 - 2.22 PW1 testified that he had no evidence to show the loss and damages under claim for special damages.
 - 2.23 In re-examination, PW1 confirmed that he was not in attendance at the meeting with the Defendant and the persons present came from Chief Mulendema Open Area and not Chief Mulendema Game Management Area (where the Plaintiffs are).
 - 2.24 PW2 was Milias Hamuluwa who filed witness statement dated January 24th, 2024 and gave evidence on oath in Tonga language.
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- 2.25 By Order of the Court following objection from the Defendant portion of paragraph 24 and 26 of PW2's witness statement as speaks to video footage were struck out or expunged from the record.
- 2.26 PW2 testified in chief that he was Party to the action under cause No. LAT/28/1997) under which he and others obtained injunction against the Defendant from eviction.
- 2.27 PW2's evidence in chief was the same in detail as that of PW1. Therefore, I shall not repeat it.
- 2.28 Under cross examination, PW2 conceded that Mumbwa had a Game Management Area but he did not know the boundaries of the Game Management Area.
- 2.29 PW2 conceded that the recommendation to vacate the Game Management Area in 2013 was given in rainy season.
- 2.30 PW2 denied ever seeing the Consent Judgment and further answered in the negative when shown paragraph 14 of his witness statement.
- 2.31 PW2 conceded that the Plaintiffs had not vacated the Game Management Area. He further testified that the Defendant did not offer the Plaintiff alternative land.
- 2.32 PW2 testified that Mr. Achiume signed the Consent Judgment and he was not part of the case *in casu*.
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- 2.33 PW2 denied ever attending a meeting with the Defendant but identified the 1st Plaintiff Peter Chinda as having attended the meeting.
- 2.34 PW2 testified that he resides in Mumbwa Game management Area and there are no wild animals seen.
- 2.35 In re-examination, PW2 clarified that there are no wild animals in the area where the Plaintiffs reside.
- 2.36 PW2 clarified that in 2013, he and the Plaintiffs never saw the Notice to Vacate or Eviction Notice but he saw the Consent Judgment.
- 2.37 PW3 was Peter Mainza who submitted witness statement dated January 24th, 2024 and gave evidence on oath in Tonga language. Parts of paragraph 4 and 8 of his witness statement as refers to the video footage were expunged from the record.
- 2.38 PW3's testimony in chief was the same in fact with that of PW1 and PW2. I will not repeat such that is same.
- 2.39 PW3 testified in chief that the Defendants beat the Plaintiffs, one so beaten was Conwell Hajaya whose medical report is at page 31 of the Plaintiff's bundle of documents.
- 2.40 PW3 testified that their lawyer Mr. C. C. Mwansa had no instructions to sign the Consent Judgment that he signed.
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- 2.41 Under re – examination, PW3 confirmed that part of Mumbwa is a Game Management Area. That he and the Plaintiff have settled in the Game Management Area for more than 50 years.
- 2.42 PW3 conceded that he knew the boundaries for human and animal settlement. Further conceded that he is aware that some villagers have settled in the Wildlife boundary.
- 2.43 PW3 testified that Chief Mulendema had two areas, with headmen and he knew some.
- 2.44 PW3 denied that the Defendant gave the Plaintiffs lawful Notice to vacate the Game Management Area.
- 2.45 PW3 conceded that he was not Conwell Hajaya and in fact he did not know him nor sign medical report at page 31 of the Plaintiff's bundle of documents.
- 2.46 PW3 confirmed that he did not author any letter at page 28 of the Plaintiff's bundle of documents.
- 2.47 PW3 confirmed knowing Peter Chiindi as one of the Plaintiffs.
- 2.48 PW3 testified that the Plaintiffs never gave Mr. C. C. Mwansa instructions to sign Consent Judgment and the lawyer was not part of the proceedings, that he doesn't even know him.
- 2.49 PW3 was not subjected to re-examination.
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- 2.50 DW1 was Mathews Mushimbalume a Wildlife Police Officer who submitted witness statement dated April 10th, 2024 testified under oath.
- 2.51 DW1 testified in chief that as Principal Warden Operations his duties include but not limited to supervising and coordinating the implementation of the anti-poaching strategies in order to protect wildlife and habitats and policing of protected area which includes National Parks and Game Management Areas.
- 2.52 DW1 testified that sometime in 2016 and prior to the eviction of the illegal settlers in the Game Management Area (GMA), PW1 and other members of the Department of National Parks and Wildlife team, held consultation meetings with the Mumbwa District Administration and the three Chiefs under Mumbwa and Namwala Game Management Areas which included members from Chief Chibuluma, Chieftainess Kabulwebulwe and Chief Mulendema to discuss the welfare and state of the illegal settlers in the Game Management Areas. A report of these activities appears at pages 1 to 61 of the Defendant's bundle of documents.
- 2.53 DW1 testified that the said Game Management Area in Mumbwa was gazetted as Game Management Area No. 14 by a Statutory Instrument No. 44 of 1972 as per page 62 of the Defendant's bundle of documents.
- 2.54 DW1 testified that the meetings were followed by sensitization meetings with the representatives of settlers, in these affected areas prior to the relocation exercise. The Zambia Information Services

(ZANIS) was engaged to disseminate the eviction notice around the Game Management Areas catchment areas. The said announcements were made between 7th and 13th August 2017. As per pages 71 and 72 of the Defendant's bundle of documents.

2.55 After the notice period had elapsed, and sometime in 2017 a joint team of officers went round the Game Management Areas to move the illegal settlers that had not moved during the notice period.

2.56 DW1 testified under cross examination that his evidence in chief does show that the Plaintiffs have conducted poaching/interfered with wildlife in the GMA.

2.57 DW1 conceded that only the Report at pages 1 to 61 of the Defendant's bundle of documents shows that the settlers/Plaintiffs were consulted.

2.58 DW1 further conceded that the settlers/Plaintiffs settled in the area in the 1950s and the GMA plan does not prevent people from settling in the GMA.

2.59 DW1 testified that residents through the Community Resources Board are supposed to assist the Defendant in preventing poaching.

2.60 DW1 conceded that he did not produce minutes or proof of acknowledgment by the Plaintiffs of the eviction Notice.

2.61 DW1 confirmed that he was in attendance/on site on the last day of eviction and none of the Plaintiffs' property was destroyed.

- 2.62 DW1 conceded that there was a valid Court injunction during the eviction order but denied having willfully disobeyed a Court Order.
- 2.63 DW1 was not subjected to re-examination.
- 2.64 DW2 was Lewis Daka a Senior Wildlife Warden who submitted witness statement dated April 10th, 2024.
- 2.65 DW2 testified in chief that as Senior Wildlife Warden for Kafue National Park based in Mumbwa his duties included coordination of Protected Areas, Law Enforcement Activities, Community Based Natural Management and overseeing all activities in the National Park and the Game Management Area in Kafue Region.
- 2.66 DW2 testified that based on facts known to him in his capacity as Senior Wildlife Warden for the Kafue National Park they are about nine (9) surrounding Game Management Areas (GMA) namely; Kasonso Busanga, Mufunta, Mulobezi, Sichifulo, Bilili, Nkala, Namwala, Mumbwa, and Lunga Luswishi.
- 2.67 DW2 testified that all the nine Game Management plans (GMP) and the Mumbwa Game Management Area (GMA) have a general management plan that encompasses areas surrounding the Mulendema, Mulendema, Kabulwebulwe and Chibuluma chiefdoms.
- 2.68 DW2 testified that sometime in 2008, it was agreed with the three (3) Chiefs namely Chief Mulendema, Chief Kabulwebulwe and Chief Chibuluma through their representatives to relocate the illegal
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settlers (encroachers) who had settled west along the Chunga stream in Mumbwa Game Management Area to alternative selected areas away from the prohibited GMAs. An agreement was written and the parties signed and this was later attached to the formal eviction notice that was drawn up by the Defendant. As per pages 63 to 69 of the Defendant's bundle of documents.

2.69 DW2 testified that the said eviction notice was distributed to the alleged illegal settlers that had settled in the GMA and the following people were in receipt of the same;

- Area MP – Mumbwa Central constituency
- District Commissioner – Mumbwa
- DIO – OP Mumbwa
- OC – Mumbwa Police
- Council Secretary – Mumbwa District Council
- HRH – Chief Mulendema
- HRH – Chief Chibuluma
- HRH – Chieftainess Kabulwebulwe

2.70 DW2 testified that the sensitization meetings with the representatives of settlers, were concluded and prior to relocation exercise. The Zambia Information Services (ZANIS) was engaged to disseminate the eviction notice around the GMSs catchment areas. The said announcements were made between June and December 2008, as well as in August 2017. As per pages 71 and 72 of the Defendant's bundle of documents.

- 2.71 DW2 testified that sometime in June 2015 a Joint team of the Defendant, officers from the Office of the President (OP) and DW2 being part of the team, did carry out an exercise to relocate and move the illegal settlers that had settled in the prohibited GMAs zones and had refused to move during the given notice period.
- 2.72 The said exercise was conducted after conducting several sensitizations and also after the Defendant had secured alternative land in Mumbwa being concession area.
- 2.73 Under cross examination, DW2 denied knowing that Chief Mulendema of Nasanga area distanced himself from the Agreement as appears on pages 63 to 69 of the Defendant's bundle of documents. Maintaining that the letter at page 4 to 6 of the Plaintiffs bundle of documents is not proof of the Chief's protest.
- 2.74 DW2 further denied that the Chief needed to have consulted the subjects before signing the agreement with the Defendant.
- 2.75 DW2 testified that the three Chiefs in attendance at meetings and representing the settlers were Chief Mulendema, Chief Kabulwebulwe and Chief Chibuluma which chiefs signed the agreement.
- 2.76 DW2 conceded that none of the Plaintiffs settlers signed the agreement and the Chiefs did not produce proof of consent from the Plaintiffs/settlers.

- 2.77 DW2 conceded that he did not produce evidence (maps, survey diagrams and pictures) to show where the Defendant intended to resettle the Plaintiffs/settlers.
- 2.78 When referred to page 63 to 69 and particularly 65 to 69 he testified that because the Chief signed, he knew the persons from his area.
- 2.79 DW2 conceded that he had not produced any evidence to show that the settlers acknowledged receipt of eviction notice.
- 2.80 DW2 testified that the GMA Plans were before Court at pages 2 to 62 of the Defendants bundle of documents but no map or coordinates show extent of encroachment.
- 2.81 DW2 testified that he did not know the date the Government issued Gazette to relocate the settlers who had been there since the 1950s.
- 2.82 DW2 was not subjected to re-examination.
- 2.83 DW3 was one Chaka Harold Kaumba, Principal Planner, who submitted witness statement dated April 10th, 2025.
- 2.84 DW3 testified in chief that in his position of Geographic Information Systems Specialist his duties include but not limited to providing coordination of Protected Areas Planning processes as well as support management decision making through the use of Geographical Information Systems tools and technologies.
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2.85 DW3 further testified that sometime in 2010, a General Management Plan for Mumbwa Game Management Area was developed. The first stakeholders' workshop was held from 24th to 27th August 2010 at New La hacienda Hotel. The second stakeholders was a validation Workshop and was held from 14th to 15th December, 2010 at Madalitso Guest House in Mumbwa Town. Both workshops were to discuss the welfare of the Mumbwa Game Reserve area.

2.86 The said workshops were to ascertain the extent of human encroachment in the Mumbwa Game Management Area No. 14 General Management Plan. The Game Management Area provided for human settlement as outlined in Chapter 6 – Management Zone Plan. The Game Management Area (GMA) is zoned into 5 different management zones namely;

- (i) Conservation Zone
- (ii) Buffer Zone
- (iii) Development Zone
- (iv) Tourism Development Zone
- (v) Special Use Zone.

2.87 The said Game Management Area in Mumbwa was gazette as Game Management Area No. 14 by a **Statutory Instrument No. 44 of 1972** as per page 62 of the Defendant's bundle of documents.

2.88 The General Management Plan provides for human settlement in the Development Zone whose purpose was to provide for human settlements and associated socio-economic development.

- 2.89 The extents of the Development Zone are provided in the General Management Plan as being the third largest Management Zone covering about 528.7 square kilometers forming about 15.7% of Mumbwa Game Management Area land mass. The Development Zone is described to start at the point where the Lutale Stream and M9 road meet. The boundary follows the Lutale River southwards up to Kafue flats. The boundary then follows the Nasenga Stream northwards up to Nkolola stream, then up to the point where its confluence with the Chungu stream, then Nkolola up to the point where it meets the M9 road, then eastwards on the M9 road up to Lutale stream, the starting point. As per pages 26 to 29 of the Defendant's bundle of documents.
- 2.90 The two workshops were attended by representatives of the different traditional groups situated around and near the GMA these including representatives from Chief Chibuluma, Chieftainess Kabulwebulwe and Chief Mulendema as per pages 3 and 60 of the Defendant's bundle of documents.
- 2.91 After the workshop, eviction notices were issued to the illegal settlers that had settled in the GMA zones, these settlements were outside the approved areas referred to in paragraphs 5 to 7 above. The said notice is exhibited at pages 70 to 72 of the Defendant's bundle of documents.
- 2.92 Under cross examination, DW3 conceded that he did not have minutes of the stakeholders meeting.

- 2.93 DW3 further conceded that he did not have indicated coordinates of Zones. BUT that this doesn't mean it would be difficult for the Court to know exact extent of encroachment.
- 2.94 DW3 testified that it was possible that the Plaintiffs/settlers were there since the 1950s and that Government gazette declaring GMA was in 1972.
- 2.95 DW3 conceded that the Defendant had to consult the settlers before relocating them but did not agree that it was the Defendant's duty to find alternative habitable place for the Settlers.
- 2.96 DW3 further conceded that he had not produced evidence to show that the settlers have exceeded the extent of the Development Zone/Area as the same are difficult to read.
- 2.97 DW3 conceded that map at page 25 of the Defendant's bundle of documents does not indicate encroachment area.
- 2.98 In re-examination, DW3 clarified that under paragraph 9 of his witness statement indicated/describes the Zone of interest by physical features which are easier to interpret by common man – as opposed to co-ordinates.
- 2.99 DW3 further testified that the map at page 25 of the Defendant's bundle of documents depicts the 5 Management Zones of Mumbwa GMA in the General Management Plan and not meant to show encroachment. He further clarified that a Management Zone is a Unit of an area delineated to perform a specific land use.

2.100 The Defendant closed its case with DW3.

2.101 At close of trial I opined that the Court and Parties needed to go on site to see firsthand and appreciate the Wildlife Zone vs the Settlement Zones.

2.102 Site visit was on April 11th, 2025 at area known as Kafue National Park and / Mumbwa Game Management Area (GMA). The visit/exercise included drive through, walks and ariel view. The guide was DW3 recalled to testify.

2.103 DW3 informed the Court that the Kafue National Park was demarcated in three tracts/areas namely;

1. Tourism Development Zone

Where Wildlife outfitters/Company/lodge carried out tourism activities and no residential settlement is allowed

2. Conservation Zone

This is the area strictly for wildlife and no human settlement is allowed, to avoid wildlife/human conflict and also for purposes of safeguarding the wildlife.

He further stated that hunting licenses were issued and temporary hunting camps allowed in the Conservation Zone during the hunting season.

He informed Court that inside the Conservation Zone are special zones – Forest Reserve Zone and Special Use Zone.

3. **Development Zone**

This is the area specifically meant for all human settlement wherein, the State has provided schools, medical facilities, boreholes and other public amenities.

His evidence was that this area stretched from Lutale River crossing to Chunga River crossing.

Further testimony was that a Buffer Zone of 3 Km from the Road, in which no human settlement was allowed/permitted.

Drive through from point Lutale River crossing Chunga

- (a) Lutale River crossing with co-ordinates on map.
- (b) Formal End of Development Zone (By a Tree identified).
- (c) Chunga River crossing with Co-ordinates on map, This point was agreed to by the Parties to signify the end of the Development Zone as the river provided a more Natural and permanent marker easily identified by all.
- (d) Chunga Airstrip, where the Court and Parties advocates and witnesses Mr. Chaka Kaumbi commenced ariel view.

POINTS OBSERVED (Aerial View)

- Houses, fields and domestic animal (kraals) spotted past the Chunga River crossing (into the Conversation Zone).
- Extensive development (brick and motor) new Kafue Hook Bridge.
- Settlement and massive cultivation (cleared areas) in the protected area.
- A large tract of undeveloped land in the Development area.
- Houses, fields and domestic animal (kraals) in the development area/zone.
- School and medical facility in the Development Zone.
- Settlement (human) in the Buffer Zone

The ariel tour took about 2 hours.

On the ground and at a spot within the Conservation Zone, the Plaintiff's witness one Victor Bwatu testified;

1. That he was the Headman and was shown area to settle by the Chief Mulendema.
2. That he did not know/understand the demarcations as explained and shown by the Respondent's witness.
3. He further testified that he needed for the Respondent/ State to assist his people by allowing them to remain where they settled.
4. He further averred that he understood that the Development Zone is where a school and hospital are situated. He asked for the Respondent/State to recognize the Community schools his people had set up in areas they settled.

Court allowed/ granted the Respondent leave to file into Court the map of the Mumbwa GMA, clearly indicating the Zones spoken of and the area covered by the Court and Parties on the scene visit.

3. **LAW AND SUBMISSIONS**

3.1 The Parties filed submissions and the same are on record, I shall not reproduce them suffice to state that I have read and considered the contents in arriving at this my Judgment.

3.2 The Plaintiffs submit that the Defendant's agent Department of National Parks and Wildlife – DNPW did during eviction of the Plaintiffs, burn their house stead, 2 shops and confiscate their animals and subjected the Plaintiffs to torture and inhuman treatment. Relying on **Article 15 and 16 (1) of the Constitution Chapter 1 of the Laws of Zambia** which provides as follows;

“15. A person shall not be subjected to torture, or to inhuman or degrading punishment or other like treatment.

16. (a) Except as provided in this Article, property of any description shall not be compulsorily taken possession of, and interest in or right over property of any description shall not be compulsorily acquired, unless by or under the authority of an Act of Parliament which provides for payment of adequate compensation for the property of interest or right to be taken possession of or acquired.”

- 3.3 The Plaintiff submits that the eviction was unlawful and the Plaintiffs spent nights out in the open air on the side of Mumbwa Road. That the Plaintiffs ought to be granted exemplary and special damages as their rights were infringed by the Defendant.
- 3.4 The Plaintiffs submit that the only way to challenge a Consent Judgment is to commence a new action to set it aside, placing reliance on the case of **Zambia Seed Company Limited vs Chartered Internal (Pty) Limited (1999) ZR 151¹**. Submitting further that the Consent Judgment the Defendant relied on was signed without the Plaintiff's authorization/instructions and thus is null and void.
- 3.5 The Plaintiffs further submit that their equitable interest on the subject land rank higher than that of the Defendant. That the Plaintiffs having settled in 1950s before creation of GMA (1971).
- 3.6 The Plaintiffs submit that they are entitled to compensation or alternative land, as the President ought to consider the interests of settlers and consult the Chief and Local Authority. Placing reliance on **Section 3 (1 - 7) of the Lands Act Chapter 184 of the Laws of Zambia**. That the Plaintiffs and Community was not consulted as there was no proper proof provided during trial – relying on letter at page 4 - 6 of the Plaintiffs bundle of documents.
- 3.7 The Plaintiffs submit that the Defendant showed no evidence of encroachment on any land in the GMA beyond the Development Zone. The Plaintiff insist that they have restricted themselves to the

area not frequented by wildlife and argue that this is the Development Zone.

- 3.8 The Plaintiffs submit that the Defendant has contravened the Lands Act, Constitution of Zambia and Wildlife Act as the Defendant attempts to illegally alter the parameters of the area occupied by the Plaintiffs without consultation or consideration of the rights of possession of land as held by the Plaintiffs.
- 3.9 The Plaintiffs pray that their claims be granted with costs.
- 3.10 The Defendants submits that the Plaintiff's claim to set aside the Consent Judgment must fail, because the Plaintiffs failed to prove by pleadings/evidence during trial that their Counsel acted without their Consent/instructions. The said Counsel is not party to the action and the Defendant cannot answer to whether or not he had instructions to execute the Consent Judgment.

The Defendant places reliance on the authority in case of ***Fred M'mbmbe and Another vs Abel Moozi and Others CAZ Appeal No. 175/2019²*** which stated that;

"... we are of the view that only parties to an action/proceedings or executed order can set aside a consent judgment order by commencing a fresh action ... The procedure to set aside a consent judgment by way of commencement of fresh action on basis of fraud or mistake or any grounds that would vitiate a contract does

not apply to litigants or person who were not parties to the consent judgment or proceedings...

3.11 The Defendant further submits that no injunction is sustainable against the Defendant as per **Section 16 (1) of the State Proceedings Act Chapter 71 of the Laws of Zambia** which provides that;

“16(1) In any civil proceedings by or against the State the court shall, subject to the provisions of this Act, have power to make all such orders as it has power to make in proceedings between subjects, and otherwise to give such appropriate relief as the case may requires;

Provided that –

- (i) Were in any proceedings against the State any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, but may in lieu thereof make an order declaratory of the rights of the parties; and***

Further stating that the Defendant opted to relocate the families that settled after the suit was commenced.

3.12 The Defendant submits that it took out all the steps as stipulated, in invoking the Wildlife Act ie

- (i) Informed the Plaintiffs at various meetings of the issue of settlement in the prohibited GMA;***

- (ii) During meetings the Plaintiffs were given notice to vacate the land and provided with alternative land; and
- (iii) The Plaintiff through their representatives agreed and consented (by signing the meeting minutes) to the relocation and alternative land. The Defendant further relied on Section 28 (1) submitting that the subject land was declared GMA by **Statutory Instrument No. 44 of 1972** whose boundaries and limits are defined.

Section 29 of the Wildlife Act No. 14 of 2015 provides as follows;

“A person who settles/lives in a Game Management Area shall comply with the provisions of a general management plan for the GMA.”

- 3.13 The Defendant submits that the issue is the Plaintiffs have moved and settled outside the allowable area permitted for human settlement causing animal/human conflict, deforestation due to charcoal and agriculture activities. That the GM Plan was made in consultation with the Plaintiffs' representative including traditional leaders as per pages 3 and 5 of the Defendant's bundle of documents.
- 3.14 The Defendant submits that its witnesses adduced evidence of the parameters of Human settlement/Development Zone, confirmed during site visit and PW1 who confirmed that the villagers settled beyond the allowed boundaries.
- 3.15 The Defendant submits that the Plaintiffs claim for special damages must fail because the Plaintiffs have failed to prove the same placing reliance on the authority in cases of;

- **Caroline Marsh vs L M Kristal Limited 2016 HPC³.**
- **Attorney General vs D. G. Mpundu 1984 ZR 6 S.C⁴.**

The Defendant further submits that the Plaintiffs have come to equity with unclean hands by reason that they are illegal settlers outside the allowed human settlement Zone.

- 3.16 The Defendant referred to the case of ***Justine Kapita and 3 Others vs Zambia Wildlife Authority and Another 2018/HK/381⁵*** in which it was held that;

“I hold that the Plaintiffs cannot be entitled to legal ownership of the land located inside Chembe Bird Sanctuary by the time they allegedly settled there ...”

- 3.17 The Defendant submits that all of the Plaintiffs claims must fail as they have failed to prove their case even if the Defendant’s Defence would fail. Reliance was placed on the case of ***Khalid Mohamed vs Attorney General (1982) ZR 48 (S.C)⁶***.

- 3.18 The Defendant submits that its Counter – claim be granted with costs.

4. **COURT’S ANALYSIS AND DECISION**

- 4.1 The clear and undisputed facts in this case are as follows;

- (i) That the Plaintiffs settled on the subject land in the 1950s;
- (ii) That the Mumbwa GMA was gazetted in 1972;

- (iii) There exists a Consent Judgment between the Parties under cause No. LAT/24/2013 which was executed by the Parties in 2013;
- (iv) An injunction was obtained against the Defendant under cause No. LAT/28/1997 which action was consolidated with LAT/24/2013.

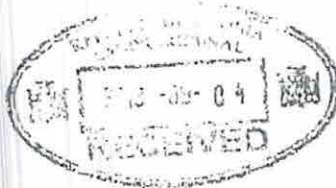
4.2 The disputed facts are;

- (i) Whether or not the Plaintiffs consented to the Consent Judgment;
- (ii) Whether the Plaintiffs are settled outside the Development Zone;
- (iii) Whether the Plaintiffs were consulted/aware of the GM Plan;
- (iv) Whether or not the eviction of the Plaintiffs was illegal.

4.3 I shall first address my mind to the validity of the Consent Judgment as is between the Parties. The Consent Judgment in issue is dated September 4th, 2013 whose provisions are as below;

"PCS"

IN THE LANDS TRIBUNAL
HOLDEN AT LUSAKA
(Civil Jurisdiction)



LAT/24/2013

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BETWEEN:

PETER CHINDA (Suing on behalf of the Residents of Surrounding Villages in the Mumbwa Game Management Area) **COMPLAINANT**

AND

ZAMBIA WILDLIFE AUTHORITY **1ST RESPONDENT**

THE ATTORNEY GENERAL **2ND RESPONDENT**

CONSENT JUDGMENT

BY CONSENT of the Parties herein IT IS HEREBY AGREED and ADJUDGED as follows:-

1. That the injunction obtained under cause LAT/28/1997 is hereby discharged.
2. That alternative pieces of land have been identified and secured for resettlement of persons who encroached on the Mumbwa Game Management Area (GMA).
3. That the alternative pieces of land are identified as follows:
 - (a) Roman Catholic Church Farm Subdivision XX of Farm 156a;
 - (b) Subdivision X of Farm 156a, Subdivision s of Farm 156a, Subdivision U of Farm 156a which farms are to be re-planned to accommodate the settlers;
4. That in the resettlement of the settlers, the 1st right of refusal is hereby given to the Chungu settlers who had obtained an injunction under Cause No. LAT/28/1997 which action has now been consolidated with this cause, to choose which portions they are willing to settle on amongst the ones identified above.

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5. That settlers who have occupied the Mumbwa Game Management Area for 4 years or more shall be given the next preference to choose the parcels of land from the remainder of the ones indentified.
6. That the settlers who have occupied Mumbwa GMA for less than 4 years shall be considered last for resettlement in relation to the identified land.
7. That in view of the above solution, the settlers are required to vacate the Mumba GMA by 30th November 2013 and any person found in the area beyond the said date is liable to eviction;
8. That the Respondents herein have no obligation to provide any further pieces of land for resettlement of any settlers who have continued to encroach Mumbwa GMA.
9. That each party will bear its legal costs of and incidental to this action.

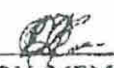
Dated at Lusaka this _____ day of _____ 2013.



HONOURABLE CHAIRMAN



HON. MEMBER



HON. MEMBER

Drawn and consented to by:  _____

Legal Counsel
Zambia Wildlife Authority
Kaifue Road
Private Bag 1
CHILANGA
Advocates for the 1st Respondent

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We Consent: M. [Signature]

The Attorney General's Chambers
3rd Floor, Kent Building
Los Angeles Boulevard
LUSAKA
Advocates for the 2nd Respondent

We Consent: [Signature]

CC Mwansa & Associates
Plot No. 4529/2
United Nations Road, Longacres
Advocates for the Complainant

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The Plaintiffs aver that this Consent Judgment was executed/signed by their lawyers without instruction. The Record will show that it is one of the Plaintiffs claim that this Consent Judgment be declared null and void for lack of instructions.

None of the Plaintiff's witnesses specifically proved that there was no authority given to Messrs CC Mwansa and Associates.

PW1 conceded under cross examination that the firm in question was on record for the Plaintiffs. Further that the Court would be unable to know whether or not the lawyer had instructions to sign the Consent Judgment. PW2 also conceded in cross examination that the lawyer Mr. Achiume who signed the Consent Judgment was not part of the case *in casu*. PW3 testified under cross examination that he did not know the lawyer who signed the Consent Judgment.

4.4 I am of the considered opinion that the Plaintiffs are being economical with the truth as regards the Consent Judgment and this clearly reflects in their testimony and pleadings. Nothing has been brought before this Court to show what action or steps the Plaintiffs took against the Advocate(s) that is alleged to have executed the Consent Judgment without instructions. The law is very clear on the seriousness of such an allegation and one would assume that the Plaintiffs would pursue such claims with the body that oversees the professional conduct of Advocates.

I must place on record that the claim or procedure to annul or void a Consent Judgment is at law is to show or prove fraud/mistake or any ground that would vitiate a contract. The case of ***Kanoso vs***

Dasu and another SCZ/86/2003⁷ refers. In the case *in casu* the Plaintiffs appear to challenge the execution by Advocates who were on record as their Counsel. The Court cannot with certainty find that the Plaintiff's claim is proved on a balance of probabilities. The detail of the Consent Judgment covers all of the 3 sets of Plaintiff's interests as appears in this matter before me. That the matter before Lands Tribunal was consolidated as of 2 matters. The Plaintiffs have not shown who the Parties under LAT/28/1997 or who the Parties were, suffice it to say that one Peter Chinda 1st Plaintiff herein was a Complainant under LAT/24/2013 who could have assisted Court as witness. I find that the claim for the setting aside the Consent Judgment fails. The Plaintiffs have failed to sufficiently/ at all to prove the claim. It is trite law that a Party that alleges must prove his claims even though the other party's defence collapse, reference is made to the authority in the case of ***Khalid Mohamed vs Attorney General SCZ/26 of 1982²***.

- 4.5 Having found as I have in 5.4 above, the Consent Judgment under LAT/24/2013 is valid settling all matters as between the Parties. This point would entitle me to end the Judgment here but I shall proceed to pronounce myself on the other of the Plaintiff's claims.
- 4.6 I shall consider the Plaintiffs claims under (iii), (iv), (v), (ix), (x), (xi) as one because they are related. The injunction Order under 2013/HP/1785 granted November 29th, 2013 and December 2nd, 2013 was discharged inter partes on February 12th, 2014. The Consent Judgment clearly states that the injunction obtained under cause No. LAT/28/1997 was discharged and the Plaintiffs granted alternative land as provided in Clause 2, 3, 4, 5, and 6 of the Consent

Order. The Plaintiffs must relocate or move to the land agreed to under the Consent Judgment.

The Consent Judgment further specifies the date on which the settlers were to vacate the GMA. Clause 7 speaks to this.

“That in view of the above solution, the Settlers are required to vacate the Mumbwa GMA by 30th November, 2013 and any person found in the area beyond the said date is liable to eviction.”

The Plaintiffs aver that they are settled within the Development Zone and area not frequented by wildlife. The Record will show that PW1 conceded that he does not know or understand the 3 demarcations as explained by DW3. DW3 testified that the Development Zone is an area specifically meant for human settlement wherein the State has provided schools, medical facilities, boreholes etc.

The exact demarcations of the Development Zone were appreciated by all the Parties including the Court during the Site Visit. Making reference to the Site Plan filed by the Defendant on May 12th, 2025, it is clear to me that all individuals outside the Development Zone are Squatters and must by law and particularly the Consent Judgment vacate the GMA Zones not marked for human settlement.

- 4.7 The Plaintiffs aver that they were not consulted as provided for under **Section 3 (4) (b), Section 3 (7) (b) of the Lands Act**. I note from the documents produced by the Defendant that in fact the Chief and some of the Plaintiffs attended the meeting in representative

positions. It would be absurd to assume or ask all the Settlers to attend a meeting. The Plaintiffs were fully and adequately put on Notice of the need or requirement to vacate the area as settled outside the Development Zone. Further the Consent Judgment is abundantly clear on the rights and obligations between the Parties.

- 4.8 The Plaintiffs claim for damages (general, aggravated, special and exemplary) for damage caused during the eviction exercise. It is also alleged that the Plaintiffs were beaten/assaulted by the Defendant. The Plaintiffs exhibit in their bundle of documents, a copy of a Medical Report at page 31. The Report appears to have been issued to a **Conwell Hajaya with pain on the ribs under circumstances of alleged assault**. The said Conwell Hajaya was not called to testify to assist the Court in determining when the alleged assault happened, whether or not it is tied to the matters before this Court.
- 4.9 I further find that the Plaintiffs have failed to prove or show that the Defendant's agents during the eviction of August 26th, 2015 was characterized by confiscation of their livestock, maize, groundnuts. Special damages must be specifically pleaded and proved. This claim too must fail.
- 4.10 I find that the Defendant has not violated the Constitution or any of the provisions of the Lands Act, Zambia Wildlife Act and the Lands Acquisition Act.

4.11 For the avoidance of doubt it is immaterial at this point how long the plaintiffs have been on the disputed land on the strength of two grounds;

- (i) The area is gazetted as GMA and outside the Development Zone; and
- (ii) The Consent Judgment executed by the Parties settles the issue of the removal of the Plaintiffs to land or area granted to them.

5. **CONCLUSION**

- 5.1 For the foregoing, I find that the Plaintiffs have failed to prove their claims on a balance of probabilities.
- 5.2 The Plaintiff's claims or case fails in its entirety.
- 5.3 The Defendant's Counter-Claim succeeds.
- 5.4 The Plaintiffs are to vacate the encroached areas within 120 days of this Judgment or such date as agreed (post the 120 days) by the Parties considering that the Plaintiffs may have cultivated on the land.
- 5.5 Each Party to bear its own costs for and incidental to this case.
- 5.6 Leave to appeal is granted.

Delivered at Lusaka this 2nd day of December, 2025



**S. CHOCHO
HIGH COURT JUDGE**

