

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)

2016/HP/796

BETWEEN:

WILLARD MULOPA

PLAINTIFF

AND

MILLION HAMUNG'ANDE

1ST DEFENDANT

NELSON CHIDAKWA

2ND DEFENDANT

FRANK MULILALILA

1ST INTERVENOR

ESTHER CHIYUNI

2ND INTERVENOR

FAIDES MAKIYI

3RD INTERVENOR

SELINA MOONGA

4TH INTERVENOR

SOFIA HAMUNG'ANDE

5TH INTERVENOR



Before the Honourable Mrs Justice Ruth Chibbabbuka on the 12th day of
January, 2026

For the Plaintiff:

Ms M. Siansumo & Mr K. Phiri, Messrs Malambo
& Company

For the Defendants & Interveners:

Mr B. Sitali & Mr N. Solochi, Messrs Butler &
Company, Legal Practitioners

JUDGMENT

Cases referred to:

1. *Mwinda v Gwaba* (1974) Z.R 188
2. *Beauty Simakoko Mukanda v Ken Siayula (Chief Singani) and Bakisha Siamulya*,
Appeal No. 168 of 2016
3. *Henry Mpanjilwa Siwale and Others v Ntapalila Siwale SCZ Judgment No. 24 of 1999*

Other works referred to:

Land Law in Zambia: Cases and Materials, Fredrick S. Mudenda, UNZA Press, 2007

Mining Rights in Zambia, Muna Ndulo, Kenneth Kaunda Foundation, 1987

1.0 Introduction

1.1 The plaintiff issued a Writ of Summons on the 21st April, 2016 claiming the following reliefs:

- (i) An order of injunction requiring the defendant to remove or demolish the structures erected on the plaintiff's land and to restrain the defendant whether by himself and/or his servants and agents from entering the plaintiff's land or in any way interfering with the plaintiff's quiet enjoyment of the possession and ownership thereof;
- (ii) A declaration that the plaintiff is entitled, as beneficial owner, to exclusive possession of the land situated at Namoomba village in the Southern province of Zambia, which for purposes of identification is bordered red on the sketch plan dated 12th May, 2007;
- (iii) Damages for trespass;
- (iv) Any other relief the Court may deem just and appropriate; and
- (v) Costs.

2.0 The plaintiff's statement of claim

2.1 In his statement of claim, the plaintiff states that he is the owner of land in Namoomba Village situated in the Southern province of Zambia, which for purposes of identification is bordered red on a sketch plan dated 12th May, 2007. In March 2015, the defendant and his agents or servants without the consent of the plaintiff entered onto the plaintiff's land and started cutting trees and clearing the land. The plaintiff has made failed attempts to restrain the defendant and his agents or servants from interfering with his land. The defendant has since constructed two houses on the said land.

- 2.2 On the 5th June, 2015, the plaintiff reported the defendant's activities to the Sikoongo Chieftdom Committee, which committee advised the defendant to refrain from doing any works on the said piece of land pending investigation of the issue. The defendant however has disregarded that directive and has continued cutting trees and clearing land to the detriment of the plaintiff.
- 2.3 In 2011, the piece of land was subject of litigation under cause number 2011/LCA/07 wherein Mr Issac Mwanja was claiming ownership of the same piece of land. The Court made a finding from the evidence on record that the plaintiff herein was entitled to the said piece of land and judgment was entered in that regard. On the 3rd September, 2015, the plaintiff's advocates wrote to the defendant that he desists from interfering with the plaintiff's quiet enjoyment of the piece of land and enclosed a copy of the judgment that was delivered under cause number 2011/LCA/07 declaring the plaintiff the owner of the piece of land.
- 2.4 The defendant has continued and intends, unless restrained by this Court to continue and repeat the wrongful acts complained of above. As a result of the defendant's actions the plaintiff has suffered loss and hence this claim.

3.0 The 1st defendant's defence

- 3.1 The 1st defendant filed a defence on the 1st June, 2016 where he states that at no time did, he enter the plaintiff's land but instead it is the plaintiff who in 2015 endeavoured to encroach on the land in issue. It was by the intervention of the Sikoongo Chieftdom which resulted in a decision in favour of the defendant's son, Nelson Chidakwa, who was given a land ownership certificate under the authority of His Royal Highness Chief Sikoongo, to secure the said land.

3.2 Neither the defendants nor his son were parties to the case bearing cause number 2011/LCA/07 being referred to by the plaintiff. The land in issue belongs to his son Nelson Chidakwa, who holds a certificate of land ownership, issued to him by his Royal Highness, Chief Sikoongo. The plaintiff has suffered no damage whatsoever and is not entitled to any of the reliefs set out in the statement of claim.

4.0 The 2nd defendant's defence

4.1 The 2nd defendant filed a defence on the 7th March, 2017 after being joined to the matter on the 4th August, 2016. In his defence he stated that at no time did he enter the plaintiff's land. That it is the plaintiff who in June, 2015 endeavoured to encroach on the land in issue and the intervention of the Sikoongo Chiefdom, resulted in a decision in favour of the 2nd defendant. The 2nd defendant was given a land ownership certificate by His Royal Highness Chief Sikoongo to secure the said land.

4.2 Neither he nor the 1st defendant were parties to the case 2011/LCA/07 referred to by the plaintiff. The land in issue belongs to him as he holds a certificate of land ownership in respect of the land in issue, that was issued to him by His Royal Highness Chief Sikoongo.

4.3 The plaintiff has suffered no damage whatsoever and is not entitled to any of the reliefs set out in the statement of claim.

5.0 The 1st, 2nd, 3rd, 4th, and 5th Interveners defence

5.1 By a Ruling dated the 20th June, 2017, the 1st, 2nd, 3rd, 4th, and 5th interveners were joined to this cause of action and on the 26th July, 2017, they filed a defence. In that defence they state that at no material time did any of them enter the plaintiff's land. That it was the plaintiff who in 2015 endeavoured to encroach on the land in issue and by the intervention of the Sikoongo Chiefdom the 2nd defendant was given a land ownership certificate by His Royal Highness Chief Sikoongo to secure the said land.

- 5.2 None of them as interveners were a party to the case bearing cause number 2011/LCA/07 referred to by the plaintiff. The land claimed by the plaintiff includes their fields, family graves, fish ponds and ancestral shrines, as such the said land could not have been and never was given to the plaintiff by His Royal Highness Chief Sikoongo.
- 5.3 The plaintiff has suffered no damage whatsoever and is not entitled to any of the reliefs set out in the statement of claim.

6.0 The plaintiff's evidence

6.1 The plaintiff called two witnesses.

6.2 The testimony of PW1

- 6.3 PW1 was John Susu a farmer and a fisherman who testified that the plaintiff was a son to the late Raymond Mulopa who was his immediate elder brother. The land where they were settled was under Headman Bakasa which is the village where his biological father was born. That he was equally born in Bakasa Village. In Bakasa Village there is a place called Namoomba where they were staying.
- 6.4 He used to stay near the place where the plaintiff stays. At the time when Selyer came to the area he went to Namoomba in search of land where he could settle cultivate. Selyer found a place which was vacant as there was no one staying there and went to Headman Bakasa to inquire over the same. Headman Bakasa called all villagers to inform them that Selyer had found land in that particular place and there was no objection given by anyone as no one was using that land. Headman Bakasa came back to inform them that Selyer and he had gone Chief Sikoongo whose name was Chali at that time. They were informed that the Chief gave Selyer the land and thereafter he prepared the land and started cultivating.
- 6.5 Due to the war between Zambia and Zimbabwe in 1977, and a number of landmines being planted in the Namoomba area, Selyer moved to an area near the Kafue River whilst he and other fishermen in the area moved to a

place called Chalokwa. As the war intensified, they shifted to an area near the Kariba Store by the roadside and stayed there. In 1980, when the war was over, they went back to their home in Namoomba.

- 6.6 His elder brother, Raymond Mulopa in the company of the plaintiff and Bornface Mulopa went to see Selyer over his land which he wanted to use to cultivate as their plots were next to each other. When they came back they told him that Selyer had told them that they could use the land as he was not going to come back to that area. Raymond Mulopa went to see the Chief and obtained a document from the Chief that Raymond showed him which would enable him get title to the land. His brother also informed him that he had gone to the Council and was told to leave the documents there but after several follow ups the said documents went missing. Thereafter his brother got sick and died in 1996.
- 6.7 From 1980, his brother had settled on the land that had belonged to Selyer and he had lived there for 26 years. The parents to the 2nd defendant were present at the funeral for his brother and they used to live peacefully together. To his surprise the 1st and 2nd defendants came to the place where the plaintiff stays in the company of Chief Sikoongo by the name of Muzokela at that time. The Chief informed them that the 1st and 2nd defendants were claiming that the land where Selyer used to stay belonged to them and that it had been grabbed from them. On the said land, Selyer had built houses where his workers were staying and the 1st and 2nd defendants began to walk over the land claiming that the same belonged to them and that the same extended up to the roadside as they walked there.
- 6.8 Afterwards, the 2nd defendant brought someone to put a wire fence around the land and houses that belonged to the plaintiff. When they went to inquire from Chief Sikoongo about the 2nd defendant's actions the Chief told them to go and share the land which surprised them as they did not

understand how they were supposed to share the land which belonged to them. Willard Mulopa then went to get some documents from the Chief to replace the documents that Raymond Mulopa had obtained which had gotten lost at the Council. The document dated 16th September, 2002 showed that the land was in the name of Willard Mulopa as he was shown the said documents by Willard. From there Willard Mulopa commenced an action in the Magistrate Court in Siavonga against Issac Mwanja and the judgment stated that the land belonged to Willard Mulopa which judgment was given to Chief Sikoongo.

6.9 When Chief Sikoongo had told them to share the land, they never did and it is the children to Hamung'ande that wanted to grab their land from them. At the time when their elder brother passed away, Million Hamung'ande was present at the funeral and Million never claimed that this land belonged to them and that is why they refused to share the land with the Hamung'andes. Thereafter Nelson Hamung'ande took the matter to the High Court.

7.0 Cross examination of PW1

7.1 In cross examination PW1 replied that he had forgotten that it was Willard Mulopa who commenced an action in the High Court and not Nelson Hamung'ande. In that cause of action Willard Mulopa is the plaintiff and the ones that were sued were Million Hamung'ande and Nelson Chidakwa. He may have been confused when he told the Court that it was Nelson Hamung'ande who brought the matter to the court as truthfully speaking, he was of the view that it was Nelson who sued. Now he knew that it was Willard who commenced the action in the High Court so he would retract his earlier statement. He forgot that he had told the court that he had mentioned that it was Issac Mwanja who commenced an action in the Subordinate Court and that is all he had forgotten.

- 7.2 The time that Sleyer came to settle in their area he did see him as they stayed with him. He could not recall how old he was at the time although he was born in 1954. He could not accurately tell the year when he met Sleyer as he did not want to lie before the court. In 1980 Sleyer was not there in their area but they followed him to where he was along the Kafue River. His brother was a fisherman and a farmer and he was with him when he came to Namoomba to establish a fishing camp before the Rhodesian war. After the war his brother went back to Namoomba and established a camp at the same place his field was. There were also other people who came back to Namoomba as fishermen after the war. The place where these other people were is called Masika which is not where his brother's fishing camp was. These people were from different places in Zambia as even people from Bakasa Village were going to Masika although he and his brother never went to Masika Village.
- 7.3 His father was Susu Mulopa who had since passed away and was buried in Namoomba. He was born in Bakasa Village. His older brother was also born in Bakasa Village and so he and his brother were natives of Bakasa as none of them were born elsewhere. He was not aware that when Raymond his brother came to the river, in 1980 he found Nelson Chidakwa as Nelson was staying in Bakasa Village and not along the river. He was not aware that the people that he was saying that lived in Bakasa used to stay by the river as they stayed away from the river. He did not know that before the war these people used to stay by the river. He lives in Namoomba and both sides of the river in Zambia and Zimbabwe are called Namoomba. They lived on the Zambian side and the name of Namoomba was given before the boundaries were created. His father was not born in Namoomba but Bakasa Village. He agreed that there were some people who lived nearer the Zambezi River in Namoomba.

- 7.4 There is a Headman in Namoomba known as Headman Mulopa and he is the current Headman. He did know Frank Mulilalila who he heard was given a book to run Village Namoomba in 2015 which he just created. Frank Mulilalila found them and they welcomed them. At the time that Frank created a village they were not informed and he agreed that Frank just installed himself as Headman and created a village.
- 7.5 Sleyer did run away from the area because of the landmines and so did they as well as other people from that area. Some of them went to Bakasa Village and after the war some of them came back including Frank Mulilalila. He agreed that before the war there used to be a village at Namoomba, although there was no village by the name of Namoomba as Namoomba was just a place. It was a place with people and it was a fishing camp but there was no village. It was a place called Namoomba on both the Zambian side and the Zimbabwean side, which had fishing camps, just for fishermen. Village Namoomba was created in 2015.
- 7.6 He was not aware that Headmen are appointed by the Chief. For all the years he had lived in that village and had not stayed anywhere else he was not aware that a Headman was appointed by a chief. His Headman was Headman Mulopa who is in Namoomba. Namoomba has two Headmen. Headman Mulopa was appointed in 1993 and the people are the ones that chose him. Headman Mulopa is still the Headman as he had not been removed. This area does fall under Chief Sikoongo and there is a traditional council that works with the chief. These people do not deal with land disputes. When Chief Sikoongo came, he came with Alex Mwanja and Jethro Mandeva, the others he did not know by name. He never saw Mr Kabanje amongst these people. Jethro Mandeva is the Secretary at the Sikoongo Chiefdom Palace.
- 7.7 When Selyer built a house he had roofing sheets on the house although he did not know whether he removed the roofing sheets when he ran away

but when he returned to the area, he found that there was no roof. He was aware that when his older brother Raymond came, he asked for permission to stay in the house of Selyer from Selyer. He was not aware that he asked the people that were staying there as there was no one present at that place. At the time that they reached that place after the war ended, they were the only ones there and there was no Headman, but there was a chief. He was aware that Selyer was not given the land as his but that he was just given the land to grow crops as he was just allowed to cultivate. Selyer did not give his brother a title deed and Selyer was not a native of that area as he was a coloured man. Selyer was not born in Namoomba and when the war started, Selyer ran away and he never came back to the area.

7.8 He was not aware that in the Namoomba area along the river there were fields where people used to cultivate. He was not aware that in the same area before the people went to Bakasa, they used to bury their dead there. He was aware that in the same area there are some ancestral shrines which the people had set up before they moved to Bakasa.

7.9 Willard did have a court matter with Issac Mwanja in which Issac was claiming that the land that Willard had belonged to him. He was appointed as an Administrator of his brother's estate. He did not go to see the Chief after his brother died as it was Willard who went there. They had discussed that he as Administrator was supposed to go and see the Chief but on the day that Willard went to see the Chief, he did not inform him. After seeing the Chief, Willard informed him that he went to obtain a document in relation to the land. His brother died in 1996 and as an Administrator he has never been to see the Chief although he was supposed to.

7.10 The document at page one of the plaintiff's bundle of documents is dated 16th September 2002 and this is the date when Willard went to see the Chief. His brother died in 1996 and Willard only went to see the Chief in 2002. He did not know how many years this took as he did not know how

to calculate. He agreed that this was six years later. On the document he had just referred to there is a date stamp of the 16th September, 2002 from His Royal Highness Chief Sikoongo's palace. There is also a date stamp of the 17th September, 2002 from the Siavonga District Council. This is the date when Willard took the document to the Council on the 17th September, 2002 with a view to getting a title deed. He did not tell the court that the documents were given to his brother by Selyer. He did not know whether Selyer had a title deed.

- 7.11 His brother had gone to see Chief Mark Sikoongo who gave him a document that got lost at the Council. This was a long time ago. After his brother discovered that the document was lost at the Council, he came back and complained to him about the same, but he did not go back to Chief Sikoongo to inform him that the document that he had been given by the Chief had been lost at the Council. He was not lying about this.
- 7.12 He did not know how to read so he could not tell the size of the land that was given to Willard on the document appearing at page one of the plaintiff's bundle of documents. He did not know that the said letter does not state the size of the land. Although he did not know that the letter does not indicate the size of the land, he did not agree that Willard could not claim what belongs to other people. This is because he knew the land and this is where Selyer used to cultivate. He agreed that he did not know how to read and the letter at page one of the plaintiff's bundle of documents shows that Willard is being given land. As the said letter does not show the dimensions the Court cannot tell the size of land that Willard was given.
- 7.13 Willard does not have a title deed to the land which he is claiming, although he wanted to get a title deed. Other people did not appear to claim part of the said land that he was claiming belongs to them and no one has claimed part of Willard's land. There were no people who had claimed that

there are graves that belong to them on Willard's land. Willard sued Nelson and Millon over the land because they grabbed Willard's land which they claim belonged to them. Willard is still trying to get a title deed for the land as he does not have a title deed yet and this land is still under customary tenure. Under customary tenure, a title deed is required if things are done properly. He was aware that under customary tenure, one is not required to have a piece of land as people just settle on the land. The Chief cannot demarcate the land if there is someone settled there and the Chief cannot give land where someone is settled and cultivating. In this case which involves traditional land, the Chief had no authority over it if it was occupied by someone.

- 7.14 He did not say that Nelson Chidakwa was given a certificate of title by the Chief. He did not know whether the document at page one of the defendant's bundle of documents was issued by the Chief. Chief Sikoongo does have authority over traditional land. He was not aware that according to the said document, Nelson Chidakwa was given land measuring 300m x 500m by the river frontage under the authority of Chief Sikoongo because he has never been to see the Chief. This land does not belong to Nelson Chidakwa even in the face of the title given by the Chief although Willard does not have a title deed to it. The only claim that Willard is making is by way of the letter dated 16th September, 2002 which has no dimensions of the land although they know the demarcation. The letter of 16th September, 2002 does not mention the dimensions of the land and he does not know whether the dimensions of the land of 300m x 500m near the river frontage are indicated on the certificate for Nelson.

8.0 Re-examination of PW1

- 8.1 There was no re-examination of PW1's evidence.

9.0 The testimony of PW2

- 9.1 PW2 was Willard Mulopa who testified that he was born in Namoomba, grew up there and that is where he stays. In Namoomba he lived with his father, there were no other people staying with them in that area. After sometime Selyer a coloured man came to their area this was a long time ago, looking for a place to stay. Selyer found a place and started cultivating bananas. They were neighbours. Sometime in 1977 a war started between Zambia and Zimbabwe and all the people that were staying in Namoomba together with Selyer ran away from that place and no one remained there by the riverside. They ran to the Kariba store and started staying there. When the dispute ended, they went back to the place where they used to stay. He went to see Selyer with Raymond Mulopa and Bornface Mulopa. At that time Selyer was living in Chirundu and Raymond asked Selyer if he was returning to Namoomba to the place where he used to cultivate bananas to which he said he was not and gave permission to Mulopa to start planting there.
- 9.2 After seeing Selyer they went to see Chief Mark Sikoongo who also gave Raymond permission to plant on the said land where Selyer used to plant as Selyer was not returning to the area. That is how they returned to their area to start staying at the place where Selyer used to stay and they began to plant on the said farm. In the process of time, Raymond Mulopa fell sick and died in 1996 and a lot of people came for his funeral including Mr Hamung'ande and Mr Mulilalila. After the funeral ended, the Mulopa family continued to live at the same land for some years and no one raised a complaint about the land when his father died.
- 9.3 Five years passed from his father's death and he called for a family meeting where he informed the family that he was going to see the Chief and explain to him that as a family they were not living well since their father's death as they needed to have a document. He returned to where he lived

and after some time passed, he then went to see the Chief who gave him a document. He found that the Chief had already written a letter although he did not know what was written in the letter, all he knew was that the said letter was over the same land. He got this letter in 2002 in September, though he could not remember the exact date. The date of the document at page one of the plaintiff's bundle of documents is 16th September, 2002.

- 9.4 When he got the letter from the Chief he went back to the village and gave it to Matthews Mulopa his young brother so that he could take it to Siavonga at the Council. His young brother came back with the document and explained that it needed an application. After one week Matthew received a call from the Council indicating that they needed to go the Council. At the Council they were informed that along with the application they had to submit the letter from the Chief, and a Site plan attached. When they returned from Siavonga, they came with these documents and packed them because they needed to organize money as things were hard at that time. Since they had the document from the Chief they packed the documents.
- 9.5 After some years went by Matthew found a surveyor, and they started measuring the land. There was the Headman, Bornface Mulopa and himself. He had forgotten in what year the said survey was conducted. After the survey was conducted, the site plan was produced and that is when they went to Siavonga at the Council for interviews so that they could acquire a title deed. He went with Matthew Mulopa and upon paying what was required, they received a receipt from the council, thereafter they went back to the village.
- 9.6 In 2011, Issac Mwanja sued them at Sikoongo Local Court claiming that they had gotten his land and they were advised to go and share the land. Matthew Mulopa, his uncle John Mulopa, Bornface Mulopa and himself were not satisfied with the decision of the Local Court and they appealed

to the Siavonga Magistrate Court where they sued Issac Mwanja and Frank who apart from himself had Frank Mulilalila as a witness. The Magistrate Court ruled in their favour and after they won the case they went back to the village.

- 9.7 After five years in 2016, they were surprised that Million Hamung'ande and Nelson Chidakwa in the company of the Chief and his entourage came to his home claiming that they wanted their land back. Million Hamung'ande claimed that he wanted the land where his sister was buried back and from there the old man started looking for the place where they had buried his sister. Nelson Chidakwa by passed the place where they were and went to his home where he stays and Million asked Nelson where he was going as the land was not where Nelson was searching at his place but that it was on the other side. The land where the Chief, Nelson and Million were searching is the land where he settled. Million refused for Nelson to go on looking at his land and told them that the place they were looking for was on the other side. From there the Chief and his entourage together with Million showed each other the land that Million wanted and they left. The land that Million and Nelson were claiming to be their land was given to Tamanikwa by Million and Nelson.
- 9.8 Some time passed and Nelson brought another person by the name of Chilubanama and apportioned some land to him after Tamanikwa's land which Chilubanama got as he was interested in the said land. This land that was allocated to these two individuals is the same land that he is occupying. He was there when Tamanikwa and Chilubanama occupied the land as he interacted with them. He commenced this action before the High Court because Million and Nelson got into his land and he wanted this Court to grant him the reliefs as stated in his writ of summons and statement of claim.

10.0 Cross examination of PW2

10.1 In cross examination PW2 replied that he was born in 1964 in Bakasa Village which is a big village in Namoomba. Bakasa was the Senior Headman in charge of the village. Their Village Headman is Bornface Mulopa who was given powers by Bakasa and Mulopa would give reports to Senior Headman Bakasa. He did not know the year when Seyler came to Bakasa. He would dispute that Seyler came to Bakasa in 1967 as that is not the time he came there although he did not know the year. The reason why he was saying that it was not in 1967 is because he was born in 1964 and he was quite old when Seyler came to Bakasa. He does not know when he first saw Seyler but he did see him. It is a lie that his father was not present when Seyler came to Namoomba. There were no other people at that time, but when Seyler came they were neighbours with him. There were people in other villages that were quite far apart but these people were not where they were.

10.2 Seyler requested the land from Bakasa. He is not the one that gave Seyler the land. Seyler found them there although he did not know the year that Seyler came to their area. When the war started people ran away and left the riverside. There were no people living at the riverside as they were on the other side. There were no people that remained when the war started in 1977. The people who lived by the riverside never used to farm by the river, they were farming on the other side not in Bakasa and they left the riverside because of the war. There were no fields by the riverside. In the area that was given to Seyler there was no one. They were staying on the other side and were neighbours to Seyler. They were farming near the riverside and there were no other people. When the war started it was them that moved from there together with Seyler and his workers. There were not many people in that area but all the people going down to Bendlele area all moved.

- 10.3 The Hamung'ande family were staying in Bakasa at the time and not Namoomba so they did not move after the war. The family of Mulilalila were also in Bakasa and that is where they stay as that is where their village is and they did not go thereafter the war or because of the war. When Seyler came to their area he was looking for land to plant bananas and he went to see Mr Bakasa who was senior. Chief Sikoongo at the time was Chali and Seyler went to meet time. Thereafter Headman Bakasa came to see them at the village and called for a meeting over Seyler's request for land for his banana project. The people agreed that Seyler be given a piece of land and the land was given to Seyler as his own and not just for the banana project.
- 10.4 At that time he was living in Namoomba, although his house was not where Seyler's house was, it was on the other side as by that time they had already settled there. Before Seyler arrived, their house was in Namoomba Village and there was no neighbour near them as they were alone going downwards and at this time the war had not yet started. When Headman Bakasa called for a meeting, the people were consulted because that is where they stayed. People own fields and farms which are different. Villagers in the village own some fields and other pieces of land without holding title deeds as people farm even if they don't have documents. The villagers can own pieces of land which they are not farming if they are found on that land. He did agree that in the village setting people own farms or fields under customary tenure without having a title deed or paper from the Chief.
- 10.5 He never used to fish with his father. He did go with his father to see Seyler in Chirundu towards the Zambezi River. They were with Bornface Mulopa who is the young brother to his father and his uncle. There were the three of them and there was no fourth person. His father went to ask Seyler if he could occupy Seyler's land and Seyler gave his father the go ahead to

occupy it as he was not coming back. Seyler did not give his father any document and his father did not pay Seyler any money. After that the three of them went to see the Chief. His father Raymond Mulopa had a vehicle. He has forgotten the name of the Chief at that time but this was in 1980. He could not remember how long Seyler had been away from the land when they went to see him. His father told the Chief that Seyler had given him the farm without presenting any document to the Chief and at his father's word the Chief gave the go ahead to his father to occupy the land. He wanted the Court to believe this. After that they went to occupy the farm that Seyler had.

- 10.6 His father was given a document by the Chief which he had forgotten to testify in his evidence. He had remembered everything else but just forgot about the paper. He had also forgotten about the years that they had stayed there and there were a number of things that he had forgotten. He did remember that Seyler had not given them a paper which he remembered to testify before this Court. On the day they went to see the Chief from Seyler's place the Chief did not give his father the document. The document was given later when they went back to see the Chief. If someone said that his father was given the letter the same day that they went to see the Chief they would be lying. He did see the said document although he did not read it as he does not know how to read. He did not know what was contained in the letter but his father knew. His father explained that the document was referring to Seyler's farm and when it was taken to the Council it went missing. When they went to the Council, they were told to leave the letter as the senior person was not there. Raymond is the one who took the letter. He did not say that he is the one who took the letter and it is Raymond who told them that the document that he took to the Council went missing. He was not there at the Council and he was just told by Raymond what had happened. Raymond did not go back to the Chief to inform him that the Council had lost the paper. He

would not know when this was. He did not know when Seyler came to their area. He knew that they went to see Seyler in 1980. He did not know when the paper got lost as he never saw it. He just saw it facially although he did not read the contents.

10.7 His father started getting sick in 1992 and it is possible that from 1980 to 1992 this was about 12 years. From the time the paper got lost and his father's death in 1996 his father never went back to the Chief for a copy of the letter because he fell sick in 1992. After his father's death his uncle John Mulopa was appointed as Administrator who had just testified in Court before him. He is not aware whether his father left a Will. He agreed that as Administrator his uncle had authority to deal with his father's estate. The time that he went to see the Chief in 2002 and the Chief gave him the letter at page one of the plaintiff's bundle of documents, he did not inform his uncle because he was sick and was actually in the University Teaching Hospital (U.T.H). He did tell the Chief that there was an Administrator who was sick and at U.T.H and the Chief still decided to give him the letter. The Administrator would not be lying if he told this court that the day he got the letter he did not inform the Administrator. He did not inform the Administrator because he was sick and he did not take advantage of the Administrator's sickness. He could not remember when the Administrator fell sick.

10.8 There could be about 8 years in between the time that his father died in 1996 and the time that he got the letter in 2002. Apart from him, his father did have eighteen other children some of who live in Lusaka, Chirundu, Siavonga, at a farm in Chongwe and the others he did not know their exact locations. After he got the letter on the 16th September, 2002 his young brother took it to the Siavonga Council on the 17th September, 2002. Their idea was to get a title deed although he was satisfied with the letter giving him the land. He wanted the title deed because the letter was given to him

for processing of the title deed. The letter was the authority from the Chief for him to process the title deed which he wanted for his land. He did not want a title deed because he was selling the land and he had not sold any piece of land to an Indian. The land is meant for farming and is not for sale but they still needed a title deed. He had not sold any land to an Indian called Asif as he had never met him. He also had not sold any land to Fazel, Mr Manda or Yurie a white man and he did not know them. The land was intact as it had not been sold. He did not receive any money from any of these people.

10.9 His young brother is the one that sold three cows to raise money to pay for a site plan to be done. He did not sell any of his cows because they were still young. They did have some survey diagrams done which were signed by the Chief and a date stamp was put on them by the Chief. This is the same Chief who wrote the letter of 16th September, 2002. His claim in Court was concerning the land that has been sold where he stays. Although he did not have a title deed, his claim is based on the letter from the Chief which gives him the authority. The Chief allocates land where there is no one and not where someone is occupying as the law does not allow this.

10.10 When they went to see Seyler with his father and Bornface Mulopa there was no fourth person and Matthew Mulopa was not there and if someone said that Matthew Mulopa was there, they would be lying. Issac Mwanja was the first person that sued him and in that action Issac Mwanja and himself were the parties. Issac Mwanja sued him claiming that he took his piece of land and was not claiming other people's land like the Hamung'ande's. Million Hamung'ande was not a party to the case in the Local Court or the Magistrate Court. Nelson Chidakwa was not a party to the case either but Frank Mulilalila was a party to the proceedings. The others were also claiming land in those proceedings. On page three of the

plaintiff's bundle of documents only Mulopa Willard, Mulopa Matthews and Mwanja Issac are parties to the proceedings. Million Hamung'ande, Nelson Chidakwa, Frank Mulalilila, Esther Chiyuni, Fides Makiyi, Selina Moonga and Sophia Hamung'ande were not parties to those proceedings.

10.11 At his father's funeral no one made any claim concerning the land and it was not because at the time they knew that the land was theirs or that the claims only started after he started selling the land. He did not announce at the funeral that that was their land or show the people the boundaries of the same. No one made an announcement over the land because they all knew that the land belonged to Seyler. He also did not announce that their land extended to Seyler's land and it was a lie that they did not have time to announce this matter or that there was no opportunity for anyone to rise up and object that the land belonged to them. The said land is traditional land under the Headman and is under the control of the Chief.

10.12 That was the case for the plaintiff.

11.0 The defendant's evidence

11.1 The defendants called seven witnesses.

11.2 The testimony of DW1

11.3 DW1 was Mary Francis Seaverine Shan who testified that in the early 1970's her father, Steven Selyer approached Chief Chali Sikoongo for land in the Sikoongo area for farming. The Chief took him to an area called Namoomba to meet Headman Bakasa who took her father to an area called Siamungande and allocated some land on which her father started a banana plantation and farmed there for a couple of years. Before the liberation of Zimbabwe started there were a lot of displacements because the soldiers for Ian Smith were crossing into their farm to pursue freedom fighters. They started planting land mines and giving land mines to the local people to plant. At some point the Zambian army moved in to quell

the problems. They had a friend who lost his life as a landmine detonated near his truck as he was carrying people for UNIP. As the war intensified, they were forced to leave the area to safer places.

- 11.4 They moved to Kafue, where her father continued with his banana plantation although he had always wanted to go back to the original area. Her father passed away sixteen years ago and he always wanted to go back to Namoomba at the first farm. If someone testified that her father gave them the farm then that person would be lying because her father always wanted to go back and he never released that farm

11.5 Cross examination of DW1

- 11.6 In cross examination DW1 replied that she is the daughter of Selyer and she did have her National Registration Card (NRC) as evidence of the same. She was aware that documents were filed before Court in respect of each parties' case but that her NRC was not part of those documents filed before Court. She did get married in 1976 and her and her husband have been living in various places like Ngwerere and now they were at a farm in Chisamba. At the time she got married, they were living at a farm in Ngwerere. Her father was in Kafue at the time she got married. She was not always with her father to know his day-to-day activities but her younger brother was there. Her father did go back to visit the farm once after the war started.

11.7 Re-examination of DW1

- 11.8 There was no re-examination of DW1.

11.9 The testimony of DW2

- 11.10 DW2 was Robby Selyer, who testified that his father had a farm in Namoomba and his name was Steven Selyer. When there was a war between Zambia and Zimbabwe his father left the farm because of the war. From Namoomba his father went to Mwenda farm and stayed there for

about forty years and he was born at Mwenda farm. His father is the one that told him that he had started farming in Namoomba. He went to see the farm with his late brother Bernard and another brother Chande in the company of their father. He could not remember the date as it was a long time ago but his father took them to see Headman Bakasa and introduced him to them. They went back to Mwenda farm in Chirundu, which is about 10km from the main road to the Kafue River where he stays. His father did return to the Namoomba area as the Chief had called him as he wanted to go back but he did not go back to settle there again.

11.10 Cross examination of DW2

11.11 There was no cross examination of DW2

11.12 The testimony of DW3

11.13 DW3 was Frank Mulilalila, a Headman in Namoomba who testified that he was born in Namoomba in 1965 and his parents were living there, farming along the river. The fields they had were shared among different families. At the time he was born the family for Million Hamung'ande were the Headmen and other families that were there were for Nelson Chidakwa and Faides Makiyi. Selyer, a coloured man came to their area in 1967. Chief Chali at the time took him to see Headman Bakasa and the families were gathered and told that Selyer wanted to grow bananas to which they all agreed and allowed Selyer to do the banana farming. The piece of land that Selyer was farming on was not given to him to own.

11.14 When war broke out between Zambia and Zimbabwe, they all ran away from the area including Selyer who had left a structure with walls and removed the iron sheets from the land. In 1980 when the war ended, they returned to Namoomba and in 1982 Lyman Mulopa came back. Lyman is the father to Willard Mulopa, the plaintiff. He was a fisherman and he came to ask for the house that Selyer had left which had no iron sheets for him to use. Mr Million allowed him to use the house and that is how

Lyman began to use the said house that Selyer left. Lyman stayed in that house and continued his fishing business with his wife. Lyman Mulopa did not sell any piece of land to anyone.

11.15 Later on Lyman died although he had forgotten the year in which he died.

Lyman's children remained on this piece of land and they started selling the land to whites. He discovered that these children had also sold his piece of land to the whites and upon this discovery, he went to report the matter to Chief Sikoongo who was Penias at the time. When the Chief looked into the matter, he found that the land did not belong to the Mulopa's and they were told to give the land back to them, this was in 2009. The Mulopa's agreed before the Chief that that they would give them back the piece of land but when they got to the land, they refused to give them back the piece of land. The plaintiff also sold Million Hamung'ande's land to an Indian named Asif Dudhia and he also sold land to a white man, Mando and to Fazel an Indian. The plaintiff also sold land to another white man by the name of Yuri.

11.16 When Mr Hamung'ande wanted to start working on his piece of land,

Willard Mulopa took him to Chief Penias Sikoongo where there was Headman Namoomba (himself), Headman Hamwiya, Headman Manyepa and Headman Makwelele. Chief Sikoongo explained to them all that Willard Mulopa did not own any piece of land in the Namoomba area and that he should leave the owners of the pieces of land to work from there. Willard Mulopa refused and said that he could not release the said pieces of land. Chief Sikoonga who was Muzokela at the time as Penias had been stopped from being Chief, came to Namoomba with his committee. All the people were gathered together when the Chief arrived and the Chief asked the people who were the owners of the pieces of land and the people explained that the land belonged to Million Hamung'ande as the Hamung'andes had their graveyards there as well as the shrines that the Hamung'ande's worshipped at. That is when the Chief gave a certificate to

Million showing that this land belonged to Million which certificate is at page 22 of the defendant's bundle of pleadings.

11.17 Even after this certificate was given, the plaintiff still refused to hand over this land to Million Hamung'ande's family and that is the reason why they were before Court. DW3 asked this Court to help them get the land that they were crying for and that he wanted his piece of land back so that he could continue with his family. That Willard had his piece of land and was claiming all the land as his.

11.18 Cross examination of DW3

11.19 In cross examination DW3 replied that Selyer came to Namoomba in 1967 and a meeting was held at which he was in attendance. At the meeting they agreed to allow Selyer to stay in their area to do banana farming. He was born in 1965 and in 1967 he was two years old. He currently resides in Namoomba at Village Namoomba. He did not become the Headman in 2014. Although he lives where the land in issue is and is Headman there, he does not live on the land in dispute. He could not remember the years when white the people he had listed before the Court came on the land. He could not have taken the white people to court as it is not them that got the piece of land from him. He had not built any structures on the land subject of this dispute.

11.20 He has been a Headman from 2010 and he is familiar with the procedure of land allocation. He knew that land that was already occupied by someone could not be allocated to someone else. He did not have any evidence that he had fields on this piece of land. He did sign as Headman Namoomba the document at page 22 of the plaintiff's bundle of pleadings. A record of the people in the village is kept by the Village Secretary. He had not brought any record to show that the 1st and 2nd defendants or any of the interveners in this matter are in the village register.

11.21 Re-examination of DW3

11.22 There was no re-examination of DW3.

11.23 The testimony of DW4

11.24 DW4 was Nelson Chidakwa Hamung'ande who testified that he is Headman Siamung'ande and the son of Million Hamung'ande. That they had lived for many years in Namoomba and had been farming by the banks of the river. The shrines and graves for the Hamung'andes were in the Namoomba area. There is also a very big stream where they would catch fish. In 1967 he was already grown when Selyer came to their area and was brought by Chief Chali who was Chief Sikoongo at that time. Selyer took a piece of land to do farming because in their area there was a lot of hunger and that is why they agreed that Selyer should come and farm in their area. The elders in the family, that is the Bakasa's and the Siamung'ande's agreed to allow Selyer to farm which Selyer did for many years.

11.25 When the war started in Zimbabwe from 1971 to 1979 everyone fled their pieces of land and when it ended between 1980 and 1982, they all went back as families and that is how they started fishing as young men. He opened a camp for fishing and his nets for fishing were kept where Selyer had put an engine for pumping water. Selyer had ran away also because of the war and the landmines that were there. In 1982, the Mulopa family came, with their boats and nets but he could not remember the month but it was around 15:00 to 16:00 hours. This was Raymond Mulopa that is Lyman. He received them and gave them a place to stay so that they could continue with their fishing. There were a lot of tribes that would come to fish from that area and he would allocate them a place to stay and fish from. When they lived with the father for Lyman Mulopa, there was no trouble as he never sold any piece of land and if he did, they were not aware about it. Lyman then went to ask his father if he could live in

the same structure that Selyer left and he was there when Lyman was asking his father.

11.26 After sometime, they saw that some houses were being built for some white people on the land where Selyer had been. This began to happen after Lyman Mulopa had died. They found that Willard Mulopa had started putting beacons on their piece of land which beacons the Court would find today if it went to see the piece of land. They gathered as a family and started to work on the land but Willard Mulopa and his family stopped them from working on their fields and took them to Chief Muzokela who was Chief Sikoongo at the time. At the meeting with the Chief, they won the matter and the Mulopa's were told to give them back their fields so that they could work. The Chief promised to visit the land and when he came he saw that the fields were theirs and that is how they were given back their land. When the Chief came back the second time, that is how he asked all the people around the villages who the owners of the land were and the people said that it was for the Hamung'andes This is because they had their shrines as well as their graves there and there was a big stream where they would do their fishing from. That is when the Chief gave them the certificate that is before this court appearing at page 22 of the plaintiff's bundle of documents. Chief Muzokela signed the certificate as well as the Chieftom Secretary Sylvester Kabanje and the Village Headman Frank Mulilalia. Thereafter, Willard Mulopa sued them in the High Court.

11.27 Cross examination of DW4

11.28 In cross examination DW4 replied that Willard Mulopa went to report the land matter to the Chief and they were called to the palace. The Chief's Secretary was present in the meeting and his name is Sylvester Kabanje. The Secretary did take a record of the proceedings at the meeting but he had remained with the said record. There was no written judgment from

the chieftdom but it was said verbally that this piece of land was not for Willard but for them and this was between 2014 and 2015.

11.29 He had fenced off Willard Mulopa's house because the Chief said that that was their piece of land and he was free to do what he wanted on his piece of land. He did not go on the piece of land only after the Chief gave him a certificate, as inspite of all the problems they had, they were there. At this point in time, he was not staying on the said piece of land but the piece of land was theirs. In the village they would normally stay in town but in their village, they had always lived by the banks of the river and on this particular piece of land.

11.30 Even after they were issued the certificate of ownership, the plaintiff resisted their ownership and is refusing to move from the piece of land and that is why they were in the High Court. He was not aware that this particular piece of land was being claimed by Issac Mwanja. He would not know if the document at page one of the plaintiff's bundle of documents is talking about any piece of land. The said document allows the plaintiff to stay at the land that is being referred to in the document but not on his piece of land. The said letter is dated 16th September, 2002. He could confirm that the document on page two of the plaintiff's bundle of documents was signed by Chief Sikoongo and it indicates the boundaries that were given to Willard Mulopa. The said document is dated the 12th May, 2007 and this was before his certificate was issued in 2015.

11.31 Re-examination of DW4

11.32 In re-examination DW4 clarified that his land was included in the letter appearing at page one of the plaintiff's bundle of documents.

11.33 The testimony of DW5

- 11.34 DW5 was Faides Makiyi who testified that she was born in Namoomba in 1957 and that the graves of her parents are in Namoomba. In 1967 a coloured man called Selyer came to their Chief known as Chief Chali at the time looking for farm land. Chief Chali took him to Senior Headman Bakasa who in turn took him to Headman Hamung'ande who agreed to give him land and showed it to him. The coloured man left and returned with his workers and everything for use at the farm and started farming. He started farming bananas and as time went on Selyer employed the residents of Namoomba as his farm was expanding and he grew other crops like onion and tomato. In 1970 freedom fighters came into their area and started putting landmines. In January, 1973 they all ran away together with Selyer because the soldiers told them to leave.
- 11.35 Selyer informed the Hamung'ande family that he was going to back and he went to get his property after realizing that the war was not ending. The war eventually ended in 1980 and people started going back to Zambezi in Namoomba. In 1982, Lyman Mulopa came from Chalokwa, he was a fisherman and he had some workers. Lyman arrived at the camp where Nelson Chidakwa, Frank Mulilalila and Headman Namoomba were. After sometime Lyman Mulopa requested Headman Hamung'ande for the house which belonged to Selyer to which he agreed and gave the house to Lyman Mulopa to stay in for some time. Lyman Mulopa did not put any roofing sheets, instead he put planks and roofed the house with grass. Mr Mulopa never built any other houses on that land.
- 11.36 In 1994, Mr Mulopa got sick and died in 1996. When he was alive there were no quarrels over the land and the disputes arose from the children after their father died, as they started giving land to the whites. In 2006, Willard Mulopa started farming on the said land and he farmed for a year. When Willard stopped farming there, they continued farming on the said

land. In 2015, they were taken to the chiefdom by Willard Mulopa who was claiming that they had taken his land but they won the case before the Chief. The Chief allowed them to continue using the land.

11.37 Mr Willard came back to trouble them and so they went to see the Chief again Mr Willard was summoned but he refused to appear before the Chief and they decided to take the Chief to see the said land. The Chief saw the land and left. The next time the Chief went to their land he was with his committee and after discussing with the people, the people informed the Chief that that land was for the Hamung'ande's and the Chief gave them a certificate which appears at page one of the defendant's bundle of documents. When Willard saw that they were given a certificate by the Chief that is when he decided to commence an action in the High Court. On that same land there are some graves for their parents. From the time the plaintiff sued them no one moves in Malende, that is their shrines, as it was closed.

11.38 Cross examination of DW5

11.39 In cross examination DW5 replied that she could not read the document at page one of the defendant's bundle of documents. She was aware that the land ownership certificate is from Nelsn Chidakwa but when they came together, they came with Nelson. She knows that the land certificate states that it was given to Nelson Chidakwa and that it was given to him. Her interest in the land that was given to Nelson Chidakwa is that he is her neighbour who has encroached into her land. She was surprised that Nelson Chidakwa who she had earlier testified had been purportedly given the land, had according to the information in the certificate on page one of the defendant's bundle of documents been given authority to use the land by other people. As far as she was concerned land could only be given by an original owner to another person.

- 11.40 In 1967 when Selyer came to their area after seeing Chief Chali, she was ten years old. She did expect this Court to believe that though she was ten years old at the time, she knew that someone had approached the Chief seeking land. She was not related to the Chief, but she was in the chieftdom at that time, staying in Namoomba at Zambezi. She was not at the Chief's palace. She was not working for Senior Headman Bakasa and she knew that he was the Headman that was taking care of the people in the village although she had nothing to do with his job. She was not there when the communications were being done between the Chief and the Headmen but her parents were there.
- 11.41 In 1970 the freedom fighters started planting landmines and in 1973 they ran away because they were scared and the soldiers told them to run away. The soldiers did not harm them and despite this situation she still had the time to listen to what Selyer was saying as she was aware that Selyer tried to go back on the land and then left. She was in Namoomba when Selyer came back to the land and found that the land was still on going and that's how he got his things. Namoomba was the same place that they had run away from. When they ran away from Namoomba they went to a school in Bakasa. She knew that Selyer went back to get his property because he went to Hamung'ande to inform him that he was going to get his things. They were in the Bakasa area and not in Namoomba but when Selyer came to inform Hamung'ande they went to help him get his things. All that she had testified about earlier on and what she was saying now was true. She was not an employee of Selyer, he just picked them to go and help him get his things.
- 11.42 In 1982, Lyman requested for a house from Senior Headman Hamung'ande and she was in that meeting although she had no capacity to be there. There was nothing written in the said meeting, although she was aware that meetings are recorded in a book. The Headman's book stays with the Headman and she did not bring it before court as proof

that the meeting took place or what was recorded or that she was there. There was no evidence apart from her word of mouth over the said meetings. She could not remember what she was wearing in the meeting in 1967 because it was a long time ago and she was only ten years old, but she did expect the Court to believe the testimony of a ten-year old regarding this issue. Her name was entered in the village book by the Headman. The said book which states that she belongs to this village is with the Headman.

11.43 She lived in Namoomba, on the same piece of land that they are fighting over with Mr Mulopa. It is not true that she only tried to build a house on the said land in 2015 as the houses were there even before which were still there today. She had not produced any evidence before court to show where she actually lived. Although they had gone to complain to the Chief twice, she had not brought any minutes before this Court to show what transpired before the Chief as the Chief was the one taking the minutes. The said minutes were in the chieftdom. Mr Mulopa had closed off access to their shrines. She was not aware that it was Mr Nelson Chidakwa who had put a wire fence on the premises.

11.44 Re-examination of DW5

11.45 There was no re-examination of DW5.

11.46 The testimony of DW6

11.47 DW6 was Aaron Chamunyanga, Senior Headman Bakasa who testified that he was born in 1951 and lives in Bakasa Village. That when Selyer arrived at the Chief Mark he was looking for land to farm. The Chief explained that he did not have land and took him to Bakasa who equally said that he did not have land and that is when they took him to Hamung'ande. Hamung'ande sat together with the community in which meeting he attended as he was already Senior Headman as his father had given him the book, it was agreed that Selyer be given some land and the

said land was shown to him which Selyer was happy with due to its size for farming. Selyer left and returned with his property and other equipment and started planting bananas, pawpaws and other types of vegetables. People were working in the banana plantations and there was no other person that settled on the land that was given to Selyer.

11.48 In 1970 there was war and they left that area because the freedom fighters were their neighbours from Zimbabwe so they ran away to settle at Kariba stores. They stayed there for two years and in 1980, that is in the third year, the war ended and they went back to the place where they were before the freedom fighters had arrived. Selyer came back to see if the war had ended and met the Headman and informed him that he wanted to return since the war had ended. Selyer went back to collect his property so that he could return to the land that he had been given but he fell ill and died. Later his children came to look at the land where their father was so that they could continue farming but they found that Lyman Mulopa and his family were living on the land for Selyer. Mulopa told them that that was his land and that before Selyer had died he had sold it to Mulopa.

11.49 This is what has led to the disputes before this Court as Mr Mulopa's children and other relatives are claiming that the land is theirs. Mr Mulopa has no land in that area because there are some shrines there. Mr Mulopa came to fish in that area and when he settled in Selyer's house he used to camp there. He was also having issue with the Mulopa's as they encroached on his land and he would be suing them in Court. The Mulopa's were just claiming any land and they had sold all his shrines and his land as well.

11.50 Cross examination of DW6

11.51 In cross examination DW6 replied that Faides Makiyi was not Selyer's daughter. Nelson Chidakwa and Frank Mulilalila were not Selyer's

children and Esther Chiyuni was not Selyer's daughter. He was not able to read. He became Headman in 1973, but in 1967 he was already a Headman as his father was old. If someone testified that the war was in Namoomba and people ran to Bakasa that person would be telling the truth and his testimony that they ran to Kariba stores was also true. The truth is that they ran away from Bakasa to Kariba Stores. It was not a lie when someone testified that during the war Selyer decided to go back and collect his property and never returned because that is what happened. His statement that Selyer came back after the war was not false. The truth is that Selyer came back after the war and said that he wanted to sell the land.

11.52 Lyman Mulopa came to settle where Selyer settled and he did remember telling the Court that Lyman told Selyer's children that he had bought the land from Selyer. He was not with Selyer or Lyman at all times and as such he would not know the dealings between Selyer and Lyman. If Selyer sold the land to Lyman they were supposed to know as Headmen. Nelson Chidakwa, Frank Mulilalila and Faides Makiyi were not his subjects as they had their own village.

11.53 Re-examination of DW6

11.54 In re-examination DW6 clarified that Faides Makiyi was found by Selyer when he came to their area.

11.55 The testimony of DW7

11.56 DW7 was Sylvester Kabanje who testified that in 2015 when Million Hamung'ande and others came to the palace they brought a complaint to the Chief. By then he was Secretary to the Chief, His Royal Highness Chief Issac Muzyokela, in the Sikoongo Chiefdom. Milion Hamug'ande's and others complaint was that his family and his extended families land was being encroached on by the family of the Mulopas. A community meeting was arranged and at the second meeting both the Hamung'ande

and the Mulopa families were present. They discussed the matter then decided to go to the land. Before they took a walk to the land, the Mulopa family produced a sketch map which was showing the land that they were claiming. On their way to the land the Chief was asking questions and he asked the Mulopa's when they came to Namoomba, and where they settled first. The Mulopa's responded that they settled on the land that was occupied by Selyer and they showed the said land to the Chief, the community and the Hamung'andes. The Mulopa's also stated that the land which belonged to Selyer was given to them by Hamung'ande. Upon completing the tour, they compared what was on the sketch map with what was on the ground. The document at page two of the plaintiff's bundle of documents is what was shown to them, which document was consent to by the previous Chief, His Royal Highness Penias Chilimbwa.

11.57 On the ground their discovery at that time is that the land which was given to Selyer in comparison to the sketch map was very different. The difference was that the land for Selyer was much smaller, while the sketch map encroached on all the land for the Hamug'andes. After that discovery, they ended the meeting and they went back to the palace. Since Chief Penias was still alive, Chief Issac Muzyokela went to see the former Chief to verify what was on the map. Chief Penias Chilimbwa said that the land that he was consenting to and signed for was, a smaller piece of land that belonged to Selyer. That after he discovered that the sketch map had brought disputes, Chief Penias did not proceed to give the letter of consent to convert the land to state land.

11.58 Upon hearing that Chief Issac Mwanja went back to the community and he met the Hamung'andes and Mulopas and told them that the Mulopas should only stick to the land which they had asked for, which belonged to Selyer, and not to continue using the sketch map as it had encroached on other people's land. All the people were told that according to their set up, they should go to the palace to get land ownership certificates which

would be verified by the Chief and the Chief's committee. The giving of the certificates at the palace was only done once the verification was done as to which piece of land belonged to which family. During his time at the palace, it was only the family of Nelson Chidakwa from the Hamung'ande family that came to collect the certificate from the Chief. They were still waiting for Mr Mulopa to get the certificate for the land that belonged to Selyer as that is the procedure that is followed up to now. People who want to get land go to the Chief who will send his committee to verify the land, then from there the Chief will issue a land ownership certificate and then a conversion form will be signed, for conversion of the land from customary land to state land if someone wants a title deed.

11.59 Cross examination of DW7

- 11.60 In cross examination DW7 replied that the document at page one of the plaintiff's bundle of documents is a letter by Chief Penias Chilimbwa giving Mr Willard Mulopa the land. Although the letter that mentions that the land was for Willard Mulopa's father the land was for Selyer. The letter does mention that the Chief was giving Willard Mulopa his father's land and the Chief in that letter was giving his recommendation.
- 11.61 He was the Secretary to the Chieftdom and one of his roles was to take records of what transpired within the chieftdom. He had not produced any minutes or report of the events that transpired between the Hamung'andes and the Mulopas. He did know of the importance of the said minutes or records as a secretary, which is for reference. Although there is no evidence before Court to show that Chief Penias Chilimbwa retracted on the sketch map it was there before the Chief and he was not asked to bring this evidence to Court. He was not aware that this piece of land was previously claimed by Issac Mwanja at the palace. The document at page three of the plaintiff's bundle of documents shows that the Sikoongo Court is in the Chieftdom and the parties to the judgment

are Mulopa Willard, Mulopa Matthews and Issac Mwanja. According to the said judgment the land belongs to the Mulopas.

11.62 He did receive a complaint from Million Hamung'ande and others in 2015. He did not remember testifying that the complaint he received was from Nelson Chidakwa. He had received a complaint from Nelson Chidakwa since Nelson is a member of the Hamung'ande family and that is why he said Million Hamung'ande and others. He did receive a complaint specifically from Nelson. When he received his complaint, they went to discuss the matter at a community meeting and he dealt with all the complaints that were affecting the Mulopas and the Hamung'andes. He did tell the Court that he had received a complaint from Nelson and others.

11.63 When they went on site for fact finding they did not have a surveyor with them on that particular date. They used the discretion of the Chief, the land owner to arrive at the decision that they made. The Chief does have the power to unilaterally reduce the size of land given to his subjects. The verification exercise was on the extent of land and the land ownership certificate is proof that the verification has been done. He did not have any proof before Court to show where the verification process was written. When Selyer came to the land in question in 1967, he was in Kabwe and Chief Issac Muzyokela was not Chief at that time. Even though he was not there when Selyer came to the land in question, he would know the extent of the land which Selyer was given because there is continuity in the Chieftom and the documents are there, which documents he had not brought.

11.64 Re-examination of DW7

11.65 In re-examination DW7 clarified that when they went to verify on the ground, they did not have a surveyor, as it is the Chief who gives the land and he knows the extent of the land that he gives to the people.

11.66 That was the case for the defendants.

12.0 The decision of the Court

12.1 Counsel for the plaintiff filed submissions on the 8th June, 2023 while counsel for the defendants and intervenors filed their submissions on the 13th July, 2023. I am indebted to both counsel for their submissions which this court will not reproduce but has duly taken consideration of the same.

12.2 On the evidence before me, I find the following as facts:

i) Sometime in the late 1960's Steven Selyer approached Chief Sikoongo to ask for and was given land in Namoomba along the Zambezi River for cultivation of a banana plantation and other crops.

ii) Steven Selyer built a small structure on the land that he was using for cultivation and roofed it with iron sheets.

ii) In the 1970's but before 1980 war broke out between Zambia and Zimbabwe which led to the people that lived in the Namoomba area including Steven Selyer to run away from the area.

iii) Steven Selyer never returned to Namoomba and continued his banana plantation in Chirundu along the Kafue River.

iv) Raymond Mulopa (alias Lyman) between 1980 and 1982 arrived in Namoomba and began to use the house that Steven Selyer had left.

12.3 The following are facts in dispute:

i) Whether Raymond Mulopa needed to obtain authority from Selyer to stay on and use the land that had been allocated to Selyer in Namoomba before the war broke out between Zambia and Zimbabwe.

ii) Whether Willard Mulopa followed the correct procedure under customary law to formalise the ownership of the land from Chief Sikoongo.

iii) Whether the dimensions of the land in question have been established before this Court.

iv) Whether it is the defendants or Willard Mulopa who has encroached on the land in question.

v) Whether the interveners have shown sufficient interest in the land in question for them to be entitled to a share of the same.

12.4 The first fact in dispute is to determine whether Raymond Mulopa, alias Lyman, obtained authority from Seyler to stay on and use the land that had been allocated to him in Namoomba before the war broke out between Zambia and Zimbabwe. It is not in dispute that sometime in 1967 Selyer approached Chief Sikoonga for a piece of land and was subsequently allocated land in the Namoomba area for his banana plantation. It is also not in dispute that war broke out between Zambia and Zimbabwe which led to the people that lived in the Namoomba area fleeing the place for safety. It is also not in dispute that Selyer did not return to Namoomba to pick up from where he had left off after the war had ended to continue his banana plantation in the Namoomba area.

12.5 DW1 testified that her father always wanted to go back, while DW2 testified that his father did return to the Namoomba area as the Chief had called him as he wanted to go back, but he did not go back to settle there again. DW2 also testified that their father took him and his brother Bernard and Chande to see Headman Bakasa and he introduced them to the Headman. This Court notes that while Selyer may have had an intention to return to Namoomba, he actually did not do so. Further, even though his sons were introduced to Headman Bakasa they did not pursue the resumption or resuscitation of the banana plantation that their father had commenced. If they had attempted to reclaim the land in question, then DW2 would have testified to this effect and as such I do not accept the evidence as testified by DW6 that the children to Selyer came to look at the land so that they could continue farming and found Lyman who told them that Selyer had sold him the land. Accordingly, I find that, Selyer abandoned

the land in question due to the war and never returned to resume his banana plantation and or other farming activities.

12.5 Having so found, the question that begs an answer is whether Raymond Mulopa needed to obtain authority from Selyer to use the land that had been allocated to Selyer. PW1 testified that his older brother, Raymond Mulopa, in the company of Bornface Mulopa and PW2, went to see Selyer over his land and when they came back, Raymond informed PW1 that Selyer said that they could use the land as he was not coming back to that area. PW2 also testified to this effect. DW1 in her testimony strongly denied that her father released the farm as he always wanted to go back. In assessing this evidence in terms of the procedure under customary law, while it would have been prudent for PW2 and his father and uncle to have obtained a document in writing from Selyer to support their claim, the release of the said land by Selyer would have been of no effect because he never returned to Namoomba to resuscitate his farm. For all intents and purposes Selyer abandoned the farm in Namoomba and this puts the procedure of obtaining the said land by other interested candidates in a different perspective.

12.6 To shed some light on the matter, in the case of **Mwiinda Vs Gwaba**¹ Justice Cullinan considered the advice of the assessors that he sat with in the case before him of an inhabitant of a village who had left and was residing in another village. In that case, the man had left a permanent house in his initial village, his wife and family who still ploughed on the said land. In the new village, he had simply put up a makeshift hut. In assessing the evidence and the advice of the assessors, Justice Cullinan determined that what was important was whether or not under customary law, the man was regarded as an inhabitant of the village in question and whether as a result he still retained a right over his land. The advise of the assessors was as follows:

“Mr Edward Jericho Mulenga:

The issue concerning people transferring from a village: when a man moves from a village, the land he was ploughing or the land he was given to settle, that land remains the property of the headman. It is the headman who is going to be approached to allocate land. If a person wants to come back there is nothing to stop him from coming back to a registered village. If a man leaves the village for a short time before he has given indication of leaving permanently, he is still called a villager unless he informs the headman he will never return to the village. If the land was given as an inheritance it remains in the hands of whom it was given. If a man moves away from a village leaving his wife and children that land remains with him as he leaves his wife to tender the fields.

Mr Phillip Kapasa:

I concur with what has been said by Mr Mulenga. If a man leaves from the village and has not been given documents from his Chief and his new Chief, he is still counted as a villager from whence he came. If he goes away to a farm he goes away as a worker and he is regarded as a villager of the village from whence he came. If a man goes away for work for about two years and dies at that place of work we bring his body back for burial as he is still regarded as a man of that village.

Mr Andrew Mwiiya:

As a Tonga man, a person who lived in a village for a length of time is not a stranger to that village. When I talk of a stranger I talk of a person with 12 months' residence. When I speak of villager, I mean a person with 12 to 14 years' residence. If he wants to move, he approaches the headman who will tell him to go or take him to the chief. Then they will talk. Would be That sort of transfer would be observed. If he is not happy then he can come back and be accepted. Any land he had left if he is a big man with a family, he will use that land as he left its. I am not sure whether it is the thing that he who lived in a village for a long time goes back and is treated like a stranger; that man is treated like a member of the village and goes back to his original land and uses its."

- 12.7 In assessing the aforementioned advise of the assessors, Justice Cullinan found that the assessors were in agreement and on this basis, he found that the man who was the plaintiff in the case before him, never ceased to be an inhabitant of the village and retained his customary rights over his land and that the defendant wrongfully entered, ploughed and planted thereon. In the case before this Court however, it is apparent that Selyer ceased to be an inhabitant of Namoomba as he never went back due to his having established a permanent home in Chirundu along the Kafue River where he established another banana plantation. As such, I find that there was no need for the plaintiff's father to get permission from Selyer to use the land that he had abandoned and what he needed to do was to get authority from the Headman of Namoomba as after Selyer abandoned the land, the said land reverted back to the custodianship of the Headman on behalf of the Chief.
- 12.8. This brings me to the second fact in dispute as to whether Willard Mulopa followed the correct procedure under customary law to formalise the

ownership of the land. It is not in dispute that the land in question is still under customary law and has not yet been converted to State land. As such, the principles that govern its allocation and or alienation are those as found under customary law. PW1 testified that after Raymond in the company of his brother and son saw Selyer and obtained authority or consent to use the land, Raymond went to see the Chief and obtained a document from him for him to attain a title deed which he subsequently took to the Council and which document got lost. PW2 also testified that in 2002, he went to see the Chief after his father, Raymond's death to obtain a document to enable him process a title deed.

12.9 PW1 testified that he was the Administrator of the late Raymond Mulopa's estate but that he never went to see the Chief over the land. PW2 on the other hand testified that although he was not the Administrator, he took it upon himself to go and see the Chief after a family meeting, where he informed them of his intention as he felt they were not living well without a document. In assessing this evidence first and foremost I have noted that PW2 did not have authority to deal with the estate of Raymond Mulopa as he was not the Administrator of the deceased. Secondly and worse still a reading of the judgment of the Court below between Mulopa Willard, Matthews Mulopa and Mwanja Issac at pages 3 to 6 of the plaintiff's bundle of documents reveals that Willard Mulopa, who is PW2 before this Court, held himself out to be an Administrator of his father's estate as it reads at page 4 as follows:

"In defence, Willard Mulopa testified.....that after the death of his father he was appointed to be the administrator of the estate of his late father Raymond Mulopa and in that capacity, he went to Chief Sikoongo where he obtained a letter in which he was given this piece of land by the Chief Sikoongo."

12.10 The Magistrate Court went on to hold that:

“As the person with the papers of authority from the chief relating to that land is the person entitled to claim ownership of that land unless there is evidence to show that the paper of authority relating to that land was fraudulently obtained in this case there is no evidence to show that the letter from Chief Sikoongo authorizing Willard Mulopa to own this land in dispute in the sketch plan were fraudulently obtained. I therefore agree with defence counsel that the defendant are entitled to the land, but not only by virtue of the said land having belonged to their late father, but also that His Royal Highness the Chief Sikoongo has given the land to Willard Mulopa in a letter dated 16 the September, 2002 followed by the approval of the sketch plan on the land on 12th May, 2009”

12.10 While the court below found that PW2 in that case was entitled to the property due it having been validly allocated to him, the evidence before this court reveals a contrary position. This is because PW2 testified that he was not the Administrator of the said land and knew that his uncle PW1 was the duly appointed Administrator. The judgment of court below reveals that PW2 did not act honestly in the way he dealt with this property and brings into question the attainment of the letter exhibited at page one of the plaintiff's bundle of documents as well as the sketch plan exhibited at page 2 of the plaintiff's bundle of documents. Additionally, in cross examination PW2 was asked why he did not inform his uncle, the Administrator, about his decision to go and obtain a document from the Chief concerning the land in question and he testified that it was because his uncle was sick in UTH. However, interestingly though, PW1 in cross examination on this issue did not mention that he was not informed by PW2 of his going to the Chief to get a document concerning the land because he was sick and actually in UTH at the time. All PW1 stated was

that he was not informed by PW2. Accordingly, I do not find PW2 to be a credible witness at all in this matter.

12.11 Further, from the guidance given in the **Mwiinda Vs Gwaba** case cited above, it is evident that before approaching the Chief over the land, the Headman of Namoomba area should have been consulted. The reason for this is because while the Chief presides over the whole chiefdom, it is the Headmen that are on the ground and know which parcels or tracts of land are occupied and which are not. Additionally, the Headmen know the extent and or boundaries of each tract of land and to who they belong. This is evident from the evidence of the defendant's witnesses. Due to not following the correct procedure, PW2 in going straight to the Chief instead of commencing with the Headman of Namoomba area and thereafter approaching the Chief, attained a document from the Chief allocating him land and subsequently a sketch plan which was not agreed upon in the community from which he was actually residing.

12.12 The key requirement is that the community needs to be consulted and their consent given for the said alienation of land. I am fortified in this position firstly by the evidence of PW1 himself who testified how the community was consulted when Selyer approached the Headman for land in the Namoomba area and that they gave their consent. Secondly, I am fortified in my view by the guidance given in the Supreme Court case of **Beauty Simakoko Mukanda Vs Ken Siayula (Chief Singani) and Bakisha Siamulya²**, where they stated that:

“Indeed, at no stage in the Court below or this Court did the Appellant question the authority of the Chief and Headman to alienate the property in dispute or the procedure they applied in doing so. She has also not denied the fact that she freely participated in the process and her only grievance is that a section or portion of the property which she felt was hers was

given to the Second Respondent. Therefore, if the property had been allocated to her initially as she alleged, she ought not to have participated in the process. The fact that she did and that it underwent alienation, in 2012, attests to the fact, as found by the Judge, that it did not belong to the Appellant. The decision we have reached is following our consideration of our earlier decision in the case of **Siwale and others**³. In that case the Appellants sought to be included on the title deeds in respect of a property which had previously been customary land then alienated to the Respondent without being consulted. We held that they should be included on the certificate of title as they ought to have been consulted as beneficiaries to the estate of the initial settler on the land. The facts of the **Siwale and others** case are clearly distinct from the facts of this case because, as the Learned High Court Judge found, the Appellant in this case was consulted and participated in the alienation process which was not the case with the Appellants in the **Siwale and others** case.”

(Underlining mine for emphasis)

12.13 From the foregoing evidence and guidance in the **Beauty Simakoko Mukanda** case, it is evident that in the alienation of customary land the community in a given area needs to be consulted and their consent obtained. The learned author of **Land Law in Zambia, Cases and Materials, Mudenda F** at **page 771** in quoting the esteemed author on **Mining Rights in Zambia, Ndulo M** explains that:

“Ndulo noted that a chief holds the land on behalf of the whole community in the capacity of a caretaker or trustee only..”

Mudenda F goes on to quote **Ndulo M** in the text of **Mining Rights in Zambia at page 78** that:

“...African customary law of tenure has no conception of land-holding comparable to the English idea of a fee simple absolute in possession, or to a theory whereby the ownership of all land in England is in the Crown alone and everybody else holds his land only as a tenant of the King. The African chief of king has no legal right, even in theory; he enjoys only an administrative right of supervisory oversight of the land for the benefit of the whole community. If he requires a piece of land, he must beg it of the individual holder of it, if the holder has no immediate use for it.

Further, **Mudenda F** in his text **Land Law in Zambia, Cases and Materials** at page 779 also explains that:

“Generally, the right to acquire land under Customary tenure in Zambia vests in individuals by reason of their being legitimate residents in a given area within which they exercise these rights of acquisition. The right to acquire land can be seen as inhering in the membership of a community.”

12.14 From the foregoing facts, cases and authoritative texts, I find that PW2, did not follow the correct procedure in formalising the ownership of the land in question as neither Headman Namoomba, nor the community were involved as PW2 simply approached the Chief and obtained the said document. Consequently, I find that the letter at page one of the plaintiff's bundle of documents and the subsequent sketch plan are accordingly invalid for want of the proper customary procedure.

12.15 In relation to the third issue as to whether the dimensions of the land in question have been established before this Court, the plaintiff exhibited a purported sketch plan of the land which this Court has already found was invalid. To explain, apart from PW2 lying to the Court below that he was an Administrator of his father's estate when in fact not, I agree with

counsel for the defendant and intervenors argument that the sketch plan is not a document that confers ownership on the plaintiff as it merely states that it is a proposed plan which has yet to be approved. The said document is not yet a diagram drawn to scale for purposes of a title deed as such the same cannot be relied on by the plaintiff as proof of the dimensions of the land in dispute. Moreover, it was testified by DW7 that all the families in the area were advised by the Chief's committee that a verification exercise for each families' tract of land would be done and then only would they be issued a certificate of ownership from the Chief which they could proceed to use to process a title deed. PW7 testified that only one family had done this exercise and were issued with a certificate.

12.16 On this basis, I find that the plaintiff has not established the dimensions of the land that he lays claim to, and the sketch plan cannot be relied upon for this purpose.

12.17 This now leads me to the next fact in dispute as to whether it is the defendants or Willard Mulopa who has encroached on the land in question. As I have already found that the plaintiff has not established the dimensions of the land that he lays claim to, it cannot be determined whether the defendants and or intervenors have encroached on the subject land. While I have found that the plaintiff did not follow the correct procedure in establishing ownership to the land, it is evident from the testimonies of DW3, DW4, DW5, and DW6 that the plaintiff and his family were and have been occupying the land that was allocated to Selyer. Consequently, I find that the only way the issue of encroachment can be resolved is by the families in this Namoomba area abiding by what their Chief through his committee has guided, that is to have the extent of each families' land verified and thereafter a certificate of ownership issued. I am fortified in this view by the holding of the Supreme Court in the **Beauty Simakoko Mukanda** case where they state at pages 27 and 29, that:

“.....we begin our consideration by showing the context in which the Learned High Court Judge made the findings of fact. Firstly, and of paramount importance is the observation she made that the property in dispute being customary land is superintended over by a chief with the aid of a headman. She observed further that as customary land, the property had no title deeds issued. The Learned High Court Judge also acknowledged the fact that when the dispute arose both the Appellant and Second Respondent met, not only with the Chief, but other members of his committee. Following from these meetings the two parties were issued with permits over two properties.the disputed property under went demarcation by the chief who later allocated pieces of it to both the Appellant and Second Respondent. The two participated in the process but the former refused to accept the permit for her portion of the property unless the portion on which the Second Respondent was constructing was included. The significance of this is that the property in dispute underwent alienation in accordance with the tenets of customary law applied by persons authorized to alienate the property. We hold the view that land alienation involving land under customary tenure at the local level, should be left at that level, especially where the laid down rules for alienation have been followed.”

(Underlining mine for emphasis)

12.18 PW1 and PW2 both acknowledged in cross examination that this land is still under the custodianship of Chief Sikoongo which means that it is still governed by customary law. Accordingly, I adopt the position of the aforementioned **Beauty Simakoko Mukanda** case that land alienation involving land under customary tenure at the local level should be left at

that level and the customary rules for the alienation of the same should be followed.

12.19 Last but not the least, is the question of whether the interveners have shown sufficient interest in the land in question for them to be entitled to a share of the same. On the totality of the evidence before this court as testified to by DW3, DW4, DW5 and DW6, I find that the said interveners have been residing in Namoomba for as long as the Mulopas. I do not accept the evidence of PW1 and PW2 that there were no other people in the Namoomba area apart from the Mulopa family. Accordingly, the issue that needs to be determined is whether the activities of the interveners in the area have either encroached on the land for the plaintiff and his family or their land has been encroached on by the plaintiff and his family. I find that this matter can only be determined by the verification exercise as guided by Chief Sikoongo through his committee.

12.20 The upshot of the matter is that the plaintiff having failed to prove his claim on a balance of probabilities, the said cause of action is hereby dismissed with costs to the defendants and the intervenors, to be taxed in default of agreement.

Leave to appeal is granted.

Dated the..... day of..... 2026.

12th January
REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
12 JAN 2025
R. CHIBBABBUKA, J
P.O. BOX 81067, LUSAKA
Ruth Chibbabbuka
HIGH COURT JUDGE