

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

2018/HP/0106

BETWEEN:

CHIBWE LWAMBA**PLAINTIFF**

AND

KELVIN MUMBUNA MUTUTWA
ATTORNEY GENERAL

1st DEFENDANT
2nd DEFENDANT

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 25th DAY OF JULY,
2024**

For the Plaintiff : Mr. W. Muhanga and Mr. C. Mweemba, Messrs Willis
Clement and Partners
For the 1st Defendant : Mr. M. Chitundu, Mr. M. Khunga and Mr. B.J Mulenga,
Messrs Barnaby Chitundu & Khunga Advocates
For the 2nd Defendant : Mr. Eneya Jere, Mr. M. Kapalu and Mrs B. Kafunji,
State Advocates, Attorney General's Chambers

J U D G M E N T

CASES REFERRED TO:

1. *Polythene Products Zambia Limited v Cyclone Hardware and Construction Limited and The Attorney General 2012 Vol 3 ZR 396*
2. *Crossland Mutinta and Bashir Seedat v Donovan Chipanta and others Selected Judgment No 53 of 2015*
3. *Union Gold (Zambia) Limited v Attorney General SCZ No 141/2016*
4. *Faramco Limited v Camel Freight and others Appeal No 136/2016*
5. *Emeldah Chilanga v Isaac Simute and Ndola City Council SCZ Appeal No 08/2017*
6. *Kalvic Bakery v The Attorney General and another Appeal No 17A/2017*
7. *Emma Mainza, Kelson Mainza (suing as Administrators of the estate of Creed Mainza Malawo) v Rabson Mwale and four others CAZ Appeal No 160/2020*
8. *Aaron Chungu v Peter Chanda and others SCZ/08/02/2023*

1. INTRODUCTION

1.1 The right to ownership of land is what is in issue in this matter. Thus, suing by Writ of Summons which was accompanied by a statement of claim on 10th April, 2018, and which was amended on 31st October, 2019, Chibwe Lwamba, as Plaintiff, claims the following reliefs against the Defendants, Kelvin Mumbuna Mututwa and the Attorney General:

- i. A declaration that Chibwe Lwamba is the legal and rightful owner of the property known as LUS/13598;*
- ii. A declaration that the invitation to treat which was in favour of Kelvin Mumbuna Mututwa was erroneously generated by the State through the Commissioner of Lands;*
- iii. Possession of the property No LUS/13598;*
- iv. An Order for the preservation of the property No LUS/13598, Lusaka pending determination of the matter;*
- v. Damages for trespass which are in the alternative and different from an Order for possession of the property;*
- vi. Costs of and incidental to the proceedings;*
- vii. Any other relief that the Court deems fit to award in the circumstances.*

2. STATEMENT OF CLAIM

2.1 It was contended in the statement of claim, that Chibwe Lwamba was at the material time, the registered owner of the property known as No LUS/13598. His contention was that

Kelvin Mumbuna Mututwa and other unknown persons were in possession of the said property. The Attorney General was sued by virtue of being the legal advisor to the State.

- 2.2 Chibwe Lwamba made further averment that he was offered the property No LUS/13598 in 2016, through a direct lease of Ninety-Nine (99) years by the President. His contention was that thereafter, he was issued with a certificate of title for the said land, for the unexpired term of Ninety-Nine (99) years from 1st October, 2000. It was further Chibwe Lwamba's averment, that prior to the certificate of title being issued, the Ministry of Lands issued a notice to re-enter and withdraw the offer to Chibwe Lwamba. However, the re-entry and withdrawal of the offer was not effected, and that was how Chibwe Lwamba was issued with the certificate of title for the property.
- 2.3 Then later, Chibwe Lwamba discovered that the Ministry of Lands had generated an invitation to treat for the said property to Kelvin Mumbuna Mututwa. His contention was that generation of the said invitation to treat was erroneous, as the property was on offer to him, and was valid and had not been withdrawn.
- 2.4 As to the developments that Chibwe Lwamba put up on the property, he stated that he constructed a foundation/box on the said property. It was also Chibwe Lwamba's averment that he left the property in the hands of his Attorney Mumba Chilambwe for management, custody and overseeing as he stays and works in the United States of America.

- 2.5 Thus, it was discovered that someone had built a structure on the foundation and when inquiries were conducted, it was discovered that Kelvin Mumbuna Mututwa had trespassed on the property, and he had continued to build on the foundation that Chibwe Lwamba had put up. Chibwe Lwamba stated that efforts to stop Kelvin Mumbuna Mututwa proved futile, and the matter was reported to the Zambia Police.
- 2.6 The averment was also that prior to the occurrence of the events, Chibwe Lwamba had put a remark on the property which acted as a caveat, and on 9th October, 2017, he wrote to the Ministry of Lands requesting that the remark on the property be temporarily removed to enable him lodge a Power of Attorney and a Deed of Gift.
- 2.7 He stated that in response, Mr. Andrea Chuni in his capacity as Registrar, wrote a letter to him dated 7th November, advising him that the offer letter was erroneously generated, and as such, the certificate of title which was in his name, would be cancelled.
- 2.8 It was Chibwe Lwamba's averment that through his advocates Messrs AKM Legal Practitioners, he wrote a letter to the Chief Registrar, explaining that he was the rightful owner of the property, on the basis that the letter from the Ministry of Lands had no proof whatsoever, that the letter of offer to him was erroneously generated.
- 2.9 Chibwe Lwamba stated that there was no response to that letter, even at the time that these proceedings were

commenced. He contended that a certificate of title can only be cancelled within the provisions of the law. The allegation was that Kelvin Mumbuna Mututwa was a trespasser on the property, as he was there without the licence, consent or authority of Chibwe Lwamba, the rightful and legal owner of the property, who had a right to possession of the said property.

3. KELVIN MUMBUNA MUTUTWA'S DEFENCE AND COUNTERCLAIM

- 3.1 The assertion that Chibwe Lwamba was the owner of the property LUS/13598 was said to be within his peculiar knowledge. Kelvin Mumbuna Mututwa denied that he was in illegal possession of the property LUS/13598. He did not dispute the capacity in which the Attorney General had been sued.
- 3.2 His defence was that Chibwe Lwamba was offered the property LUS/13598 in October, 2000, and that it was legally repossessed from him on or about May, 2016 for failure to pay ground rent and to develop the property. He contended that the certificate of title was issued to Chibwe Lwamba in error or by mistake, as Chibwe Lwamba did not challenge the repossession of the property and the property was not re-offered to him.
- 3.3 Kelvin Mumbuna Mututwa denied that the Commissioner of Lands erroneously issued him with an invitation to treat for the property, LUS/13598. He averred that he developed the property up to roof level. It was denied that Chibwe Lwamba

had been out of jurisdiction, residing in the United States of America where he works.

- 3.4 Admission was made, that Kelvin Mumbuna Mututwa had constructed on the property, and he stated that the remarks that were entered on the property at the Ministry of Lands were within Chibwe Lwamba's peculiar knowledge. Kelvin Mumbuna Mututwa also averred that Chibwe Lwamba's assertion that Andrea Chuni of the Ministry of Lands informed him that the certificate of title was issued in error or by mistake was within his peculiar knowledge.
- 3.5 He contended that the issue of ownership of the property was not resolved in Chibwe Lwamba's favour but rather, that the Ministry of Lands halted the administrative enquiries and legal procedures for cancellation of the certificate of title which was issued to Chibwe Lwamba, as Chibwe Lwamba commenced this action. Kelvin Mumbuna Mututwa denied being a trespasser on the property.
- 3.6 In his counterclaim, he contended that the Ministry of Lands placed an advertisement in the newspaper on 12th June, 2013, in which Chibwe Lwamba was informed of the intention to withdraw the offer to him, of the property known as LUS/13598. The defence was that when Kelvin Mumbuna Mututwa saw the advertisement, himself and his wife expressed interest in the property. Thus, they made inquiries over the property, and established that there were outstanding ground bills and the property had not been

developed at all, as well as the fact that it was still at offer stage in the name of Chibwe Lwamba.

- 3.7 Then on or about, 8th August, 2013, Kelvin Mumbuna Mututwa and his wife applied for the property at the Ministry of Lands, and they further made another application to the Lusaka City Council to be allocated the property on or about 20th August, 2013. It was stated that on or about 17th February, 2014, the Lusaka City Council resolved the application in favour of Kelvin Mumbuna Mututwa, and on 19th March, 2014, the said Lusaka City Council made a recommendation to the Commissioner of Lands that Kelvin Mumbuna Mututwa and his wife be allocated the property.
- 3.8 Thus, in line with the land alienation procedures, Annexure A form was completed, and it was endorsed by the Town Clerk at the Lusaka City Council on 3rd April, 2014, and thereafter, it was submitted to the Commissioner of Lands for consideration. However, inquiries on the status of property on 4th April, 2014, revealed that the property was still in Chibwe Lwamba's name, and that he had outstanding ground rent bill of ZMK14.00 as at 27th October, 2000.
- 3.9 Then in November, 2015, Kelvin Mumbuna Mututwa resubmitted his application for the property. He stated that on or about 31st March, 2016, the Commissioner of Lands wrote to Chibwe Lwamba informing him of the intention to withdraw the offer of the property to him for non-payment of ground rent, and for failure to develop the property, and he

was given Thirty (30) days within which to show cause why the property should not be repossessed.

3.10 However, no cause why the property should not be repossessed was given, and the property was repossessed.

3.11 Kelvin Mumbuna Mututwa's averment, was that following the repossession of the property, an invitation to treat in his favour was generated on 13th October, 2016, which required him to pay K18, 597.83 within Ninety (90) days. It was his averment, that he paid the said monies on 9th January, 2017, and he requested that his wife's name be included in the offer for the property, as it was omitted from the invitation to treat.

3.12 However, that could not be done, as Kelvin Mumbuna Mututwa was informed that Chibwe Lwamba's name had reappeared in the system, and he had been issued a certificate of title for the property. That was how Kelvin Mumbuna Mututwa lodged several complaints at the Ministry of Lands and other authorities, over the issuance of the certificate of title to the property to Chibwe Lwamba, in light of the fact that the offer to Chibwe Lwamba had been withdrawn, and Kelvin Mumbuna Mututwa was subsequently offered the property.

3.13 He contended that during the process of the investigations, Chibwe Lwamba was asked to submit the certificate of title so that it could be cancelled. However, Chibwe Lwamba's attorney reported Kelvin Mumbuna Mututwa to the police and the Lusaka City Council over his interest in the land,

and Chibwe Lwamba disregarded the administrative processes that were instituted with a view to resolving the matter, and he commenced this action.

3.14 Kelvin Mumbuna Mututwa alleged that Chibwe Lwamba procured the offer, the direct lease and the certificate of title for the property LUS/13598 through fraud and or illegality, with the particulars of fraud and/or illegality being stated as:

- i. The survey diagram for Chibwe Lwamba's certificate of title were procured on the basis of a letter dated 19th February, 2016, purportedly authored by Mr. A. Chikwari of Messrs ACM Land Survey Consultants authorising the Survey or General to prepare Certified True Copies (CTC) of Survey Diagrams for Stand No LUS/13598 when in fact no such letter was authored;
- ii. That Chibwe Lwamba purportedly paid outstanding ground rent of K1, 100.00 on 9th May, 2016, when Stand No LUS/13598 had already been repossessed from him;
- iii. That the lease for Stand No LUS/13598 was purported to have been executed by Chibwe Lwamba in Zambia on or about 26th October, 2016, when in fact Chibwe Lwamba was out of jurisdiction at the time, and therefore, not in a position to execute the lease.
- iv. That the lease for Stand No LUS/13598 was purported to have been executed by Chibwe Lwamba on or about 26th October, 2016, when in fact it was executed by

Mumba Chilambwe Lwamba without lawful authority to do so at the time.

- v. That the Power of Attorney purporting to confer authority on Mumba Chilambwe Lwamba to deal with matter surrounding Stand No LUS/13598 was purported to have been executed by Chibwe Lwamba at Lusaka in Zambia, on 29th September, 2017, when in fact Chibwe Lwamba was out of jurisdiction at the time, and therefore not in a position to execute the lease from Zambia.
 - vi. That Chibwe Lwamba purportedly procured Stand No LUS/13598 on the basis of developments that were undertaken by Kelvin Mumbuna Mututwa and consideration fees that were paid by Kelvin Mumbuna Mututwa, as Chibwe Lwamba's purported letter of offer dated 8th September, 2016, was devoid of any consideration fees, registration fees and preparation fees;
 - vii. That Chibwe Lwamba obtained a certificate of title relating to Stand No LUS/13598 on the basis of a letter of offer dated 8th September, 2016, purporting to be a re-print of his offer letter of October, 2000, when in fact not, as his October, 2000, offer had been withdrawn when the property was repossessed from him;
 - viii. That Chibwe Lwamba procured Stand No LUS/13598 on the premise that he had been paying ground rent, when in fact not.
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3.15 It was contended that based on the foregoing, Kelvin Mumbuna Mututwa had suffered damage and loss. His counterclaim was:

- i. An Order that Kelvin Mumbuna Mututwa is the legal and legitimate owner of Stand No LUS/ 13598;*
- ii. An Order for the possession of Stand No LUS/ 13598;*
- iii. A declaration that the improvements on Stand No LUS/13598 were undertaken by Kelvin Mumbuna Mututwa with the approval by the Lusaka City Council Planning Authority;*
- iv. An Order for the cancellation of the Certificate of Title CT-36398 which was obtained fraudulently by Chibwe Lwamba;*
- v. Damages;*
- vi. Any other relief that the Court may deem fit;*
- vii. Interest;*
- viii. Costs.*

4. CHIBWE LWAMBA'S REPLY AND DEFENCE TO KELVIN MUMBUNA MUTUWA'S DEFENCE AND COUNTERCLAIM

- 4.1 Chibwe Lwamba reiterated that he was initially offered the property LUS/13598 sometime in the year 2000, but as he misplaced the said letter, by the letter dated 23rd August, 2016, he wrote a letter to the Ministry of Lands requesting for a re-print of the letter, and he was issued one on 8th September, 2016.
- 4.2 His position was that while the Ministry of Lands issued a notice of intention to repossess the property LUS/13598

from him on 12th June, 2013, at no point did the said Ministry repossess the property from him, as it did not act on the same. Thus, Chibwe Lwamba was issued with a certificate of title for the property in 2016. He denied that the said certificate of title was issued in error or by mistake.

- 4.3 It was also his averment, that the Ministry of Lands did not revoke his offer, and therefore, there was no need to re-offer the property to him. Chibwe Lwamba's defence to the counterclaim, was that the notice that appeared in the daily newspaper was merely a notice of intention by the Ministry of Lands to withdraw the offer of the property to him, and it was not a decision to withdraw the said offer.
- 4.4 He denied that the property was completely undeveloped, stating that he commenced construction on the property after it was offered to him in 2000. His assertion was that the Lusaka City Council could not offer or recommend land which was not free, a fact that Kelvin Mumbuna Mututwa had admitted in his defence and counterclaim.
- 4.5 The assertion was further that the property, LUS/13598 was still on offer to Chibwe Lwamba, despite Kelvin Mumbuna Mututwa alleging that the Ministry of Lands had repossessed the property from him in 2013.
- 4.6 The allegations which were made by Kelvin Mumbuna Mututwa that he made follow ups on the allocation of the property to him, were said to be within his peculiar knowledge. Chibwe Lwamba stated that the Ministry of

Lands did not inform him that it intended to withdraw the offer to him for non-payment of ground rent.

- 4.7 However, his Attorney Mumba Chilambwe Lwamba had sight of the letter on 31st March, 2016, when he had made follow ups with the Customer Services Department at the Ministry of Lands on the payment of ground rent, and he was advised that the person who had authored the said letter was attending Court, and there was no need for him to worry about the property being repossessed, as the balance of the outstanding ground rent had been cleared.
- 4.8 Also, in defence to the counterclaim, Chibwe Lwamba stated that his attorney was informed that the repossession had never taken place, which was the factual situation. He contended that the invitation to treat was issued to Kelvin Mumbuna Mututwa when the property LUS/13598 was still on offer to him, and shortly thereafter on 26th October, 2016, he was issued with a certificate of title.
- 4.9 The assertion that Kelvin Mumbuna Mututwa paid the consideration fees in the sum of K18, 597.83 on 9th January, 2017, and that he requested that his wife's names be included in the letter of offer, was said to be within his peculiar knowledge. The same was said of the averment that the letter of offer could not be processed as Chibwe Lwamba's names questionably re-appeared for the property LUS/13598, and he was subsequently issued with a certificate of title for the property.

- 4.10 He reiterated his position that the offer of the property to him was not withdrawn, and that he was not issued with a certificate of title for the property in an irregular manner.
- 4.11 Also said to have been within Kelvin Mumbuna Mututwa's peculiar knowledge, was his assertions relating to him having complained to various authorities on the delay in the issuance of a letter of offer to him for the property, and that Chibwe Lwamba was after investigations, asked to surrender the certificate of title so that it could be cancelled.
- 4.12 Chibwe Lwamba denied having reported the matter to the police and the Lusaka City Council in order to frustrate Kelvin Mumbuna Mututwa's purported legitimate claims to the property, but rather that he did so, to protect his own interests in the land and as a title holder to the property, which was within his own rights.
- 4.13 It was Chibwe Lwamba's averment, that he commenced these proceedings as the Ministry of Lands was unresponsive to his demand for proof that the letter of offer was erroneously generated, and Kelvin Mumbuna Mututwa had continued to develop the property despite being Ordered by the Lusaka City Council to stop doing so on 26th September, 2017. He added that it was also because an officer at the Ministry of Lands threatened to cancel the certificate of title, when he sought to register a remark on the property on the Lands Register.
- 4.14 The allegations of fraud/illegality in the acquisition of the certificate of title were denied, and it was stated that Chibwe

Lwamba merely paid ground rent in compliance with the terms of the offer letter. It was further denied that Mumba Chilambwe Lwamba lacked authority to execute the lease, the assertion being that he had authority from Chibwe Lwamba to do so.

4.15 Chibwe Lwamba contended that he was within jurisdiction in Lusaka, when he executed the Power of Attorney. He stated that the letter of offer to him which was dated October, 2000 was not withdrawn from him, and that was why he was able to get a re-print of the same in 2016, when the original was lost or misplaced.

5. ATTORNEY GENERAL'S DEFENCE AND COUNTERCLAIM

5.1 In defence, the assertion by the Attorney General was that the certificate of title which was issued to Chibwe Lwamba was issued in error or by mistake. The allegation that Kelvin Mumbuna Mututwa was in possession of the property without the licence or authority of Chibwe Lwamba, was said to be within Chibwe Lwamba's peculiar knowledge. The capacity in which the Attorney General had been sued was admitted.

5.2 The contention that Chibwe Lwamba was offered the property LUS/13598 through a direct lease by the President was denied, the defence being that Chibwe Lwamba applied for the said property on 2nd October, 2000, and he was offered the property on 23rd October, 2000. The defence was that the offer of the property to Chibwe Lwamba was

withdrawn twice, due to non-development, in accordance with the terms of the offer.

- 5.3 In that regard, averment was made, that the first offer for the property was withdrawn in or about October, 2011, after the property was inspected on 14th June, 2011, and which revealed that the property had remained undeveloped from the time that it was offered to Chibwe Lwamba. It was stated that Chibwe Lwamba appealed the withdrawal of the offer to the Commissioner of Lands on 23rd December, 2011.
- 5.4 The appeal was said to have succeeded on the condition that Chibwe Lwamba developed the property within Three (3) months of the grant of the appeal.
- 5.5 It was also the Attorney General's defence, that in or around March/April 2016, the offer of the property to Chibwe Lwamba was again withdrawn, for failure to develop it within the stipulated time, and on the basis that Chibwe Lwamba had failed to pay outstanding ground rent for the property. The averment was that this was preceded by an inspection of the property, which established that Kelvin Mumbuna Mututwa had developed the property, and not Chibwe Lwamba.
- 5.6 Thus, the above averments were repeated as the defence to the assertion that Chibwe Lwamba was issued a certificate of title for the property, for the unexpired term of Ninety-Nine (99) years from 1st October, 2000. The Attorney General admitted that it generated an invitation to treat to Kelvin Mumbuna Mututwa, on 16th October, 2016, but denied that

this was done in error, on the basis that generation of the invitation to treat to Kelvin Mumbuna was done after the offer of the property to Chibwe Lwamba had been successfully withdrawn.

- 5.7 No comment was made to the allegation that Chibwe Lwamba put up a foundation on the property, or that Chibwe Lwamba lives in the United States of America where he works, and he left his Attorney, Mumba Chilambwe Lwamba, to manage, have custody and oversee the property. No comment was also made, to the assertion that it was discovered that Kelvin Mumbuna Mututwa was building on the foundation that Chibwe Lwamba had put up, and that efforts to stop him had proved futile.
- 5.8 The defence was that the remark on the property was put by the Chief Registrar, upon request by Chibwe Lwamba. However, the request by Chibwe Lwamba to place a caveat on the property was denied, as he was advised that one cannot place a caveat on their own property. It was agreed that Chibwe Lwamba's advocates wrote to the Ministry of Lands over the property.
- 5.9 The assertion was that the Ministry of Lands responded to the letter which was written by Chibwe Lwamba's advocates, and advised that Chibwe Lwamba's matter had been referred to the Task Force on illegal land allocation, and that they would be informed, once the investigations were concluded.
- 5.10 It was contended that a certificate of title may be cancelled if it was issued in error or by mistake. The Attorney General

denied that Kelvin Mututwa Mumbuna was a trespasser on the property, as he was duly issued with an invitation to treat for the property. It was denied that Chibwe Lwamba was entitled to the reliefs sought.

6. CHIBWE LWAMBA'S REPLY TO THE ATTORNEY GENERAL'S DEFENCE AND COUNTERCLAIM

6.1 Chibwe Lwamba joined issue with the Attorney General on the defence and counterclaim, save so far as the same consisted of admissions.

7. EVIDENCE LED AT TRIAL

7.1 At trial, Chibwe Lwamba did not testify, but he called Three (3) witnesses. Kelvin Mumbuna Mutuwa testified and he called Two (2) witnesses, while the Attorney General called Three (3) witnesses.

PW1-MUMBA CHILAMBWE LWAMBA

7.2 In testifying, Mumba Chilambwe Lwamba stated that in mid-2000, his elder brother, Chibwe Lwamba applied for a property from the Commissioner of Lands. His testimony was that the Commissioner of Lands offered Chibwe Lwamba the property, known as No LUS/13598, and he was thereafter asked to pay service charges and the other necessary bills at the Ministry of Lands and the Lusaka City Council.

7.3 The testimony that Mumba Chilambwe Lwamba further gave, was that Chibwe Lwamba paid the said bills, and between 2000 and 2006, and that development was commenced on the property, by putting a box or foundation

on the said property. It was stated that thereafter, they lost their father on 3rd December, 2000, and Chibwe Lwamba being the eldest child, took up the responsibility of taking his siblings to school.

- 7.4 Thus, development of the property was put on hold, and Chibwe Lwamba was sent into the foreign service to Sierra Leone, and thereafter, to Lesotho. Then in 2017, Chibwe Lwamba was assigned to go and work at the United Nations in the United States of America.
- 7.5 Further in his testimony, Mumba Chilambwe Lwamba testified that sometime in late 2017, as he was passing through the Tokyo ring road, he observed that an unknown person was building on Chibwe Lwamba's property. He stated that upon making enquiries, he was directed to the house of the person who was believed to be building on Chibwe Lwamba's property, and he came to know that person as Kelvin Mumbuna Mututwa.
- 7.6 It was Mumba Chilambwe Lwamba's testimony that Kelvin Mumbuna Mututwa on being asked, if he knew anything about the development that was taking place on Chibwe Lwamba's property, had responded that he had overheard from some people who had gone to his house, that the person who was building on the land had moved to Kasama. He added that Kelvin Mumbuna Mututwa told him that he did not want to get that person into trouble, as it was sensitive.
- 7.7 Thus, Mumba Chilambwe Lwamba went and reported the matter to Woodlands Police Station where he was informed

that it would be difficult for the police to take any action, as the person who was developing the property was not known. It was his continued testimony that his brother advised him to go to the Ministry of Lands to check on the status of the property.

- 7.8 It was testified that Mumba Chilambwe Lwamba, was at the Ministry of Lands asked to avail Chibwe Lwamba's national registration card (nrc) so that they could search for the property using the said national registration card. He stated that that was how he had left, and he had asked Chibwe Lwamba to send him a copy of his national registration card.
- 7.9 The testimony given, was that Chibwe Lwamba sent his national registration card in early 2016, and on the property being searched at the Ministry of Lands using Chibwe Lwamba's national registration card, it was discovered that the property was still in Chibwe Lwamba's name. Mumba Chilambwe Lwamba's evidence was that on advising the officers at the Ministry of Lands that there was someone who was developing the property, he was informed that the officers needed to see the physical file to see what was on it.
- 7.10 It was his testimony that he would frequent the Ministry of Lands, but he was informed that the file could not be found. Then later, Mumba Chilambwe Lwamba was asked to pay ground rent in excess of K1000.00. He further testified that during his follow ups with the Ministry of Lands, he was referred to the Legal Department of that Ministry.

- 7.11 He identified page 7 of Chibwe Lwamba's bundle of documents, as the title deed which was issued to Chibwe Lwamba after he was guided to obtain one by the said Ministry, by Chibwe Lwamba authorising him to do so. He identified page 6 of Chibwe Lwamba's supplementary bundle of documents, as the letter that Chibwe Lwamba first wrote on 21st July, 2016, authorising him to process the certificate of title, and page 17 of Chibwe Lwamba's bundle of documents, which was dated 8th February, 2017, again, authorising him to process the certificate of title.
- 7.12 Mumba Chilambwe Lwamba testified that the Legal Department at the Ministry of Lands, through Paul Kachimba, advised him that Chibwe Lwamba was sent a letter informing him of the intention to repossess the property. However, when he had earlier made follow ups with the said department, it had not informed him about the letter, as he had even paid ground rent. He added that Mr. Musonda whose details were on the letter that was sent, had received the said letter.
- 7.13 Mumba Chilambwe Lwamba noted that there was no date of receipt on the letter, and he was shown a notice of intention to repossess the property, which was issued in 2013. Page 23 of the Attorney General's bundle of documents was identified as the said notice of intention to re-enter which was sent. His testimony was that as at 31st March, 2016, the property was developed up to window level, with the owner on the system being shown as Chibwe Lwamba.

- 7.14 Mumba Chilambwe Lwamba testified that he only came to know Willis Musonda after he called the phone number on the letter, and pretended that he needed help to survey a property. That was how Willis Musonda arranged to meet with him at the Ministry of Lands.
- 7.15 Page 5 of Chibwe Lwamba's supplementary bundle of documents, was identified as the receipt for the payment of ground rent. Mumba Chilambwe Lwamba's testimony was that during the process of processing the certificate of title, it became necessary for the letter of offer to be availed. That was how the offer letter was reprinted from the system.
- 7.16 He denied that the survey diagram for the property was procured by fraud, as Mr. Chikwari authored the letter which he gave him when the certificate of title was being processed. Mumba Chilambwe Lwamba's testimony was further that he signed the lease as Chibwe Lwamba was out of the country and he had authorised him to process the certificate of title, on the guidance that was given by the Ministry of Lands.
- 7.17 He told the Court that when the Power of Attorney was executed on 29th September, 2017, Chibwe Lwamba was in the country, and he stressed that he was given a re-print of the offer letter for the property, which was issued in 2000 in September, 2016. It was also Mumba Chilambwe Lwamba's evidence that there was no evidence to show that the property was repossessed, as there was no certificate of re-entry on the Lands Register.
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- 7.18 His further testimony was that there was no evidence to show that Kelvin Mumbuna Mututwa was the legal owner of the property. Page 5 of Chibwe Lwamba's bundle of documents was stated as being the re-print of the offer. In concluding his testimony, Mumba Chilambwe Lwamba testified that Willis Musonda was an employee of Alex Chikawari, and he had met him at Alex Chikwari's office.
- 7.19 It was stated that initially, Alex Chikwari had agreed to be Chibwe Lwamba's witness, but he later changed, stating that he would testify for the defence.

**CROSS EXAMINATION OF MUMBA CHILAMBWE
LWAMBA BY COUNSEL FOR KELVIN MUMBUNA
MUTUTWA, M. KHUNGA**

- 7.20 It was testified in cross examination, that the Ministry of Lands in 2011, wrote to Chibwe Lwamba giving him notice of intention to repossess the property. Mumba Chilambwe Lwamba agreed that he did not see the letter, and that Chibwe Lwamba was working for USAID in Zambia, when the said notice of intention to repossess the property was issued.
- 7.21 He testified that he only saw the letter in Court, although he was aware that it was written in 2011. Mumba Chilambwe Lwamba told the Court that Chibwe Lwamba successfully appealed the notice of intention to re-enter the property. On being referred to the said notice of intention to withdraw the offer, Mumba Chilambwe Lwamba's evidence was that it was

a notice of intention to re-enter or withdraw the offer, as the property had not been developed within a certain period.

- 7.22 He agreed that the response that Chibwe Lwamba wrote to the Commissioner of Lands was at page 9 of the said bundle of documents. Mumba Chilambwe Lwamba further agreed that in the letter, Chibwe Lwamba did not contest the fact that he had not developed the property. It was further agreed that in the letter at page 10 of the Attorney General's bundle of documents, the Commissioner of Lands had written to Chibwe Lwamba, advising him that the appeal was successful, and that he had to develop the property within Three (3) months of the appeal.
- 7.23 Further agreement was made, that thereafter a notice of intention to re-enter the property was advertised in the newspaper, which was at page 13 of Attorney General's bundle of documents and was dated Wednesday 12th June, 2013. Mumba Chilambwe Lwamba agreed that in the notice, the defaulters were required to make representations in writing, as to why the offers should not be withdrawn.
- 7.24 He agreed that the property listed at number 221 of the said advertisement was LUS/13598, and that the status showed that the property was undeveloped. It was also agreed that according to the advertisement, Chibwe Lwamba was to make representations to the Ministry of Lands in writing. Mumba Chilambwe Lwamba was not aware whether Chibwe Lwamba made the representations.

- 7.25 He did however agree that page 19 of the Attorney General's bundle of documents, was the ground rent bill for the property as at 30th September, 2013, in the amount of K199.98. It was stated that Chibwe Lwamba paid K14.00 on 27th October 2000, which receipt was at page 3 of Chibwe Lwamba's supplementary bundle of documents, and page 19 of the Attorney General bundles of documents.
- 7.26 Mumba Chilambwe Lwamba also agreed that Chibwe Lwamba only paid the ground rent bill in 2000. On being referred to the notice of intention to withdraw the offer dated 11th March, 2016, which was at page 23 of the Attorney General's bundle of documents, Mumba Chilambwe Lwamba testified that as at the date of that letter, Chibwe Lwamba had partially failed to pay the ground rent bill and to develop the property.
- 7.27 He agreed that Chibwe Lwamba was given Thirty (30) days to show cause why the offer should not be withdrawn. Mumba Chilambwe Lwamba's evidence when he was referred to the Zambia Postal Service Receipt at page 24 of the Attorney General's bundle of documents, was that there was an indorsement in ink, on that receipt, which showed that the letter was sent on 7th April, 2016 by Willis Musonda.
- 7.28 However, his testimony was that the printed date on the document read as 4th July, 2016. Mumba Chilambwe Lwamba could not confirm whether Willis Musonda worked that the Ministry of Lands, and that he was tasked to dispatch the letter to Chibwe Lwamba.

- 7.29 He did nevertheless agree that the box number 30069 which was indicated on the receipt for Zampost, was the same as the one that was on the application for land that Chibwe Lwamba made, which was at page 1 of Chibwe Lwamba's supplementary bundle of documents. Mumba Chilambwe Lwamba testified that Chibwe Lwamba did not respond to the letter dated 23rd March, 2016, whose Thirty (30) days elapsed around 23rd April, 2016.
- 7.30 As to the receipt for the payment of ground rent which was at page 5 of Chibwe Lwamba's supplementary bundle of documents which was dated 9th May, 2016, Mumba Chilambwe Lwamba's testimony was that he could not confirm that it was the date when Chibwe Lwamba next paid the ground rent bill from 2000, on the basis that the document indicated that the ground rent bill was from 2014-2016, and there were arrears of K149.00.
- 7.31 Mumba Chilambwe Lwamba told the Court when he was referred to the inspection report for LUS/13598 dated 17th June, 2011 which was at page 5 of the Attorney General's bundle of documents, that it indicated that the property was not structurally developed. He added that Gilbert Shula the Ground Rent Collector prepared the report which was sent to the Head Estates and Valuation. The testimony that was given, was that according to the document, the inspection was done on 14th March, 2016.
- 7.32 Still in cross examination, Mumba Chilambwe Lwamba testified that the field findings revealed that Kelvin

Mumbuna Mututwa and Otilla Mututwa were developing the property, as seen on the pictures at pages 21-22 of the Attorney General's bundle of documents.

- 7.33 It was testified that the inspection report at page 22 of Kelvin Mumbuna Mututwa's bundle of documents was dated 6th September, 2016, and that it was authored by Precious Kalito. Mumba Chilambwe Lwamba's testimony was that according to that report, Chibwe Lwamba was developing the property. His evidence when he was referred to the inspection report dated 6th March, 2017, which was at page 33 of the Attorney General's bundle of documents was that Edwin C. Banda inspected the property according to the said inspection report.
- 7.34 Mumbwa Chilambwe Lwamba testified that the field findings as indicated in the report, were that there were Two (2) semi-detached dwelling houses, which were being constructed on the property, as well as a wall fence around the property, by Kelvin Mumbuna Mututwa. He added that the report also indicated that there were no incumbrances on the property, but that there was a dispute between two parties, Chibwe Lwamba and Kelvin Mumbuna Mututwa.
- 7.35 As regards the letter at page 6 Chibwe Lwamba's supplementary bundle of documents, the testimony that was given was that it authorised Mumba Chilambwe Lwamba to process the certificate of title on behalf of Chibwe Lwamba. He added that the Ministry of Lands guided him so, which authority extended to signing documents on Chibwe

Lwamba's behalf. The evidence that was also given, was that the letter was dated 21st July, 2016, after Paul Kachimba had written the letter giving notice of intention to re-possess the property, on 23rd March, 2016.

- 7.36 Pages 38-44 of Chibwe Lwamba's bundle of documents was stated as being a general Power of Attorney, which Mumba Chilambwe Lwamba was given by Chibwe Lwamba. He stated that on 29th July 2017, he represented Chibwe Lwamba in respect of the property, and that in 2016, the power that was granted to Mumba Chilambwe Lwamba was to specifically process the certificate of title.
- 7.37 It was testified that the Commissioner of Lands did not respond to Chibwe Lwamba's letter. Mumba Chilambwe Lwamba's evidence was that he signed the lease for the property, which was at pages 11-15 of Chibwe Lwamba's bundle of documents, adding that it was dated 26th October, 2016. His evidence was that he acted based on the authority dated 21st July, 2017.
- 7.38 When cross examined further, Mumba Chilambwe Lwamba testified that Chibwe Lwamba had not executed the Power of Attorney authorising him to process the certificate of title for the property at the time.
- 7.39 Page 5 of Chibwe Lwamba's bundle of documents was said to be a letter of offer for the property LUS/13598 which was dated 8th September, 2016, and that pages 3 and 1 of Chibwe Lwamba's supplementary bundle of documents had the same figures, while the figures on page 5 of Chibwe

Lwamba's bundle of documents were different. He agreed that the signatures on the documents were different, and it was testified that Mtwalo Jere signed on the offer letter at page 5 Chibwe Lwamba's bundle of documents.

- 7.40 Mumba Chilambwe Lwamba agreed that the said document which was at page 5 of Chibwe Lwamba's bundle of documents did not state that it was re-print. His continued testimony in cross examination, was that he got the survey diagram which was at page 10 of Chibwe Lwamba's bundle of documents after the Ministry of Lands informed him that they did not have the file for the property, and they asked him to obtain a certified copy.
- 7.41 It was his evidence that he got a copy from Alex Chikwari, the Surveyor, and then submitted it to the Ministry of Lands, after a person from the Survey Department gave him Mr. Chikwari's number.
- 7.42 Mumba Chilambwe Lwamba agreed that the pleadings did not state that he got the survey diagram from Mr. Chikwari, and he was not aware that Mr. Chikwari distanced himself from having issued any letter, as seen on the letter at page 75 of Kelvin Mumbuna Mututwa's bundle of documents, which was dated 28th May, 2018.
- 7.43 The survey diagram at page 10 of Chibwe Lwamba's bundles of documents was said to have a diagram number SD-25533, which was different from the one on the survey diagram at page 4 of Chibwe Lwamba's supplementary bundle of documents. It was that no name was indicated at page 10 of

Chibwe Lwamba's bundle of documents, and that it just indicated that it was signed by a Government Surveyor on 28th June, 2016, which signature was different from that at page 4.

7.44 Mumba Chilambwe Lwamba was unaware that a CTC had a stamp indicating CTC or that the diagram was superseded by another diagram, and it was stated that the survey diagram at page 10 of Chibwe Lwamba's bundle of documents, was supposed to be a copy of the one at page 4 of his supplementary bundle of documents.

7.45 Mumba Chilambwe Lwamba testified that on the document at page 29 of Kelvin Mumbuna Mututwa's bundle of documents, Paul Kachimba addressed the Chief Lands Officer stating that the property had been officially withdrawn. His evidence was that the document at page 17 of Kelvin Mumbuna Mututwa's bundle of documents, looked similar to that which Mr. Chikwari gave him in Order for him to obtain the CTC diagrams, but he could not confirm.

CROSS EXAMINATION BY COUNSEL FOR KELVIN MUMBUNA MUTUTWA- M CHITUNDU

7.46 It was testified that the parties to the lease were supposed to be the President and Chibwe Lwamba. Mumba Chilambwe Lwamba agreed that Chibwe Lwamba did not sign the lease. He also testified, agreeing that Chibwe Lwamba did not complete construction on the property, within Eighteen (18) months of signing the lease.

- 7.47 Whilst agreeing that Chibwe Lwamba authorised him to process the certificate of title, Mumba Chilambwe Lwamba's evidence was that the said certificate of title was not registered at the Lands and Deeds Registry. He however maintained that the property was not repossessed from Chibwe Lwamba, and therefore, he was not challenging the repossession, as it did not happen.
- 7.48 Agreement was however made that Chibwe Lwamba was offered the property in the year 2000, and that he did not complete construction on the said property within Eighteen (18) months of the offer being given to him. Mumba Chilambwe Lwamba testified that that was the position even after the letter of offer was re-printed.
- 7.49 As to when Chibwe Lwamba was last in Zambia, Mumba Chilambwe Lwamba's evidence was that it was around January to February, 2000, and he also stated that Chibwe Lwamba came to Zambia in 2018. Mumba Chilambwe Lwamba's testimony was that the Powers of Attorney were not registered at the Ministry of Lands, but at the High Court, even though the evidence was not before Court.
- 7.50 He was unaware that the Ministry of Lands wanted to cancel the certificate of title, which was issued to Chibwe Lwamba, as it was erroneously issued, but that had not been done, as the matter was in Court.
- 7.51 Mumba Chilambwe Lwamba agreed that when the re-print for the letter of offer was generated, there was no invitation to treat which was also issued. He stated that the letter

which was at page 73 of Kelvin Mumbuna Mututwa's bundle of documents which was dated 15th February, 2018, was authored by the Ministry of Lands to Kelvin Mumbuna Mututwa over cancellation of the certificate of title which was issued to Chibwe Lwamba for the property, and Kelvin Mumbuna Mututwa was advised that as there was a Court case, no action in the matter could be taken.

CROSS EXAMINATION BY COUNSEL FOR THE ATTORNEY GENERAL-MR JERE

- 7.52 In cross examination by Counsel for the Attorney General, Mumba Chilambwe Lwamba testified that an authorization letter, authorises a person to do something. He stated that the letter dated 21st July, 2016, authorised him to process the certificate of title for the property for Chibwe Lwamba. Mumba Chilambwe Lwamba's assertion was that this extended to signing the lease agreement.
- 7.53 It was also his evidence, that a Power of Attorney also authorises one to act on another's behalf. Mumba Chilambwe Lwamba's contention was that the letter and the Power of Attorney had the said effect. He agreed that the documents were not registered at the Ministry of Lands, stating that this was because he was not advised to do so. It was further testified that Chibwe Lwamba owned the property and he did not sign the lease.
- 7.54 The testimony that was also given, was that the letter of authorization enabled Mumba Chilambwe Lwamba to

process the certificate of title, while the Power of Attorney enabled him to commence these proceedings.

CROSS EXAMINATION BY COUNSEL FOR THE ATTORNEY GENERAL-MR KAPULO

7.55 Mumba Chilambwe Lwamba, testified that a certificate of title is evidence of ownership of land. He was not sure whether the certificate of title which was issued to Chibwe Lwamba for the property was issued by mistake. Mumba Chilambwe Lwamba's testimony was that he was unaware that following the withdrawal of the offer of the property to Chibwe Lwamba, Kelvin Mumbuna Mututwa was issued with an invitation to treat for the property, which was at page 29 of Chibwe Lwamba's bundle of documents, or that Kelvin Mumbuna Mututwa paid the amount stated in the said invitation to treat.

7.56 However, when referred to pages 32-34 of Kelvin Mumbuna Mututwa's bundle of documents, Mumba Chilambwe Lwamba agreed that it was a receipt for payment of the amount which was indicated on the invitation to treat. He took the position that despite Kelvin Mututwa Mumbuna having paid the amount on the invitation to treat, he was a trespasser on the property, as he had no documents which indicated that he owned the property.

RE-EXAMINATION OF MUMBA CHILAMBWE LWAMBA

7.57 It was clarified that when Kelvin Mumbuna Mututwa was given an invitation to treat for the property, Chibwe Lwamba had been issued with a certificate of title for the property on

9th January 2017. It was stated that Mumba Chilambwe Lwamba signed the lease, as Chibwe Lwamba on 21st July, 2016 wrote the letter authorising him to process the certificate of title.

7.58 He clarified that the dates on the offers at page 1 of Chibwe Lwamba's supplementary bundle of documents and that at page 5 of Chibwe Lwamba's bundle of documents were different, as they showed when the documents were printed. Further clarity was made, that when the Ministry of Lands issued the notice of intention to re-enter the property on 31st March, 2016, the property had been developed, which was even confirmed on the inspection report which was at page 18 of Kelvin Mumbuna Mututwa's bundle of documents, which was dated 21st March, 2016.

7.59 Further evidence was given in re-examination, that the rates were paid on 9th May, 2016, as seen at page 5 of Chibwe Lwamba's supplementary bundle of documents, about Thirty-Five (35) days later, and the State did not do anything.

PW2-AGATHA BANDA

7.60 This witness was the Chief Registrar at the Ministry of Lands, and she was subpoenaed to testify. Her evidence was that her job included facilitation of issuance of certificates of title, and registration of various transactions relating to land. She also testified that as regards this matter, she wrote some letters relating to the registration of a caveat and ownership of the property.

- 7.61 Page 26 of Chibwe Lwamba's bundle of documents was identified as the letter that Agatha Banda wrote to the Police on 14th March, 2017, stating that Chibwe Lwamba was the owner of the property. She further identified page 29 of Chibwe Lwamba's bundle of documents, as the letter that she wrote to Chibwe Lwamba on 22nd March, 2017, advising him to make payment, so that the caveat could be registered on the property, LUS/13598.
- 7.62 Then at page 33 of the said bundle of documents was the letter that she wrote to Chibwe Lwamba on 12th June, 2017, advising him that the caveat had been registered on the property, after he had written, requesting that it be registered.
- 7.63 It was also Agatha Banda's evidence, that as seen at page 55 of Kelvin Mumbuna Mututwa's bundle of documents, she received an internal memorandum from the Legal Officer at the Ministry of Lands, on 28th March, 2017, who inquired on the status of the caveat on the property in issue, asking for her views as regards the same, before the repossession process could be effected.
- 7.64 Her testimony was that in confirming ownership of the property, she looked at the Lands Register which is printed from the Land Management System and contained information relating to ownership of land. Thus, when she wrote the letter to the police confirming ownership of the land, she had looked at the print out of the Lands Register relating to the property.

- 7.65 Her evidence was that entry No 3 on the Lands Register was the registration of the caveat, and that she could not comment on the caveat, as the property number that was stated in the memorandum was a different one. Thus, she wrote on clarification of the property number.
- 7.66 Agatha Banda further testified that according to the memorandum, comment was sought on the caveat, as repossession of the property had not been done pending confirmation of the caveat.

CROSS EXAMINATION BY COUNSEL FOR KELVIN MUMBUNA MUTUTWA-MR M. KHUNGA

- 7.67 It was Agatha Banda's testimony that her duties did not involve the allocation of land, repossession of land and leasing of land, stating that those were duties of the Commissioner of Lands. She stated that registration of leases went to her, as an instruction from the President, with the presumption that by that time, the Commissioner of Lands had done due diligence, and it was not for her to raise issues.
- 7.68 Agatha Banda agreed that it was not uncommon that leases and certificates of title which had been registered and issued would later be found to have been erroneously issued. She stated that the Courts had guided that it was only the Court that could cancel a certificate of title, thus her office only took note.
- 7.69 Still in cross examination, Agatha Banda testified that the Commissioner of Lands would raise issue of primary leases

and certificates of title, and that the issue before Court related to primary registration, which the Commissioner of Lands dealt with. She agreed that her office later became aware that the certificate of title was erroneously issued to Chibwe Lwamba, and her office was in the process of cancelling the certificate of title.

7.70 Page 35 of the Attorney General's bundle of documents was said to have been written by the Registrar, to Chibwe Lwamba, informing him that the letter of offer was erroneously issued to him, as the payments were made by another client, and Kelvin Mumbuna Mututwa put up developments on the property, and they intended to cancel the certificate of title pursuant to **Section 11 (1) of the Lands and Deeds Registry Act**.

7.71 Agatha Banda agreed that they did not proceed to cancel the certificate of title, in light of the guidance that had been given by the Court. Whilst noting that she was not privy to the procedure on repossession of property, Agatha Banda testified that the State's contention was that the property had been repossessed from Chibwe Lwamba, and that she stood by that position.

7.72 She also stated that she was unaware that Chibwe Lwamba was repossessed of the property twice. Agatha Banda testified it was usual for a property owner to register a caveat on a property, and she named an instance where the owner of the property wanted to prevent fraud and other illegal activities on the property.

- 7.73 Her evidence was that in this case, Chibwe Lwamba indicated that another person was illegally constructing on the property, and the matter had been reported to the Zambia Police. It was Agatha Banda's testimony that her office did not hear from the person who was alleged to be doing the acts.
- 7.74 She further stated that in registering the caveat, they did not hear from the other person. Agatha Banda stated that the law that was used to register the caveat is meant to protect an owners' interest. She went on to testify that her office had no information as regards the person who was constructing on the property, being Kelvin Mumbuna Mututwa, as she was not availed the information which was contained in the letter at page 35 of the Attorney General's bundle of documents at the time.
- 7.75 Agatha Banda testified that had she been given the information at the time, she would have acted differently, by referring the matter to the Commissioner of Lands to clarify on the issue of ownership of the property. She agreed that an official search on the file, as opposed to just looking at the Lands Register carries more weight, when there is a dispute over land.
- 7.76 Her evidence was further that according to the memorandum which was at page 55 of Chibwe Lwamba's bundle of documents, the property could not be found in the system, as it was different from the one that was before Court.

**CROSS EXAMINATION BY COUNSEL FOR THE
ATTORNEY GENERAL-MRS B. KAFUNYA**

7.77 The evidence that Agatha Banda gave, when she was referred to the letter that she wrote to the Zambia Police, which was at page 26 of Chibwe Lwamba's bundle of documents, was that she was not aware that the offer had been withdrawn from Chibwe Lwamba. She also testified that where her office acted on letters of offer, which were issued in error, they would refer the issue to the Commissioner of Lands.

7.78 Her evidence was also that when registering documents, they referred to the documents and the Lands Register. Agatha Banda clarified that she wrote the letter based on the Lands Register, and that she learnt that the property was repossessed after the caveat was registered, and Chibwe Lwamba sought removal of the caveat.

PW3-LUMBWE LWAMBA

7.79 This witness testified that he was employed as a Government surveyor and that he had worked in that position for close to Nine (9) years at the time of his testimony. It was his evidence that he was trained at the University of Zambia as a Geomatic Engineer, and that he started his internship at the Ministry of Lands in 2014.

7.80 Lumbwe Lwamba testified that as a Geomatic Engineer, he dealt with land engineering, land survey and components of civil engineering.

7.81 His continued testimony was that in 2014, Chibwe Lwamba, his elder brother was out of the country, and he had asked

his other elder brother, Mumba Lwamba, to help facilitate the land acquisition process. That was how Lumbwe Lwamba took Mumba Lwamba to the Customer Services office at the Ministry of Lands, as the survey diagram for the property was lost, and they paid to obtain certified copies of the said survey diagram, adding that a receipt was issued.

7.82 It was also his testimony, that he took Mumba Lwamba to the Drawing Office at headquarters, where Mr. Mpotwa on looking at the receipt, advised them that the survey diagrams could only be processed on the written consent of the licenced surveyor who did the survey being given. That was how they were availed the phone number for Alex Chikwari and on calling him, and securing an appointment, Lumbwe Lwamba went with Mumba Lwamba to see Alex Chikwari.

7.83 Lumbwe Lwamba testified that after explaining that they needed certified copies of the survey diagrams, Alex Chikwari had the following week, given them a letter out of gratitude, and Alex Chikwari declined to get the token of appreciation that Mumba Lwamba offered to give him, stating that the property was already paid for, and there was no need.

7.84 Then days later, the certified copies of the survey diagram were approved and scanned. He identified page 17 of Kelvin Mumbuna Mututwa's bundle of documents as a copy of the letter that Alex Chikwari gave them, even though he noted that it was not clear.

CROSS EXAMINATION BY COUNSEL FOR KELVIN MUMBUNA MUTUTWA- MR M KHUNGA

- 7.85 In cross examination, Lumbwe Lwamba testified that other than the Government, he had worked for the United Church of Zambia headquarters from February 2018 to March 2019. He stated that in 2014, he worked as an intern at the Ministry of Lands, and that he graduated from the University of Zambia in 2016. Then in 2019, the Government employed him as a Government Surveyor, and he was based at the Lusaka Province Regional Survey Office.
- 7.86 It was Lumbwe Lwamba's testimony that the Regional Office falls under the Surveyor General, and that as Lands Surveyor, his immediate supervisor was the Senior Lands Surveyor Mr. Mpange. Further in cross examination, Lumbwe Lwamba's evidence was that a CTS diagram is a certified true copy of a survey diagram, and that it is produced by the Surveyor General, when the original is either lost or damaged, for purposes of obtaining a certificate of title.
- 7.87 He told the Court that Alex Chikwari's office was off Cairo Road opposite the Post Office, and he stated that the letter that Alex Chikwari gave them, which was at page 17 of Kelvin Mumbuna Mututwa's bundle of documents was handed over to the Ministry of Lands. Lumbwe Lwamba was unaware that Alex Chikwari had disowned the letter, but when referred to page 75 of Kelvin Mumbuna Mututwa's bundle of

documents, he agreed that that was the letter that Alex Chiwari wrote, disowning the letter.

7.88 His evidence was that the receipt at page 1 of Chibwe Lwamba's bundle of documents was not clear.

CROSS EXAMINATION BY COUNSEL FOR THE ATTORNEY GENERAL-MRS B. KAFUNYA

7.89 There was no cross examination.

7.90 That marked the close of the case for Chibwe Lwamba.

8. KELVIN MUMBUNA MUTUTWA'S CASE

DW1-ALEX CHIKWARI

- 8.1 The first witness who was called by Kelvin Mumbuna Mututwa was Alex Chikwari, a Land Surveyor. He testified that he practiced under the firm, ACM Land Survey Consultants. Alex Chikwari told the Court that he began his practice after he qualified in 1973, and he first worked in the Government from August 1973 up to March 1999. Then, thereafter, he set up his practice.
- 8.2 In terms of what his practice involved, Alex Chikwari stated that it involved cadaster survey, which is surveying land to enable clients obtain certificates of titles for properties. He stated that Stand No LUS/13598 was one of the properties that he was contracted to survey by the Lusaka City Council. Alex Chikwari explained that this was in 1998, when he worked at SP. Mulenga Associates.
- 8.3 The evidence that was given, was that the survey was done and the survey records were submitted for examination and

approval by the Government, through the Survey Department and thereafter, they were given to the owner.

- 8.4 Alex Chikwari could not recall the date when the owner collected the approved survey diagrams, but he recalled that the brother to the owner of the documents collected them. He then changed his position, stating that the owner collected them.
- 8.5 Further in his testimony, Alex Chikwari testified that sometime in 2017 or round about then, Kelvin went to his office with a new letter of offer, and he wanted the survey diagrams for the property. He explained that he had told Kelvin that the owner had taken the survey diagrams and therefore Kelvin had to obtain certified true copies from the office of the Surveyor General.
- 8.6 He added that he had told Kelvin that he could prepare a letter, in Order to allow Kelvin to obtain certified copies of the survey diagrams. That was how he had prepared the letter, and he gave it to Kelvin. Then thereafter, in 2021, Chibwe Lwamba's brother went to see him at his office, claiming that he had seen him earlier.
- 8.7 However, Alex Chikwari denied having seen Chibwe Lwamba's brother earlier. He stated that Chibwe Lwamba's brother wanted him to testify as a witness in relation to a letter that he was purported to have signed. It was testified that Alex Chikwari had told Chibwe Lwamba's brother that he could not testify as a witness, as he did not sign any letter. Alex Chikwari denied that the signature on the purported

letter was his, although it was on his letterhead, and it was addressed to the Surveyor General for the preparation of certified copies of the survey diagram.

- 8.8 He identified page 17 of Kelvin Mumbuna Mututwa's bundle of documents as the said letter. Alex Chikwari also testified that he wrote a letter denying that he had authored the letter, and he identified page 75 of Kelvin Mumbuna Mututwa's bundle of documents as the said letter.
- 8.9 His evidence as regards the survey diagram which was at page 10 of Chibwe Lwamba's bundle of documents, was that it was not a certified copy of the original survey diagram. In so testifying, Alex Chikwari stated that if it was a certified true copy, the name of the Surveyor General should have been typed on the document and not signed, as was the position on the document. It was Alex Chikwari's testimony that the late Leonard Chunga signed as Government Surveyor on the document.
- 8.10 Further in his testimony, Alex Chikwari told the Court that the document should have had a Government stamp, and that the one on the document was not the stamp which was used by the Survey Department. On what other features the certified true copy should have had, Alex Chikwari's evidence was that it should have had a stamp, indicating that it was approved in line with **Section 33 of the Land Survey Act**.
- 8.11 He testified that he could only confirm the other details if he saw the original survey diagram that he had prepared. Alex Chikwari in his continued testimony, stated that the survey

diagram at page 4 of Chibwe Lwamba's bundle of documents was signed by the late Fanwell Muyoya. He stated that the CTC was supposed to bear Fanwell Muyoya's names, and not Leonard Chunga's names.

8.12 The further evidence that was given, was that the date of approval should have read as 11th January, 2001, and not 23rd July, 2016. Alex Chikwari also stated that the diagram should have read as number 5454 of 2000 and not SD25533 of 2016.

8.13 Alex Chikwari also testified that the map reference on the document was SNT 1528 A4 and not PN4088. With regard to the extent of the land, he stated that page 4 showed that it was 626 square meters, while on page 10, it was indicated as 624 square meters. It was also his testimony that the CTC diagram was prepared as if it was an original diagram.

8.14 In concluding his testimony, Alex Chikwari told the Court that a supercede diagram is prepared when you are replacing a diagram with imperial measurements with one with metric measurements. He stated that a supercede diagram will bear a different diagram, while a CTC diagram maintains its' original diagram number.

8.15 It was further stated that a supercede diagram is stamped as such, to show that it is not an original diagram as the original diagram has been replaced.

CROSS EXAMINATION BY COUNSEL FOR THE ATTORNEY GENERAL

8.16 There was no cross examination.

**CROSS EXAMINATION BY COUNSEL FOR CHIBWE
LWAMBA**

- 8.17 It was Alex Chikwari's evidence in cross examination that Kelvin Mumbuna Mututwa approached him to obtain a CTC diagram. Whilst stating that he had written a letter authorising that the said CTC be obtained, Alex Chikwari agreed that the letter was not before Court. He agreed that as the letter was not before Court, the Court would not have the opportunity to see how he had worded the letter or indeed note how he signed.
- 8.18 It was his evidence, that his work as a surveyor was reported to the Surveyor General, and sometimes to the police. Alex Chikwari also testified that he worked to earn money and he could not decline money as he used stationary. He nevertheless denied having met the people in 2016. He explained that the new numbering used SD before the number, unlike previously.
- 8.19 Further in cross examination, Alex Chikwari stated that when a new diagram was prepared on a survey that he did, it needed his approval to show that he was paid for the services. The evidence that he also gave, was that a supercede is prepared from an already existing diagram and that in such a case, his approval was not required, as a diagram was already existing. Therefore, he played no role in a supersede diagram.
- 8.20 On being referred to the survey diagrams at page 10 of Chibwe Lwamba bundle of documents and P4 of Chibwe

Lwamba's supplementary bundle of documents, Alex Chikwari testified that the two documents had different names of Government Surveyors who were both deceased. He explained that where the Government Surveyor was deceased and it was a CTC, the Surveyors name would be typed on to the document.

- 8.21 He further testified that for approval, there was a stamp and the Government Surveyor signed. Alex Chikwari added that a CTC was not signed, but that it was signed on the stamp. He told the Court that Willis Musonda was employed as his Accountant, and that he was deceased. In that regard, he explained that he employed him in 2009 after they both left SP Mulenga Associates, and that Willis Musonda left his employment in 2015, and he died in June, 2021.

RE-EXAMINATION OF ALEX CHIKWARI

- 8.22 In re-examination, Alex Chikwari clarified that the survey diagram at page 10 of Chibwe Lwamba's bundle of documents had the name of the Surveyor typed, and the date stamp was from Bank of Zambia, when it should have been from the Surveyor Department as a CTC, where the Surveyor signs.

DW2- LOVENESS LUMPA CHIBEZA

- 8.23 This witness testified that Kelvin Mumbuna Mututwa was building next to her plot. She stated that she met him around 2014 when he first started building, and he would ask to draw water from her home, as he was starting the construction. Loveness Lumpa Chibeza also testified that the

area was open, and that it had been like that in 2010 when she moved there, and she was even cultivating there.

- 8.24 Her evidence was further that on the right side, there was a neighbour, James Mayuni, who moved there Two (2) weeks before she shifted into her house. Other persons who were stated as living in the area, were Linda Mweene who was stated as living after James Mayuni. Loveness Lumpa Chibeza's testimony was that at the time of her testimony, Kelvin Mumbuna Mututwa had built up to roof level and he had bought planks and roofing sheets.

**CROSS EXAMINATION OF LOVENESS LUMPA CHIBEZA
BY COUNSEL FOR THE ATTORNEY GENERAL**

- 8.25 In cross examination by Counsel for the Attorney General, Loveness Lumpa Chibeza testified that Kelvin Mumbuna Mututwa started constructing in 2014. It was her evidence that he put up the foundation on the property, and that prior to that, a lady wanted to put up a foundation on the property. However, as she had planted maize, she had told the lady to wait until the maize was harvested. Then the lady, whose names she did not recall, went and never returned.

**CROSS EXAMINATION BY COUNSEL FOR CHIBWE
LWAMBA**

- 8.26 Loveness Lumpa Chibeza in cross examination by Counsel for Chibwe Lwamba testified that according to herself, development of the property started in 2014. She explained that the foundation was laid and thereafter, there was

construction. Then between 2016-2017, the property was developed to roof level.

DW3-KELVIN MUMBUNA MUTUTWA

- 8.27 In his testimony, Kelvin Mumbuna Mututwa testified that his wife and himself came across an advertisement in the Zambia Daily Mail newspaper on 12th June, 2013, in which the Ministry of Lands notified Chibwe Lwamba of its' notice of intention to re-enter his property, LUS/13598 for failure to develop it. Page 1 of his bundle of documents was identified as the said advertisement.
- 8.28 He added that the property was at number 5 on that document, and himself and his wife developed interest in the property. Thus, they inquired through the office of the Commissioner of Lands about the said property and others which were captured in the advertisement. Kelvin Mumbuna Mututwa's evidence was that he was informed that the property LUS/13598 was still at offer stage in Chibwe Lwamba's names, who had outstanding ground rent payment for the said property, and that the property was not developed at all.
- 8.29 It was also his testimony, that the office of the Commissioner of Lands had informed him that the property was once withdrawn and repossessed from Chibwe Lwamba in 2011 for failure to develop it, and that Chibwe Lwamba had neglected to pay ground rent, having last paid ground rent in October 2000 in the amount of K14.00.

- 8.30 Still in his testimony, Kelvin Mumbuna Mututwa stated that he was advised to go to the Survey Department so that he could be availed a site plan for the property to establish where it was located. Thus, on being availed the site plan, he went with his wife to search for the property, and they found Mr. and Mrs Mate on the adjacent property being LUS/13599. He stated that he found that the property LUS/13598 was not developed at all.
- 8.31 That was how himself and his wife, wrote an application letter to the Commissioner of Lands so that they could be offered the property. It was testified that in the application, highlight was made that the property had not been developed and that ground rent had not been paid for the property. Page 2 of Kelvin Mumbuna Mututwa's bundle of documents was identified as the application letter that was written to the Commissioner of Lands on 8th August, 2013.
- 8.32 He went on to testify that when follow up was made with the office of the Commissioner of Lands, Kelvin Mumbuna Mututwa was advised that land agency had been given back to the Lusaka Council, and he was referred there. It was Kelvin Mumbuna Mututwa's evidence that himself and his wife wrote to the Town Clerk at the Lusaka City Council on 20th August, 2013 seeking recommendation to be allocated the property, with page 3 of his bundle of documents being identified as the said letter.
- 8.33 Kelvin Mumbuna Mututwa told the Court that the Town Clerk advised him that the application would only be

processed when the full Council sat. That was how he started waiting and in 2014, the Town Clerk advised him that the full Council sat on 14th February, 2014, and had approved the application for LUS/13598.

- 8.34 Kelvin Mumbuna Mututwa testified that a recommendation letter was written by the Town Clerk on 9th March, 2014 to the Commissioner of Lands for survey to determine the extent of the property, so that an offer letter could be issued. He added that an Annexure A certificate was signed by the Town Clerk on 3rd April, 2014, which highlighted the minutes of the full Council meeting under minute number C/152/02/14, and he was given a copy.
- 8.35 It was testified that the documents were submitted to the Commissioner of Lands for processing of the letter of offer. Page 14 of Kelvin Mumbuna Mututwa's bundle of documents was identified as the letter of recommendation that the Town Clerk wrote to the Commissioner of Lands, which was dated 9th March, 2014, adding that his name and his wife's names appeared at number 1.
- 8.36 He also stated that extract of minutes of the PWD Committee of the Council were at pages 9-13, which recommended allocation of the property, as the property had been repossessed, and it fell under the jurisdiction of the Lusaka City Council. The evidence that was also given, was that the extract of the minutes of the full council meeting which was held on 17th February 2014, were at pages 11-13, and which

showed that the allocation of the property to Kelvin Mumbuna Mututwa was approved.

8.37 Pages 5-8 of Kelvin Mumbuna Mututwa's bundle of documents was identified as the Annexure A Form, which was his application for the property. He testified that after the documents were lodged at the Ministry of Lands, the process to issue the letter of offer started. Then a Lands Officer, Mwansa, informed him that the Commissioner of Lands would repossess the property, so that a letter of offer could be issued, and that process would take about Two (2) weeks.

8.38 Kelvin Mumbuna Mututwa's evidence was that with that assurance, he engaged an architect, Mr. Sakala, to do a plan for the house, and after that was done, the property was cleared and materials for construction were bought. It was testified that they started digging the foundation for two in one flats, and they built a box and they back filled. However only a slab was done on one flat and construction was done up to wall plate level.

8.39 Then thereafter, construction was done on the other flat also up to wall plate level, and in 2017, they put window frames and door frames in one flat. Kelvin Mumbuna Mututwa testified that they applied for building permission from the Lusaka City Council, and they paid scrutiny and inspection fees. He stated that the Council approved the application and numbered their property as 238-2017.

- 8.40 He identified pages 47-53 of his bundle of documents as the documents that were submitted to the Lusaka City Council adding that the approval was indicated on the top left corner at page 47, which was given on 5th April, 2017.
- 8.41 Kelvin Mumbuna Mututwa referred to page 1 of his supplementary bundle of documents, which was dated 18th August, 2020, as being receipts for the payment of the scrutiny fee of K56.16 and building fee of K112.74.
- 8.42 His continued testimony was that in 2014 when follow up was made over the offer letter, the new Lands Officer Namukale informed him that the file for the property could not be found. Thus, after several follow ups, Kelvin Mumbuna Mututwa in November 2015, complained to the Legal Department, which was manned by Paul Kachimba who directed the Registry to open a temporary jacket.
- 8.43 He stated that he was asked to submit his documents, being the application to the Commissioner of Lands and minutes of the Council meetings, the Town Clerk's letter, Annexure A Form, as well as his national registration card and that for his wife. Kelvin Mumbuna Mututwa testified that the file was referred to the Estates Department as construction had already commenced on the property, so that an inspection report could be done.
- 8.44 It was testified that the inspection report was done in March 2016, which was at pages 18-20 of Kelvin Mumbuna Mututwa's bundle of documents. Kelvin Mumbuna Mututwa stated that the report indicated that himself and his wife

were developing the property. Then at page 19, it showed a side view of the slab, and a flat which had been constructed up to wall plate level. Kelvin Mumbuna Mututwa denied that Chibwe Lwamba put up a foundation on the property, stating that himself and his wife did so.

- 8.45 He contended that Chibwe Lwamba had not adduced any evidence to support his assertion that he put up any developments on the property. It was added that when the Ministry of Lands inspected the property in 2011, they found that the property had not been developed, and it withdrew the offer of the property to Chibwe Lwamba. Kelvin Mumbuna Mututwa identified page 5-7 of the Attorney General's bundle of documents as the inspection for 2011.
- 8.46 Still in his testimony, Kelvin Mumbuna Mututwa stated that Chibwe Lwamba in the letter that he wrote to the Ministry of Lands, asked for time to develop the property, as he was out of town, as seen in the said letter, which was at page 9 of the Attorney General's bundle of documents, and was dated 23rd December, 2011. He explained that the said letter was written in response to the notice of intention to withdraw the offer, which was at page 8 of the same bundle of documents, which was dated 22nd October, 2011.
- 8.47 Kelvin Mumbuna Mututwa also in his testimony stated that in the letter at page 10 of the said bundle of documents, the Ministry of Lands gave Chibwe Lwamba Three (3) months to develop the land, otherwise it would be repossessed. However, Chibwe Lwamba did not develop the property, and

on 12th June, 2013, another notice of intention to repossess the property was given, as seen at pages 11-13 of the Attorney General's bundle of documents.

- 8.48 His evidence was that after the inspection report of March, 2016, which established that himself and his wife were developing the property, the offer of the property to Chibwe Lwamba was withdrawn by the Commissioner of Lands. Kelvin Mumbuna Mututwa testified that the said letter was at page 23 of the Attorney Generals' bundle of documents, which was a notice of intention to withdraw the offer of the property, for failure to pay ground rent and for failure to develop the property.
- 8.49 He added that in the letter, Chibwe Lwamba was given Thirty (30) days to show cause. However, he did not show cause and the offer was withdrawn. That was how, an offer was issued to Kelvin Mumbuna Mututwa, and Namukale sent Kelvin Mumbuna Mututwa to Mrs Musenge's office. However, Mrs Musenge had informed Kelvin Mumbuna Mututwa that the property was in Chibwe Lwamba, her brother's name, and she had asked him why he was developing the property.
- 8.50 It was stated that in response, Kelvin Mumbuna Mututwa had stated that he was developing the property as it had been repossessed. He explained that he went to see the Assistant Commissioner, Chazya Silwamba, who called for the file relating to the property. It was further stated that Chazya Silwamba informed Kelvin Mumbuna Mututwa that

the consideration fees had been calculated, but they were quite high as Kelvin Mumbuna Mututwa had developed the property before an offer was issued.

- 8.51 Thus, he was asked if he was ready to pay K18, 597.83 as consideration fees, and he agreed, and that was how on 13th October, 2016, an invitation to treat was issued in his favour for LUS/13598, and it omitted his wife.
- 8.52 Kelvin Mumbuna Mututwa testified that he accepted the invitation to treat by paying the K18, 597.83 in full, as seen at pages 32-34 of his bundle of documents. Then as his wife's name had been omitted, Kelvin Mumbuna Mututwa on 9th January, 2017, applied that she be included on the offer letter. He stated that Namukale S. Chewe advised him to check the following week, as she needed to seek authority to include his wife on the offer letter.
- 8.53 However, when he went there, he was informed that his names were no longer appearing in the system but that Chibwe Lwamba's names were appearing. With reference to pages 37-38 of his bundle of documents, Kelvin Mumbuna Mututwa said that he wrote that letter to the Assistant Commissioner, who informed him that investigations would be instituted to establish why Chibwe Lwamba's names still appeared as offeree of the property, when the property had been repossessed.
- 8.54 He added that he was advised that no transactions could be done on the property until the investigations were concluded. It was Kelvin Mumbuna Mututwa's testimony

that he later discovered that a certificate of title had been issued to Chibwe Lwamba for the property even after the property had been repossessed from him.

- 8.55 He also testified that during that period, Chibwe Lwamba's attorney reported him to the police at Woodlands and the Lusaka City Council, alleging that he was a trespasser on the property who was developing it. The testimony that was given, was that the Zambia Police and the Lusaka City Council cleared Kelvin Mumbuna Mututwa after he presented his documents.
- 8.56 Kelvin Mumbuna Mututwa still in his evidence, testified that he wrote complaints to various authorities relating to the fraudulent issuance of the certificate of title to Chibwe Lwamba.
- 8.57 In that regard, the assertion was that the certificate of title was issued on the basis of a letter which was purportedly issued by Alex Chikwari of ACM Land Property Consultants authorising the Surveyor General to prepare certified true copies of the survey diagram that he had prepared for the property, when in fact, Alex Chikwari did not write the said letter.
- 8.58 He further alleged that the certificate of title was procured on the basis that Chibwe Lwamba was paying ground rent when in fact, the last payment that was made for ground rent for the property was in October 2014, when he paid K14.00. Kelvin Mumbuna Mututwa also testified that the purported payment of ground rent in the sum of K1,100.00

that Chibwe Lwamba made on 9th May, 2016, was after the property had been repossessed from him between April and 7th May, 2016.

8.59 Page 5 of Chibwe Lwamba's further supplementary bundle of documents was identified as the receipt for the payment of ground rent in the sum of K1, 100.00. Kelvin Mumbuna Mututwa also contended that the certificate of title was procured on the basis of a letter of offer which was issued to Chibwe Lwamba on 8th September, 2016. However, at that time, the property had been successfully repossessed from Chibwe Lwamba. It was stated that the letter of offer dated 8th September, 2016, was purportedly a re-print of the one which was issued in 2000, when in fact the figures on the documents differed. The evidence that was given was that the letter of offer dated 8th September, 2016, had no preparation fees and registration fees, but only had ground rent fees.

8.60 Kelvin Mumbuna Mututwa stated that the certificate of title was procured on the basis of K18, 605.57, which he paid as seen on the offer letter which was at page 5 of Chibwe Lwamba's bundle of documents. He contended that a reprint of an offer should indicate that it is re-print. Further in his testimony, Kelvin Mumbuna Mututwa told the Court that Mumba C. Lwamba executed the lease on 26th October, 2016, at a time that he did not have a Power of Attorney authorising him to execute the said lease.

- 8.61 With reference to pages 7-15 of Chibwe Lwamba's bundle of documents, it was stated that page 11 was the lease which showed that Mumba C. Lwamba signed on behalf of Chibwe Lwamba. He stated that the Power of Attorney was executed on 29th September, 2017, as evidenced at pages 38-41 of Chibwe Lwamba's bundle of documents.
- 8.62 It was also stated that after Kelvin Mumbuna Mututwa informed the Lusaka City Council and the Ministry of Lands and he appealed to the Director General of the Anti-Corruption Commission (ACC), and the head of State, a task force was constituted to investigate the owner of Stand No LUS/13598 by the Ministry of Lands.
- 8.63 His evidence was that thereafter, the Ministry of Lands wrote to him informing him that the certificate of title was erroneously issued to Chibwe Lwamba, and that redress would be made, and he would accordingly be informed. Page 70 of his bundle of documents was identified as the said letter that he was written.
- 8.64 It was also testified that Chibwe Lwamba was written to and he was informed of the outcome of the investigations, and the intention to cancel the certificate of title which was issued to him. Further testimony was given that Chibwe Lwamba was asked to show cause, within Fourteen (14) days as to why the certificate of title should not be cancelled, and the offer revoked. Page 46 of Chibwe Lwamba's bundle of documents was identified as the letter which was written to Chibwe Lwamba.

- 8.65 However, Chibwe Lwamba commenced these proceedings, and Kelvin Mumbuna Mututwa was advised that administrative action could not be taken as Chibwe Lwamba had sued. Kelvin Mumbuna Mututwa identified the letter at page 73 of his bundle of documents as the letter which was written to him.
- 8.66 His prayer was that the Court should declare him as the rightful owner of LUS/13598, and that the property should be repossessed from Chibwe Lwamba, and be given to him. It was also prayed that the certificate of title which was issued to Chibwe Lwamba should be cancelled, and that Kelvin Mumbuna Mututwa be awarded the costs of the proceedings.

**CROSS EXAMINATION OF KELVIN MUMBUNA MUTUTWA
BY COUNSEL FOR THE ATTORNEY GENERAL**

- 8.67 In cross examination by Counsel for the Attorney General, Kelvin Mumbuna Mututwa testified that on making inquiries on the property, he was advised that it was in Chibwe Lwamba's name, and that it was at offer stage. However, there were outstanding ground rent bills on the property. He reiterated that the property was repossessed from Chibwe Lwamba for non-development.
- 8.68 It was also testified that when Kelvin Mumbuna Mututwa went to the site, he found no development on the property. His evidence was that he was aware that the offer of the property was in Chibwe Lwamba's name, and that he saw

the advert that was placed in the newspaper of the intention to withdraw the offer.

- 8.69 Kelvin Mumbuna Mututwa agreed that the advert was a notice of intention to withdraw the offer, and not a withdrawal of the offer. When referred to page 2 of his bundle of documents, Kelvin Mumbuna Mututwa stated that he reacted to the notice of intention to withdraw the offer by making an application for the property which was at that page. It was evidence that according to the application, he was aware that the property had to be repossessed before it could be offered to him, adding that that was the procedure.
- 8.70 Kelvin Mumbuna Mututwa agreed that he had not received an offer for the property, but testified that he was given an invitation to treat, which was at page 26 of his bundle of documents. Whilst agreeing that on number 3 of that document, it indicated that upon payment he would be issued with a letter, that had not been done, due to the Court case. He was unaware of any proceedings in which the Ministry of Lands had halted the issuance of the letter of offer to him.
- 8.71 Kelvin Mumbuna Mututwa alleged that Chibwe Lwamba illegally re-possessed the property from him as the rightful owner, using officers from the Ministry of Lands by having his name removed from the system, and coming up with a purported letter of offer as a re-print, which was dated 8th September, 2016.

- 8.72 It was also his evidence that prior to that, Chibwe Lwamba obtained an inspection report which stated that he was developing the property. Kelvin Mumbuna Mututwa alleged that he was the owner of the property based on the invitation to treat, and the fact that he made an application for the land at the Lusaka City Council. He agreed that the recommendation letter from the Council which was at page 13 of his bundle of documents, was not a letter of offer.
- 8.73 Further, Kelvin Mumbuna Mututwa acknowledged that the Commissioner of Lands could accept a recommendation for an offer of land or not, but his position was that he received feedback from the Commissioner of Lands through the invitation to treat. It was further Kelvin Mumbuna Mututwa's evidence in cross examination, that the property was repossessed twice from Chibwe Lwamba in October 2011 for non-development.
- 8.74 He stated that the letter at page 21 of his bundle of documents, which was dated 31st March, 2016, was one of the letters that withdrew the offer of the property to Chibwe Lwamba. Kelvin Mumbuna Mututwa also testified that Paul Kachimba directed Regina to create a temporary jacket file as the original file had disappeared.
- 8.75 He stated that according to his knowledge, Thirty (30) days is given for intention to withdraw an offer, and Ninety (90) days where one has a certificate of title. On being referred to the letters at pages 8-9 of the Attorney General's bundle of documents, Kelvin Mumbuna Mututwa testified that page 8

was dated 22nd October, 2011, and Chibwe Lwamba's address on the said letter was indicated as 31908. Then on the letter that Chibwe Lwamba wrote on 23rd December, 2011, at page 9, his address was indicated as UNAIDS.

8.76 Kelvin Mumbuna Mututwa agreed that the address at page 9 was not the same as that at page 8. It was stated that on the reply at page 10, the Lands Officer addressed the letter to Chibwe Lwamba of CO/NU AIDS, and not the registered mail address. He however denied that Chibwe Lwamba's last known address was that at page 9.

8.77 It was contended that the lease and the certificate of title were based on the consideration that Kelvin Mumbuna Mututwa paid. He stated that the lease was purportedly signed on 26th October, 2016, and he paid the consideration fees on 9th January, 2017.

8.78 Kelvin Mumbuna Mututwa maintained that the letter of offer which was at page 5 of Chibwe Lwamba's bundle of documents was a purported letter of offer, and that it referred to receipt number 11444, which was not issued to him. He agreed that page 1 of Chibwe Lwamba's supplementary bundle of documents was an offer letter which was dated 23rd October 2000, and that page 3 of the same bundle of documents was a receipt number 11444, which was the receipt number on the letter of offer which was at page 5 of Chibwe Lwamba's bundle of documents.

8.79 The testimony that Kelvin Mumbuna Mututwa also gave, was that on the letter of offer at page 5 of Chibwe Lwamba's

bundle of documents, no consideration, preparation and registration fees were indicated. His position was that where one is re-offered the land they have to pay twice, and therefore, a re-print has to bear the same fees as on the initial letter of offer.

8.80 The contention was also that the fees on the re-print had to be in re-based figures. It was Kelvin Mumbuna Mututwa's evidence that one should not pay for a re-print, but he contended that page 5 of Chibwe Lwamba's bundle of documents was not a re-print.

8.81 He agreed that pages 25-27 of the Attorney General's bundle of documents was an affidavit in which Chibwe Lwamba had deposed that he had lost the offer letter. Further agreement was made, that page 26 was a police report which was dated 25th August, 2016, which indicated that the letter of offer was lost. Then page 27 was a request for a re-print, while page 28, was the letter of offer after Chibwe Lwamba requested for a re-print.

8.82 Kelvin Mumbuna Mututwa however took the position that the re-print of the letter of offer was erroneously issued. He testified that he started building on the property in 2014, and that at that time, the property had not been offered to him. Kelvin Mumbuna Mututwa denied that he was building on someone else's property, and he told the Court that as at 2016, the property was not fully developed, but it was developed.

- 8.83 He added that he had leeway from the Council to develop the property as it was an agent in land alienation. In that regard, Kelvin Mumbuna Mututwa's testimony was that he applied to the Council so that it recommends allocation of the property to him on 20th August, 2013, and the recommendation was made on 17th February, 2014, by a full Council meeting.
- 8.84 That was how the Town Clerk wrote the recommendation letter on 19th March, 2014, and the property was numbered. Kelvin Mumbuna Mututwa testified that based on that, he started building to protect his interest. It was also his testimony, that the Council gave him permission to build, but he agreed that did not have planning permission to build in 2014. Kelvin Mumbuna Mututwa also agreed that page 47 of his bundle of documents, was the application for building permission that he made on 29th March, 2017, way after he started construction on the property.
- 8.85 Further agreement was made, that page 5 of Chibwe Lwamba's bundle of documents, was an offer letter dated 8th September, 2016, while page 26 of his bundle of documents was the invitation to treat to himself which was dated 13th October, 2016.
- 8.86 Still in cross examination, it was testified that Kelvin Mumbuna Mututwa paid the consideration fees on the invitation to treat on 9th January, 2017, and he agreed that he had not produced a certificate of re-entry or the Lands

Register to show that the property was repossessed from Chibwe Lwamba.

- 8.87 Kelvin Mumbuna Mututwa told the Court that investigation was done, which revealed that he was developing the property, and not that he told the officers that he was developing the said property.

**CROSS EXAMINATION OF KELVIN MUMBUNA MUTUTWA
BY COUNSEL FOR CHIBWE LWAMBA- MR W MUHANGA**

- 8.88 Kelvin Mumbuna Mututwa stated that he had never worked at the Ministry of Lands. He did however state that he investigated the property, as he was interested in it. He alleged that the documents for Chibwe Lwamba from 2016, were fraudulent. On being referred to the letter dated 14th March, 2017, which was at page 26 of Chibwe Lwamba's bundle of documents, Kelvin Mumbuna Mututwa stated that in that letter, Agatha N Banda the Acting Chief Registrar advised the Criminal Investigations Officer at Woodlands Police that the property LUS/13598 belonged to Chibwe Lwamba.
- 8.89 As regards the letter at page 76 of his bundle of documents, Kelvin Mumbuna Mututwa's evidence was that the Principal Private Secretary to the President wrote it to the Commissioner of Lands, as the President owns the land. He agreed that he went to State House and that was how the letter was written to the Commissioner of Lands. It was testified that when Kelvin Mumbuna Mututwa wrote the

letter, he only had an invitation to treat, and not a letter of offer.

- 8.90 When referred to his applications for the land which he made to the Commissioner of Lands and the Town Clerk respectively at pages 2-3 of his bundle of documents, Kelvin Mumbuna Mututwa responded that in the letter at page 2, he had stated that the property was still at offer stage. He told the Court that he had the right to apply for a property which had not been developed. It was also his testimony that he had not heard about the Land Policy of 1985.
- 8.91 Kelvin Mumbuna Mututwa explained that he applied for the land to the Commissioner of Lands after he saw the advertisement in the newspaper, and that he only thereafter applied to the Town Clerk after the Commissioner of Lands advised him to do so. He agreed that page 21 of his bundle of documents was the notice of intention to withdraw the property from Chibwe Lwamba, which was dated 31st March, 2016, and that page 8 of the Attorney General's bundle of documents was a notice of intention to withdraw the offer of the property from Chibwe Lwamba, which was dated 22nd October, 2011.
- 8.92 Kelvin Mumbuna Mututwa's testimony was that a re-print is a duplicate, as it bears the same information as the initial document. He agreed that the re-print came after the notice of intention to withdraw the offer of 2011, but stated that it was erroneously issued. Kelvin Mumbuna Mututwa further agreed that a temporary jacket file was issued after the

original could not be found, and therefore he did not see the contents of the original file.

8.93 His evidence as regards page 5 of his bundle of documents was that it was an Annexure Form, which accompanied the recommendations which were made by the Council, while page 14 was the recommendation which was dated 19th March, 2014. Kelvin Mumbuna Mututwa testified that at page 8, was the certificate of the Town Clerk which was dated 17th February, 2014, and that the document had a date stamp for 3rd April, 2014.

8.94 He stated that this was logical, as the recommendation was first made, and thereafter Annexure A was issued. Kelvin Mumbuna Mututwa agreed that when the Council made the recommendation of the offer of the land to him, the property had not been re-entered, although the minutes at page 10 of his bundle of documents, showed that the property had been re-entered.

RE-EXAMINATION OF KELVIN MUMBUNA MUTUTWA

8.95 Kelvin Mumbuna Mututwa clarified that his development of the property was not fatal, as the Ministry of Lands and the Lusaka City Council had no issue over the same. He also stated that Chibwe Lwamba's address at UNAIDS was not registered at the Ministry of Lands.

8.96 That marked the close of the case for Kelvin Mumbuna Mututwa.

9. EVIDENCE BY THE ATTORNEY GENERAL

DW4-KISHA JERE

- 9.1 Kisha Jere, a Legal Officer at the Ministry of Lands was DW4. Her testimony was that amongst her duties were to issue consent to assign properties on behalf of the Commissioner of Lands, and to prepare documentation for repossession of properties by the Commissioner of Lands.
- 9.2 In relation to this case, Kisha Jere testified that Chibwe Lwamba applied for land from the Commissioner of Lands in the year 2000, and was successful. However, Chibwe Lwamba did not develop the land, and in 2011, a notice to withdraw the property was issued. She stated that Chibwe Lwamba responded to the notice in December 2011, and his appeal was successful in January, 2012, when he was given Three (3) months to develop the property.
- 9.3 It was further Kisha Jere's testimony that Chibwe Lwamba still did not develop the property, and in 2016, another inspection was done on the property, which was at page 20 of the Attorney General's bundle of documents. She stated that the findings in that report, were that the property had not been developed, and there were outstanding ground rent bills. Thus, a letter to withdraw the offer was written to Chibwe Lwamba which was posted to his last known address on 7th April, 2016.
- 9.4 Kisha Jere still in her testimony, stated that Chibwe Lwamba did not respond to the letter, and thereafter, a notice to withdraw the property, as well as other properties was issued

in the newspaper. In conclusion, she stated that Kelvin Mumbuna Mututwa at that stage received recommendations from the Lusaka City Council, and he applied for the property.

CROSS EXAMINATION OF KISHA JERE BY COUNSEL FOR KELVIN MUMBUNA MUTUTWA

- 9.5 Kisha Jere on being cross examined, and being referred to pages 5-10 of the Attorney General's bundle of documents, testified that those documents were the inspection report of 2011. Her evidence was that page 6 was a photograph, which showed that there was no development on the property. It was agreed that at page 8, Chibwe Lwamba was given Thirty (30) days to show cause why he had not developed the property.
- 9.6 Further agreement was made, that page 10 showed that Chibwe Lwamba was successful on appeal, on 31st January, 2012, and he was given Three (3) months to develop the property.
- 9.7 Kisha Jere's testimony was that at offer stage, a notice to withdraw the offer is given, premised on the terms in the offer letter, which include development of the land within Eighteen (18) months. Her evidence was that at the stage of the offer, there is no lease.
- 9.8 Still in cross examination, Kisha Jere stated that the lease was at page 4 of the Attorney General's bundle of documents under number 4, and that under number 3, Chibwe Lwamba was required pay ground rent. Further under condition 2,

Chibwe Lwamba was required to pay service charges to the Council. It was stated that the service charges had been paid, but what was in issue was payment of ground rent and non-development of the property.

- 9.9 Kisha Jere testified that for a property which was on title, the terms in the lease are what are applicable for repossession. She agreed that at pages 11-13 of the Attorney General's bundle of documents were notices to withdraw offers and titles, and the offerees were required to make representations in writing. It was also her testimony that the property LUS/13598 appeared as undeveloped in the advertisement, which was dated 12th June, 2013.
- 9.10 Kisha Jere testified that Chibwe Lwamba did not appeal the notice to withdraw the offer of the property which was issued in 2013, and she stated that where a repossession was not challenged, an offer was withdrawn. Page 20 of the Attorney General's bundle of documents was stated as being the inspection report which was dated 14th March, 2016. It was testified that page 23 of the said bundle of documents was a letter which was written to Chibwe Lwamba on 31st March, 2016, giving him notice of intention to withdraw the offer, and it also gave him Thirty (30) days to show cause why the offer should not be withdrawn.
- 9.11 Kisha Jere agreed that page 24 of the said bundle of documents, was postage by registered mail, which was dated 7th April, 2016, and her testimony was that the repossession was effective 7th May, 2016. Her evidence was that Chibwe

Lwamba did not make any representations over the 2016 repossession.

- 9.12 As regards the documents at pages 25-27 of the Attorney General's bundle of documents, it was her evidence that the affidavit at page 25, culminated in the offer letter which was at page 28. However, Kisha Jere stated that the overtures were null and void, as at 7th May, 2016, the property had been repossessed, and the said overtures did not amount to cause being shown why the property should not be repossessed.
- 9.13 In respect of the letter of offer of the property to Chibwe Lwamba, which was at page 4 of the Attorney General's bundle of documents, and was dated 23rd October, 2000, Kisha Jere's evidence was that it contained all the fees that were to be paid, and that the offer of the property to Chibwe Lwamba which was dated 8th September, 2016, and was at page 28 of the Attorney General's bundle of documents, was fundamentally different from the one at page 4, as it did not indicate the consideration fees.
- 9.14 She added that paragraph 5 which was at page 4, did not reflect at page 28, and paragraph 3 at page 4 was different from the one at page 28. Kisha Jere stated that allocation of properties did not fall within her duties. Her evidence was nevertheless that Kelvin Mumbuna Mututwa was allocated the property after it was repossessed.
- 9.15 She testified that the invitation to treat which was at page 29 of the Attorney Generals' bundle of documents was issued

before the letter of offer. It was her evidence that at page 29 of Kelvin Mumbuna Mututwa's bundles of documents, the Lands Officer indicated at folio 9, that the property was withdrawn as postage of the same was sent. Then on page 30, there were writings addressed to Namukale giving a market value of the property to be charged to deter would be offenders.

9.16 Thus, Kelvin Mumbuna Mututwa was charged Three (3) times the value of the property, and he purged the wrong that he had done. Further testimony that Kisha Jere gave, was that a lease is signed by a lessee or by a person conferred with authority by a Power of Attorney and not by a mere letter. She stated that a lease that is signed by another person without a Power of Attorney is defective.

9.17 It was her evidence was that the Power of Attorney which was at page 39 of Chibwe Lwamba's bundle of documents was dated 29th September, 2017, and that the lease which was at page 11 of the same bundle of documents was dated 26th October 2016. However, the signatures on the Two (2) documents were different.

CROSS EXAMINATION OF KISHA JERE BY COUNSEL FOR CHIBWE LWAMBA

9.18 It was stated that the property was offered to Chibwe Lwamba in 2000, and that he complied with the conditions which were stipulated in the offer. When referred to the said offer which as at page 4 of the Attorney General's bundle of documents, Kisha Jere testified that condition number 1

required Chibwe Lwamba to pay K120, 032.00 within Thirty (30) days.

- 9.19 She agreed that the receipt at page 3 of Chibwe Lwamba's bundle of documents evidenced payment of that amount. It was also Kisha Jere's testimony, that an offer could be withdrawn at any stage, and she agreed that condition number 5 of the offer at page 4 of the Attorney General's bundle of documents was that if payment under condition 1 was not made, the offer would lapse after Thirty (30) days.
- 9.20 Her testimony was that an offer would lapse when the conditions under 1 and 3 were not met. Kisha Jere still in cross examination, testified that condition 3 stated that a lease would be for Ninety-Nine (99) years, and she denied that the said condition was only applicable where there was a lease. She did nevertheless agree that condition 7 said that before development is done to land, prior consent of the Town Planning Authority had to be obtained through the Town Clerk.
- 9.21 Kisha Jere, while acknowledging that one needs to obtain a certificate of title to property, testified that it was not a necessity for one to obtain development permission. She stated that registration fees were not for preparation of a certificate of title. It was however clarified that it was not to Kisha Jere's knowledge, as it was not amongst her duties.
- 9.22 Kisha Jere agreed that a lease is part of a certificate of title and that one was bound by the terms of the lease on executing it. Her position was that the notice that gave

Chibwe Lwamba intention to withdraw the offer effected repossession of the property. Kisha Jere agreed that from the letter, Chibwe Lwamba was asked to make representations. Thus, at the date of the letter, the offer had not been withdrawn.

- 9.23 It was agreed that on the letter at page 8 of the Attorney General's bundle of documents, the Legal Officer wrote to Chibwe Lwamba giving notice of intention to withdraw the offer, and used Chibwe Lwamba's postal address 31908 Lusaka. Her testimony was that in the letter in response, which was dated 23rd November, 2011, and was at page 9, Chibwe Lwamba used an email address.
- 9.24 She agreed that a notice of intention to withdraw an offer is sent to enable a person to make representations on the intended re-possession. Kisha Jere testified that the notice is sent to the address on the register, and where the person states that they are. It was agreed that the Lands Officer sent the letter to Chibwe Lwamba using the address NUAIDS, but Kisha Jere could not explain why that address was used, maintaining that they use the address on the register.
- 9.25 Kisha Jere also testified that they wrote on behalf of the Commissioner of Lands, and that at the time the letter was written to Chibwe Lwamba, they were not aware that the address had changed, and Chibwe Lwamba did not inform them in writing that his address had changed. She stated that a period of Ninety (90) days is given to repossess a property which is on title, and which begins to run Thirty

(30) days after the notice of intention to repossess property is given.

- 9.26 It was also her testimony that thereafter, the notice of cancellation is entered on the Lands Register. Kisha Jere's evidence was also that prior to the notice being given, an inspection of the property would have been carried out. It was stated that Chibwe Lwamba asked for a re-print of the letter of offer, which was at page 28 of the Attorney General's bundle of documents, and that it was different from the offer which was at page 4 of the said bundle of documents.
- 9.27 She did however, agree that page 28 acknowledged the fees that were paid at page 4, and was evidenced by the receipt at page 3 of Chibwe Lwamba's supplementary bundle of documents. The testimony that Kisha Jere further gave, was that a person pays consideration fees once, and that annual rent is paid annually. She could not confirm whether Chibwe Lwamba was required to pay consideration and preparation fees.
- 9.28 She made no comment on the letter that Andrea Chuni the Registrar wrote to Chibwe Lwamba on 17th November, 2017, on removal and replacement of remark on the property. Her evidence was that a certificate of re-entry was entered on the Lands Register, and the land would revert to the Commissioner of Lands, who would thereafter be free to allocate the land to someone else.
- 9.29 Kisha Jere went on to state that it depended on the circumstances, whether prior to that, any allocation of land

would be invalid. Still in cross examination, Kisha Jere's testimony was that the land was not offered to Kelvin Mumbuna Mututwa, but that he was given an invitation to treat. She agreed that as at 2016, the property had been developed, but not by the person who was offered the property.

9.30 The position that was taken by Kisha Jere, was that it was appropriate to repossess the property even though it had been developed. She testified that the appropriate sanction for failure to pay ground rent was to repossess the property, depending on the amount accumulated.

9.31 She agreed that the ground rent bills at page 18 of the Attorney General's bundle of documents, and at page 27 of Chibwe Lwamba's bundle of documents stated that outstanding ground rent bills would attract a penalty of 25 percent. Kisha Jere also testified that the lease was not valid as it was signed by Chibwe Lwamba's brother, and not by Chibwe Lwamba himself, and that affected the ownership of the land.

RE-EXAMINATION OF KISHA JERE

9.32 In re-examination, Kisha Jere clarified that condition 4 on a letter of offer did not stop an offeree from developing a property.

DW5-NAMUKALE SIMUNYOLA

9.33 This witness told the Court that she was a Lands Officer at the Ministry of Lands. Her evidence was that the property LUS/13598 is in Libala South, and that it was offered to

Chibwe Lwamba, but the offer was later withdrawn. Namukale Simunyola further testified that thereafter, an invitation to treat was given to Kelvin Mumbuna Mututwa and that Chibwe Lwamba asked for a re-print of the letter of offer, which was done.

- 9.34 However, Namukale Simunyola told the Court that the re-print of the offer was erroneously done by the Ministry of Lands, as the offer was withdrawn. She stated that the realization was made after Kelvin Mumbuna Mututwa went there with a receipt for the payment of the fees on the invitation to treat. She asked the Court to cancel the certificate of title which was issued to Chibwe Lwamba, stating that it was issued in error.

**CROSS EXAMINATION OF NAMUKALE SIMUNYOLA BY
COUNSEL FOR KELVIN MUMBUNA MUTUTWA- MR M.
KHUNGA**

- 9.35 Namukale Simunyola's testimony was that she was the Lands Officer who worked on the file for the property. She testified that when the property was withdrawn from Chibwe Lwamba, it was at offer stage, and not on title. It was explained that when a property is at offer stage, notice is given to an offeree citing the breach, and the intention to repossess the property.
- 9.36 She further testified that a property is physically inspected to ascertain the physical development of the property. When referred to the inspection report at page 5 of the Attorney General's bundle of documents, Namukale Simunyola

testified that according to the report, as at 17th June, 2011, the property was structurally undeveloped.

- 9.37 She further testified that page 8 of the said bundle of documents was a letter which was written to Chibwe Lwamba on 22nd October, 2011, informing him of the intention to withdraw the offer for the property, and he was asked to make representations within Thirty (30) days.
- 9.38 It was agreed that the address on the letter was P.O. Box 31908, which was the same one as that on the letter of offer. Namukale Simunyola agreed that in the letter at page 9 of the said bundle of documents, Chibwe Lwamba made representations to the Commissioner of Lands on 23rd December, 2011, stating that he was capable of developing the land.
- 9.39 Then at page, 10, the Commissioner of Lands rescinded the intention to repossess the property from Chibwe Lwamba. As for page 13 of the Attorney General's bundle of documents, Namukale Simunyola agreed that it was a notice that was given to Chibwe Lwamba, giving him notice of intention to repossess the property which was dated 12th June, 2013, adding it was published in the Zambia Daily Mail. Further testimony was given that Chibwe Lwamba's name appeared at number 221 on the notice, and it was indicated that the property LUS/13598 was undeveloped.
- 9.40 Namukale Simunyola's testimony was that to her knowledge, Chibwe Lwamba did not challenge the notice of intention to repossess the property. Thus, as at 2013, the property stood

repossessed. She explained that for properties that are on title, and the breach is pursuant to **Section 13 (1) of the Lands Act**, the breach relates to conditions in the lease. Then for properties which are at offer stage, the breach relates to the terms of the offer.

- 9.41 Thus, the breach in respect of the property LUS/13598 was non-development, based on the terms of the offer. When referred to pages 18 and 19 of the Attorney General's bundle of documents, Namukale Simunyola stated that at page 19, it showed that Chibwe Lwamba last paid ground rent on 27th October, 2000, in the amount of K14.00, and at page 18, the outstanding ground was indicated as K399.00, as at 13th April, 2015.
- 9.42 She agreed that under note 1, at page 18, it stated that non-payment of ground rent could lead to repossession of the property, without notice. Namukale Simunyola when referred to the inspection report which was at page 20 of the Attorney General's bundle of documents, testified that the said report indicated that inspection of the property was done on 14th March, 2016, and that the report was authored by Gilbert Shula.
- 9.43 She stated that the report indicated that the property was in the names of Chibwe Lwamba on the system. Therefore, the property had not been withdrawn from him, and she could not explain why that was the position.
- 9.44 Namukale Simunyola did however state that a property was withdrawn on the notice period that was stated in the notice

of intention to withdraw an offer lapsing, adding that it was an administrative process. She maintained that notwithstanding that Chibwe Lwamba's name appeared in the system, the offer had been withdrawn from him. It was stated that the letter which was at page 23 of the Attorney General's bundle of documents, was the letter that withdrew the offer, and that it was addressed to P.O Box 31908, with the reason for the withdrawal of the offer, being indicated as failure to develop the property, and to pay ground rent.

- 9.45 The testimony that Namukale Simunyola also gave, was that in the letter, Chibwe Lwamba was asked to show cause why the offer should not be withdrawn, and that page 24 of the said bundle of documents was proof that the letter was sent by registered mail to Chibwe Lwamba on 7th April, 2016, from which date, the Thirty (30) days started running. Her evidence was further that Chibwe Lwamba did not write to the Commissioner of Lands advising that his address had changed, as required.
- 9.46 Thus, where no notification of change of address is given, the last known address will be used. Namukale Simunyola testified that if after the property was withdrawn from Chibwe Lwamba, and he was re-offered the property, there should have been a fresh offer, if he was successful on appeal.
- 9.47 As to what happens when there is a repossession and another person is given an invitation to treat for the said property, if the initial offeree succeeds on appeal, Namukale

Simunyola stated that the person who was given an invitation to treat for the said property will be advised that the invitation to treat has been withdrawn.

- 9.48 It was Namukale Simunyola's continued testimony that page 29 of Chibwe Lwamba's bundle of documents reflected the internal process that went on as regards the property. Her evidence was that the page reflected that the property was formally withdrawn, and that page 9 was proof of postage. She agreed that the Legal Officer, Paul Kachimba, had endorsed that there was lawlessness as the Lusaka City Council had recommended allocation of a property that belonged to someone else.
- 9.49 However, she noted that Paul Kachimba had also stated that now that the property had been legally withdrawn, the property could be offered at market value. Then at folio 12, the property was approved for regularization to Kelvin Mumbuna Mututwa. Namukale Simunyola's testimony was that Kelvin Mumbuna Mututwa was penalized by paying a market value for the property, which was at page 30 of Kelvin Mumbuna Mutuwa's bundle of documents.
- 9.50 Then at folio 14, the market value was reduced by Twenty-Five percent, as Kelvin Mumbuna Mututwa is a Zambian. It was Namukale Simunyola's testimony that at folio 15, she directed that a record for Kelvin Mumbuna Mututwa be created. She explained that it was an application which was created on the system, and that in this matter, it was possible to have Two (2) people in the system for the same

property, as the application to withdraw and the application to create were done at the same time on the ZILMIS system.

9.51 Still on the property, Namukale Simunyola stated that at page 31 of Kelvin Mumbuna Mututwa's bundle of documents, was a checklist which showed the documents that had been checked, in Order for further processing to the Commissioner of Lands to be done, which was dated 13th October, 2016. She added that the invitation to treat which was issued to Kelvin Mumbuna Mututwa was based on page 31.

9.52 It was stated that however, an offer could not be issued to Kelvin Mumbuna Mututwa as Chibwe Lwamba's names appeared on the system. Namukale Simunyola confirmed that Chibwe Lwamba wrote a letter asking for a re-print of the letter of offer, and it was re-printed. Her evidence was that ideally, one file should exist for a property, but when that file cannot be found, a temporary file is opened, after approval by the Commissioner of Lands or a senior officer. It was stated that a temporal file should retain what is on the original file, and not introduce new things altogether.

9.53 With regard to this matter, Namukale Simunyola could not confirm whether approval was given to open a temporary file or whether what was contained on the temporal file was what was on the original file. She did however state that neither the temporal file nor the main file pointed to Kelvin Mumbuna Mututwa being the owner of the property.

- 9.54 It was further Namukale Simunyola's testimony that at page 30, the Head of Valuation endorsed on 12th October, 2016, that they should proceed without reducing the Twenty-Five (25) percent. She stated that that was how the invitation to treat to Kelvin Mumbuna Mututwa was generated, which was before the lease was issued.
- 9.55 However, a day later, the temporary file was acted on to prepare a lease for Chibwe Lwamba, based on the re-print of the letter of offer, which was erroneously issued. Namukale Simunyola stated that based on that, page 31 of Kelvin Mumbuna Mututwa's bundle of documents was equally erroneous.
- 9.56 She agreed that the inspection report which was at page 18 of Kelvin Mumbuna Mututwa's bundle of documents, and was dated 21st March, 2016, showed that the inspection was done on 14th March, 2016, and that Kelvin Mumbuna Mututwa and Otilia Hamabele Mututwa were developing the property.
- 9.57 Namukale Simunyola's evidence was that the inspection report at page 22 of Kelvin Mumbuna Mututwa's bundle of documents was also an inspection report which was done by Precious Katilo, a Ground Rent Collector who inspected the property on 6th September, 2016, and found that Chibwe Lwamba was developing the property.
- 9.53 She agreed that page 44 of Kelvin Mumbuna Mututwa's bundle of documents was yet another inspection report, which was done by Edwin C. Banda, an Estates and

Valuation Officer after he inspected the property on 23rd February, 2017, and found that Two (2) semi-detached flats were being built by Kelvin Mumbuna Mututwa.

9.59 It was stated that an Estates and Valuation Officer is more senior than a Ground Rent Collector, and that the last inspection report was done to establish or verify who was developing the property. Namukale Simunyola agreed that she wrote the document which was at pages 41-42 of Kelvin Mumbuna Mututwa's bundle of documents to the Chief Lands Officer on 31st January, 2017, indicating that there was a temporary file, which was at cross purpose with the main file.

9.60 Her evidence was that in response, the Chief Lands Officer had responded that there was a dispute as to who was developing the property. Namukale Simunyola explained that the date on a reprint of an offer will be different, and that some of the details on it will differ, if it is printed on the ZILMIS system. She stated that a property can be developed even if it is at offer stage. Namukale Simunyola testified that the lease date is the date on which the property is leased in the system.

**CROSS EXAMINATION OF NAMUKALE SIMUNYOLA BY
COUNSEL FOR KELVIN MUMBUNA MUTUTWA-MR B.J
MULENGA**

9.61 Namukale Simunyola stated that the re-print of the letter of offer, was the basis of the issuance of the certificate of title to Chibwe Lwamba. She agreed that such a certificate of title

could be cancelled, as it had no legal basis. Her testimony was that the property was properly granted to Kelvin Mumbuna Mututwa, as there was approval that was given in his favour.

9.62 Further agreement was made, that as endorsed at page 29 of Kelvin Mumbuna Mututwa's bundle of documents, there was lawlessness in the Council allocating the property as well as the person who was recommended. It was also stated that it was wrong to have developed the property based on the recommendation by the Council. She testified that however, there was atonement by offering the property at market value, and approval was given to regularize the allocation of the property.

9.53 Namukale Simunyola's continued evidence was that she was not better placed to speak about the building permission which was given to Kelvin Mumbuna Mututwa, stating that the Local Authority was better placed to talk about that.

**CROSS EXAMINATION OF NAMUKALE SIMUNYOLA BY
COUNSEL FOR CHIBWE LWAMBA- MR W MUHANGA**

9.64 It was Namukale Simunyola's evidence that she agreed that the letter of offer, spoke to development of the property, but that she was not competent to speak to the development that was done in this matter. Her testimony was that as Lands Officer, her duties included scrutiny of documents, but not making recommendations for the cancellation of certificates of title, stating that she did not have such power.

- 9.65 It was also her testimony, that she did not have power to withdraw a lease which was duly issued. Namukale Simunyola agreed that in the letter, which was at page 31 of the Attorney General's bundle of documents, Kelvin Mumbuna Mututwa had on 18th January, 2017, written complaining about the delayed issuance of a letter of offer for the property, and that she was the Lands Officer who was mentioned in that letter.
- 9.66 Namukale Simunyola stated that she noted that a certificate of title had been processed in Chibwe Lwamba's name and she further discovered that there was erroneous re-print of the letter of offer before she came to Court. She agreed that the letter which was written to the Chief Lands Officer was not before Court.
- 9.67 When referred to the letter at page 38 of the Attorney General's bundle of documents, which was written to the Chief Registrar on 20th November, 2017, by Messrs AKM Legal Practitioners, requesting for the removal of and replacement of a remark on the property, Namukale Simunyola testified that she was not privy to the letter. Her evidence was that the Lands Register shows ownership of property.
- 9.68 It was her testimony when she was referred to the Lands Register at page 36 of Chibwe Lwamba's bundle of documents, that it showed that a certificate of title was issued to Chibwe Lwamba, and that it did not state that there was an erroneous re-print of the letter of offer. She

agreed that at entry number 3 on the said Lands Register, the Registrar had registered a caveat on the property on 25th April, 2017, which caveat was dated 28th March, 2017.

- 9.69 Namukale Simunyola was unsure whether the Chief Registrar could enter a caveat on the property. She agreed that at page 33 of Chibwe Lwamba's bundle of documents was a letter from the Ministry of Lands, which was dated 12th June, 2017, which informed him that a caveat had been placed on the property as requested.
- 9.70 The writings at pages 29 and 30 of Kelvin Mumbuna Mututwa's bundle of documents were said to have been made in 2016, and that the letter at page 33 of Chibwe Lwamba's bundle of documents was dated 12th June, 2017. Namukale Simunyola's evidence was that the Chief Registrar has a mandate to confirm ownership of property.
- 9.71 Her testimony was also that at page 29 of Kelvin Mumbuna Mututwa's bundle of documents, the said Kelvin Mumbuna Mututwa was recommended as the applicant, on the basis that he was building on a property that was not his. It was agreed that in the letter at page 37 of the Attorney General's bundle of documents, Kelvin Mumbuna Mututwa was notified by the Chief Lands Officer on behalf of the Commissioner of Lands on 13th November, 2017, that he would be advised on the issuance of a certificate of title for the property, following the appeal letter that he had written.
- 9.72 Namukale Simunyola agreed that the letter that Kelvin Mumbuna Mututwa wrote was not in the bundle of

documents. Whilst agreeing that the inspection report which was at page 20 of the Attorney Generals' bundle of documents, and the one which was at page 18 of Kelvin Mumbuna Mututwa's bundle of documents were the same, Namukale Simunyola agreed that the one which was at page 20 of the Attorney General's bundle of documents, had no date, unlike the one which was at page 18 of Kelvin Mumbuna Mututwa's bundle of documents.

9.73 She had no comment to make on the discrepancy, but stated that the inspection was done on 14th March, 2016. The letter at page 23 of the Attorney General's bundle of documents was said to have been written on 23rd March, 2016, after the date of the inspection, giving notice of intention to withdraw offer of the property to Chibwe Lwamba.

9.74 The testimony given was that the invitation to treat which was at page 29 of Kelvin Mumbuna Mututwa's bundle of documents was dated 13th October, 2016. Namukale Simunyola agreed that her testimony was that the offer was withdrawn by advertisement and she stated that an advertisement is an invitation to withdraw an offer. Further agreement was made that as at 2016, the offer to Chibwe Lwamba was still valid, and that the offer was not fully withdrawn.

9.75 Namukale Simunyola's evidence was also that ground rent is outstanding to a person with an offer, as is development of a property. She could not recall that there was a letter withdrawing the offer to Chibwe Lwamba other than the

advertisement, as he did not respond to the advertisement. She stated that the Legal Officers were the persons who withdrew offers, and therefore, they were the persons that could competently answer.

**CROSS EXAMINATION OF NAMUKALE SIMUNYOLA BY
COUNSEL FOR CHIBWE LWAMBA-MR C. MWEEMBA**

- 9.76 It was stated that the land was offered to Chibwe Lwamba on conditions. Namukale Simunyola could not confirm whether Chibwe Lwamba complied with the terms of the offer which were at page 4 of the Attorney General's bundle of documents, and page 3 of Chibwe Lwamba's supplementary bundle of documents, as she did not check the system to establish whether he had started developing the property.
- 9.77 She agreed that page 3 of Chibwe Lwamba's supplementary bundle of documents was a receipt for payment of the fees, and that included in those fees, were preparation fees so that when one submitted a survey diagram, the Ministry of Lands prepared a certificate of title.
- 9.78 Namukale Simunyola also testified that the offer for the land, did not show the size of the land, but that it provided that within Nine (9) months, the foundation should have been built and building completed within Eighteen (18) months.
- 9.79 Further agreement was made, that condition 7 required that prior consent of the Town Planning Authority had to be obtained before one started building. Therefore, before consent was obtained, one could not start building. Namukale Simunyola could however not answer what

documents one needed to submit in Order to obtain planning authority.

9.80 When referred to pages 39-40 of Kelvin Mumbuna Mututwa's bundle of documents, Namukale Simunyola agreed that it was an application for planning permission, and that at page 40, under item number 14, one had to state the area of the land that was affected, the area of the building and the percentage of the existing buildings, as well as of the proposed buildings. It was agreed that the size of the land was obtained from the survey diagram, which is contained in a certificate of title.

9.81 However, Namukale Simunyola was unaware that what is submitted to the Planning Authority, is what is in a certificate of title. She stated that the survey diagram is a separate document, which is part of the certificate of title. Her evidence was that she was incompetent to say that when applying for planning permission, one submits a certificate of title. Further, she did not know why a certificate of title was not issued to Chibwe Lwamba.

9.82 Still on the conditions of the offer, her evidence was that on condition 4 of the offer which was at page 4 of the Attorney General's bundle of documents, it referred to a lease, and her evidence was that a lease was prepared after the survey diagrams were prepared. Namukale Simunyola agreed that the said condition provided that a lease would be required to be completed not later than Eighteen (18) months of the building.

- 9.83 However, she took the position that a lease starts to run from the date of the offer, and that a lease binds a person when they sign it. Namukale Simunyola could not recall when exactly Chibwe Lwamba signed the lease, but stated that it was some time in the year 2016. Her continued testimony in cross examination, was that the basis for withdrawal of the offer was the letter which was at page 23 of the Attorney General's bundle of documents.
- 9.84 Her evidence as regards who collected the said letter, was that, that was within the best knowledge of the Registry which was responsible for dispatching letters. Namukale Simunyola testified that re-printing of letters of offer was not uncommon, and she agreed that the letter of offer, which was at page 28 of the Attorney General's bundle of documents was generated by the Ministry of Lands on 8th September, 2016 to Chibwe Lwamba, and that it was re-print.
- 9.85 It was also agreed that the said letter referred to receipt number 11444, which was at page 3 of Chibwe Lwamba's bundle of documents. Namukale Simunyola explained that when a letter of offer was generated on the old system, and a re-print of the same was done, the fees did not appear. Her evidence was that IT would be able to explain that, but she however, testified that from her experience, the fees did appear on the re-print, as they were indicated on the original offer.
- 9.86 It was also Namukale Simunyola's testimony that the original offer asked someone to pay fees, while a reprint

acknowledged payment of those fees. She explained that the original offer was generated in the LIMIS system, and that currently, they were using the ZILMIS. She further testified that officers from the Estates Department carried out inspection of properties, and that they were better placed to explain why Kelvin Mumbuna Mututwa was building on the land in 2014.

- 9.87 Namukale Simunyola agreed that it was not normal for one to build on someone else's land, and that one could only be given land after it was successfully withdrawn from someone else.

DW6-ANDREA CHUNI

- 9.88 The last witness who was called by the Attorney General was Andrea Chuni, a Senior Registrar in the Lands and Deeds Department at the Ministry of Lands. His testimony was that he maintained the Lands Register, processed documents relating to interest in land and issued certificates of title. Further in his testimony, Andrea Chuni stated that the property LUS/13598 was in conflict between Two (2) individuals, namely Chibwe Lwamba and Kelvin Mumbuna Mututwa, as to who the rightful and lawful offeree of the property was.
- 9.89 With reference to page 46 of Chibwe Lwamba's bundle of documents, Andrea Chuni testified that he wrote that letter as he was referred a letter by the Chief Registrar. It was his evidence that when the letter was referred to him, he had requested for the file from the Lands Department, so that he

could make an informed decision, as to the certificate of title which was issued to Chibwe Lwamba.

9.90 Andrea Chuni's continued testimony was that on thoroughly perusing the file, he discovered that the offer for the land was given to Chibwe Lwamba, who erroneously obtained a certificate of title for the property. That was how Andrea Chuni wrote a letter requesting for the cancellation of the certificate of title. It was stated that Andrea Chuni also informed Chibwe Lwamba to avail all the receipts, and the invitation to treat, and he was informed that the remark that was on the property could not be removed so as to enable him to register a Deed of Gift.

9.91 Andrea Chuni testified that he could not comment on the reprint of the letter of offer, as that fell within the preserve of officers in the Lands Department.

CROSS EXAMINATION OF ANDREA CHUNI BY COUNSEL FOR KELVIN MUMBUNA MUTUTWA-MR M. KHUNGA

9.92 Andrea Chuni, when cross examined, testified that he had been Senior Registrar for over Two (2) years, having previously worked as Registrar, from 2016-2021. It was his evidence that prior to becoming Registrar, he had worked in the Lands Department, as a Lands Officer under the Commissioner of Lands from the end of 2013. Thus, he agreed that he was competent to answer on what went on in the Lands Department.

9.93 Andrea Chuni testified that when he was in the Lands Department, they used to use the system called Zambia

Integrated Land Management System (ZILMIS). However, he could not recall in what year the Department started using that system. He told the Court that the Ministry stopped using the ZILMIS system in June 2021, and that prior to using ZILMIS, the Land Information Management System (LIMS) was being used.

9.94 It was also his evidence that from June, 2021, they had been using the Zambia Integrated Land Administration System (ZILAS). Andrea Chuni told the Court that the letter of offer which was issued to Chibwe Lwamba, which was at page 4 of the Attorney General's bundle of documents was generated in the LIMS system on 23rd October, 2000, while the one at page 28 of the Attorney General's bundle of documents which was generated on 28th September, 2016, was generated under the ZILMIS system.

9.95 He could not confirm that under LIMS, if an offer was made, payment would be made thereafter, as it was before his time. He stated as regards the letter of offer which was at page 28 of the Attorney General's bundle of documents, that an applicant would apply for a particular piece of land, and attach a copy of their national registration card to the application. Then the offer would be generated under ZILMIS, and the applicant would pay the fees which were indicated on the offer.

9.96 His position was that page 28 of the Attorney General's bundle of documents was a letter of offer, and not a re-print, as it clearly indicated that it was an offer. Andrea Chuni

could not confirm that a re-print was exactly the same as the original offer. He told the Court that the Ministry of Lands started issuing invitations to treat before giving an offer under the ZILMIS system, which entailed that one had to pay before they were given an offer.

9.97 His testimony was that as at 8th September, 2016, they were using the ZILMIS system, and that was why he had asked Chibwe Lwamba to furnish his office with receipts to show how he obtained the property. However, Chibwe Lwamba did not provide the receipts. Andrea Chuni still in cross examination, testified that the offer to Chibwe Lwamba was erroneously issued, as the file from the Lands Department showed that the offer of the property to him had been withdrawn.

9.98 He stated that page 23 of the Attorney General's bundle of documents was the withdrawal of the offer, which was dated 31st March, 2016. Andrea Chuni explained that the last paragraph of that letter, meant that if Chibwe Lwamba did not pay ground rent, the offer would be withdrawn. Further in cross examination, he stated that page 24 of the said bundle of documents, was proof of postage of the letter by the Ministry of Lands.

9.99 He could not confirm that Willis Musonda whose names appeared at the bottom of the letter at page 23, worked at the Ministry of Lands. It was testified that at page 24, the sender of the letter was indicated as Musonda. The further testimony that was given, was that the withdrawal of an offer

was sent by registered mail, and that according to the letter at page 23, Chibwe Lwamba was supposed to pay the ground rent within Thirty (30) days.

9.100 Andrea Chuni also testified that Chibwe Lwamba was issued with a certificate of title for the property based on the payments that Kelvin Mumbuna Mututwa made, which were at pages 26, 32, 33 and 34 of Kelvin Mumbuna Mututwa's bundle of documents. He could not confirm whether a lease was back dated to the date of the offer. When referred to the lease which was at pages 11-15 of Chibwe Lwamba's bundle of documents, Andrea Chuni testified that the survey diagram number was not clear, and the date of the lease was blank.

9.101 He stated that under paragraph 2 of the lease, there were details that were supposed to have been filled in from the offer letter and the survey diagram, such as the annual rent which was payable. He told the Court that below the Republic of Zambia, was that date 26th October, 2016, and that the said date was supposed to tally with that under the part starting with the words, TO HOLD.

9.102 When cross examined further, Andrea Chuni's evidence was that he could not confirm whether the dates were supposed to tally. He stated that the letter of offer which was at page 1 of Chibwe Lwamba's bundle of documents was a 2000 document, and that the lease was dated 2016. It was testified that it was possible to have a lease dated 2016, for an offer which was issued in 2000.

- 9.103 He explained that at page 11 of Chibwe Lwamba's bundle of documents, was the date when the lease was signed, and that there was a difference between the date of the lease and the effective date of the lease.
- 9.104 Andrea Chuni agreed that he was familiar with the memorials in a certificate of title. It was his testimony that if the first owner got a direct lease from the President, the first entry in the memorials, would be the date of the lease, and that it would have the commencement date of the lease and the date when the lease was signed.
- 9.105 When referred to the certificate of title, which was at page 8 of Chibwe Lwamba's bundle of documents, Andrea Chuni's testimony was that it was the certificate of title that he had written about in his letter, stating that it was erroneously issued. He told the Court that at page 8, the effective date of the lease was indicated as 1st October, 2000, which was the date of the offer.
- 9.106 Then in the memorials at page 9, it read that the lease was between the President and Chibwe Lwamba, and the date of the document was 7th October, 2016, and that the date of registration was 26th October, 2016. As regards the conditions in the letter of offer which was at page 1 of Chibwe Lwamba's supplementary bundle of documents and paragraph 5 of the lease which was at page 13 of Chibwe Lwamba's bundle of documents, Andrea Chuni stated that they both spoke to development within Eighteen (18) months, as they were conditions in the offer, and began to

apply when the offer was generated, and not when the lease was signed.

9.107 He further testified that the documents at pages 11-13 of the Attorney General's bundle of documents, revealed that the property was repossessed from Chibwe Lwamba as far back as 2013, as the property was not developed. Andrea Chuni could not recall that Chibwe Lwamba had challenged the repossession of the property in 2013, as if he did, he would have written a letter to the Commissioner of Lands.

9.108 Pages 18-19 of the Attorney General's bundle of documents was stated to have been the ground rent status as at 2014-2015. Andrea Chuni agreed that Chibwe Lwamba had not paid the ground rent or developed the property, and that the inspection report which was at page 20 of the Attorney General's bundle of documents, was dated 14th March, 2016, and that it revealed that Kelvin Mumbuna Mututwa and Otilia Hamabele Mututwa were developing the property.

9.109 Andrea Chuni could not state why Kelvin Mumbuna Mututwa was subjected to high consideration fees, stating that consideration fees varied. He further testified that he did not come across information that Kelvin Mumbuna Mututwa was subjected to high consideration fees as a penalty for developing the property without being offered it.

9.110 When referred to the writings at page 29 of Kelvin Mumbuna Mututwa's bundle of documents, Andrea Chuni testified that it was dated 30th June, 2016, and that Paul Kachimba had indicated thereon, that the property had been legally

withdrawn from Chibwe Lwamba, but that there was lawlessness on the part of Kelvin Mumbuna Mututwa, and he recommended that he be offered the property at a market value, to deter would be offenders.

9.111 It was agreed that at page 30 of the said bundle of documents, there was a comment that Kelvin Mumbuna Mututwa should be offered the property at a market value, less Twenty-Five (25) percent, as Kelvin Mumbuna Mututwa is a Zambian. Andrea Chuni agreed that from the right ups that had been seen, the offer was unusually high. It was also his testimony, that the certificate of title was issued to Chibwe Lwamba on 26th October, 2016 and that the invitation to treat was issued to Kelvin Mumbuna Mututwa on 13th October, 2016.

9.112 Andrea Chuni took the position, that had Chibwe Lwamba given him the receipts, it would have helped him to determine how he obtained the certificate of title. It was also his testimony that repossession could not be cancelled by paying the fees post cancellation. Andrea Chuni told the Court that a withdrawal of an offer should be effected, and that once postage of the withdrawal was made, and Thirty (30) days elapsed, an affected person engaged the Ministry, as the property would have been withdrawn from them.

9.113 It was also testified that the system would reject payment of ground rent after the Thirty (30) days elapsed on the offer being withdrawn. However, the Commissioner of Lands could reverse the withdrawal of an offer, by inspection of the

land being carried out, and a report being given. Thereafter, the Commissioner of Lands would generate a fresh offer. Andrea Chuni could not confirm whether this process was followed for Chibwe Lwamba.

9.114 He stated that the certificate of title which was issued to Chibwe Lwamba should be cancelled, and that the property be offered to Kelvin Mumbuna Mututwa.

**CROSS EXAMINATION ANDREA CHUNI BY COUNSEL
FOR CHIBWE LWAMBA- MR W MUHANGA**

9.115 Andrea Chuni testified that he recalled that his testimony was that the certificate of title which was issued to Chibwe Lwamba should be cancelled. He stated that based on the documents that were on record, the State had an interest in the matter, in favour of Kelvin Mumbuna Mututwa. Andrea Chuni told the Court that the certificate of title which was in favour of Chibwe Lwamba was issued by Mr. Mwale, the then Registrar.

9.116 He agreed that the office of the Commissioner of Lands and not Chibwe Lwamba, issued the lease and the certificate of title. It was further agreed that the office of the Registrar that issued the lease should take the blame for any omissions. Andrea Chuni also agreed that a Deed of Rectification seeks to cure an omission or an error. He was unaware whether Chibwe Lwamba filed one.

9.117 He testified that he only became aware of the issues when the Chief Registrar wrote to him, and that the letter which was at page 23 of the Attorney General's bundle of

documents, was the intention to withdraw the offer to Chibwe Lwamba, which was dated 31st March, 2016. He explained that an offer was withdrawn after a period of Thirty (30) days, as provided in the Lands and Deeds Registry Act.

9.118 Andrea Chuni agreed that the letter of recommendation that the Town Clerk wrote on 19th March, 2014, recommending allocation of the property to Kelvin Mumbuna Mututwa, was even before Chibwe Lwamba had been informed of the notice of intention to withdraw the property. He stated that the letter which was authored by Paul Kachimba giving notice of intention to withdraw the offer was dated 31st March, 2016.

9.119 It was testified that the ground rent bills which were at pages 18 and 19 of the Attorney General's bundle of documents, were ground rent bills for the property LUS/13598, which showed that the property was in Chibwe Lwamba's names. Andrea Chuni's evidence was that the Lands Department under the Commissioner of Lands generated the same.

9.120 Agreement was made, that the inspection report which was at page 44 of Kelvin Mumbuna Mututwa's bundle of documents, showed that the inspection was conducted on 23rd February, 2017, and that at the time, Chibwe Lwamba owned by the property, but Kelvin Mumbuna Mututwa was developing it. Andrea Chuni testified that development of a property, did not entail ownership of it.

9.121 He agreed that Kelvin Mumbuna Mututwa paid for the property, after the certificate of title had been issued in

Chibwe Lwamba's name. It was also his testimony that at page 25 of the Attorney General's bundle of documents, Chibwe Lwamba had deposed to an affidavit, stating that he had lost the original letter of offer.

9.122 Then at page 26, was a police report which showed that Chibwe Lwamba had lost the letter of offer, and at page 27, Chibwe Lwamba wrote to the Commissioner of Lands on 28th August, 2016, requesting for a re-print of the said letter of offer.

9.123 Andrea Chuni did not recall seeing those documents on the file that he requested from the Lands Department. He recalled having received the letter from State House over the property, and Andrea Chuni testified that he went into panic mode. His evidence was that after a certificate of title is issued, only the Court can cancel it, although in paragraph 4 of the letter, which was at page 35 of the Attorney General's bundle of documents, he had written that they intended to cancel the certificate of title.

**CROSS EXAMINATION OF ANDREA CHUNI BY COUNSEL
FOR CHIBWE LWAMBA-MR C. MWEEMBA**

9.124 It was Andrea Chuni's testimony, that as at 2016, the property was still at offer stage. He stated that there were no specific payments for properties which were on offer and for those that were on title, but that there were conditions for properties that were on offer, and for those that were on title. It was added that they were not necessarily the same, and Andrea Chuni testified that it depended, whether a period of

Ninety (90) days was given to repossess a property which was on title.

9.125 He told the Court that where the State has an interest, or where it has information relating to the security of the country, where a road is being constructed, or where there are minerals, the State will compulsorily acquire the property. He stated that on the documents relating to ground rent, the penalty for non-payment was a penalty fee of Twenty-Five (25) percent, and the document did not talk about repossession.

9.126 Andrea Chuni testified that in the letter which was at page 23 of the Attorney General's bundle of documents, the basis of giving notice of intention to withdraw the offer, was neglect to pay the ground rent bill. He stated that Chibwe Lwamba paid the outstanding ground rent in Two (2) instalments, outside the Thirty (30) days' notice. It was his evidence that a property that is on title is repossessed, while one that is on offer is withdrawn.

9.127 That marked the close of the case for the Attorney General.

10. DECISION OF THIS COURT

10.1 I have considered the evidence and the submissions. Before I proceed to delve into the merits of the case, I wish to address the question of whether I have jurisdiction to determine this matter, in light of the submissions which were filed by Chibwe Lwamba and Kelvin Mumbuna Mututwa.

CHIBWE LWAMBA'S SUBMISSIONS

- 10.2 In his submissions, Chibwe Lwamba, stated that in view of the guidance which was given by the Supreme Court in the case of ***Aaron Chungu v Peter Chanda and others*** ⁽⁸⁾, this Court has no jurisdiction to entertain an action relating to the re-entry of land by the Commissioner of Lands.
- 10.3 However, his contention was that this case is distinguishable from the case of ***Aaron Chungu v Peter Chanda and others*** ⁽⁸⁾ as in this matter, the property which was offered to Chibwe Lwamba was still at offer stage, at the time of the alleged withdrawal of the said offer. It was also submitted that Chibwe Lwamba's claims hinge on trespass, a declaration that Chibwe Lwamba is the rightful owner of the property LUS/13598, and that the invitation to treat which was issued to Kelvin Mumbuna Mututwa was invalidly issued to him.
- 10.4 The contention was that while this Court has no jurisdiction to determine issues relating to re-possession of the property, it can determine all the other issues that Chibwe Lwamba claims.

KELVIN MUMBUNA MUTUTWA'S SUBMISSIONS

- 10.5 Kelvin Mumbuna Mututwa in his submissions, agreed with the decision in the case of ***Aaron Chungu v Peter Chanda and others*** ⁽⁸⁾, and he went on to submit that Chibwe Lwamba had argued that the said case is distinguishable from this case, on the basis that his property was still at offer stage at the time the property was withdrawn from him, and

that his claims hinge on trespass to property, a declaration that he is the rightful owner of the property, and that the invitation to treat which was issued to Kelvin Mumbuna Mututwa was erroneous.

- 10.6 His submission however, was that to the contrary, the case of ***Aaron Chungu v Peter Chanda and others*** ⁽⁸⁾ is on all fours with this case, and that the re-entry of any property is done in line with ***Section 13 (3) of the Lands Act, Chapter 184 of the Laws of Zambia***, which applies to properties, which are both at offer stage and on title.
- 10.7 Reference was made to this Court's Ruling dated 27th March, 2018, on whether the matter was properly commenced by Originating Summons, stating that it found at page R9 of the Ruling, that from the affidavits which were on record, there was a dispute as to whether Chibwe Lwamba's land was re-entered. Therefore, it was inappropriate to commence the matter under ***Order 113 of the Rules of the Supreme Court of England***.
- 10.8 Further reference was made to the advertisement which appeared in the Zambia Daily Newspaper of 12th June, 2013, which was at page 12 of the Attorney General's bundle of documents, as showing that it was issued pursuant to ***Section 13 of the Lands Act***, and it asked the affected persons to make representations to the Commissioner of Lands, as to why the properties should not be repossessed.
- 10.9 The case of ***Emma Mainza, Kelson Mainza (suing as Administrators of the estate of Creed Mainza Malawo) v***

Rabson Mwale and four others ⁽⁷⁾ was relied on, as where the Court of Appeal pronounced itself on the provisions of **Section 13 of the Lands Act**, notwithstanding that the property involved was at offer stage.

10.10 Further reliance was placed on the case of **Emeldah Chilanga v Isaac Simute and Ndola City Council** ⁽⁵⁾ where a property was dispossessed, and the Supreme Court held that there was need to serve a notice on a lessee, and that there must be proof of service before a lessor can re-enter or repossess a property.

10.11 Submission was also made that the Attorney General's position, was that the Commissioner of Lands had successfully repossessed the property before an invitation to treat was given to Kelvin Mumbuna Mututwa. Therefore, the submission was that in this matter, Chibwe Lwamba seeks to challenge the repossession of the property LUS/13598, by seeking a declaration that he is the rightful owner of the said property.

10.12 Thus, the dispute hinges on whether the property was repossessed from Chibwe Lwamba, and whether the subsequent allocation of the said property to Kelvin Mumbuna Mututwa was regular. Based on that, this Court was urged to find that it has no jurisdiction to determine the matter, and that it should dismiss it with costs, as this was the position of the law, even before the decision in the case of **Aaron Chungu v Peter Chanda and others** ⁽⁸⁾.

CHIBWE LWAMBA'S SUBMISSIONS IN REPLY

10.13 In his submissions in reply, Chibwe Lwamba, asked this Court to look at the reliefs, as sought in this matter, and he contended that on doing so, this Court would find that it has jurisdiction to determine the said reliefs.

WHETHER THIS COURT HAS JURISDICTION TO DETERMINE THE MATTER?

10.14 A perusal of the case of ***Aaron Chungu v Peter Chanda and others*** ⁽⁸⁾ which has been relied on to argue that this Court has no jurisdiction to determine the matter, as what has been challenged is the re-entry of the property LUS/13598, shows that Aaron Chungu commenced proceedings in the High Court seeking:

(i) An Order and/or declaration that the Plaintiff is the Legal Owner of Subdivision No.4 of Subdivision 'G' of Farm No. 4142 Lusaka and which land is held on certificate of title No. L7109.

(ii) An Order and or declaration that the Notice of Intention to re-enter and the certificate of re-entry registered against the subject property by the Commissioner of Lands were fraudulently, illegally and or unlawfully processed and are therefore null and void.

(iii) An Order setting aside the Notice of Intention to re-enter and the certificate of re-entry registered against the property by the Commissioner of Lands on 21" March, 2018.

- (iv) An Order and or a declaration that the subsequent subdivisions, created out of the Plaintiff's property at the instance of the Commissioner of Lands and approved by the Surveyor General following the fraudulent and or illegal registration of the certificate of re-entry against the Plaintiff's property aforesaid and subsequently offered to the 1st, 2nd and 3rd Defendants, are null and void.*
- (v) An Order directing the cancellation of all the subdivisions referred to in paragraph (iv) above together with the subsequent offer letters issued by the Commissioner of Lands to the 1st, 2nd and 3rd Defendants.*
- (vi) An injunction restraining the 1st, 2nd and 3rd Defendants and their agents or Servants from taking possession of the land they have illegally been offered and or allocated, from trespassing on the Land, from developing it or selling or attempting to sell or convey howsoever the pieces of land referred to in paragraph (i) above or interfering in whatsoever manner with the Plaintiff's peaceful enjoyment of the said piece of land until this matter is determined by this Honorable Court.*
- (vii) Damages for trespass to land.*
- (viii) Damages for mental anguish and inconvenience.*
- (ix) Costs*

- 10.15 A Notice of Motion to raise a preliminary issue pursuant to **Order 14A and Order 33 Rules 3 and 7 of the Rules of the Supreme Court** on whether the High Court had jurisdiction to hear the matter, in view of **Section 13 (3) of the Lands Act Cap 184** was raised.
- 10.16 The learned High Court Judge on hearing the Notice of Motion, reviewed a number of cases, and concluded that while the High Court had unlimited jurisdiction in land disputes, and that the **Lands Tribunal Act No. 39 of 2010** did not oust the jurisdiction of the High Court to determine disputes over land, as a Court of first instance, it was clear that the appellant was challenging the re-entry.
- 10.17 The Hon Judge noted that since that was the case, the proper course of action was to appeal to the Lands Tribunal as was held in the **Polythene Products** case, which was followed in the case of **Kalvic Bakery v The Attorney General and another** ⁽⁶⁾. She accordingly upheld the preliminary issue which was raised, and disposed the case on a point of Law. The Court of Appeal upheld the decision of the High Court on appeal.
- 10.18 On further appeal to the Supreme Court, it was noted that the issue of commencement of proceedings arose again in the case of **Polythene Products Zambia Limited v Cyclone Hardware and Construction Limited and The Attorney General** ⁽¹⁾. They stated that the question in that case, was whether in view of **Section 13 (3) of the Lands Act** which

gave jurisdiction to the Lands Tribunal in matters involving re-entry, a party had a choice of forum.

10.19 The Supreme Court noted that it held as follows in that matter:

"... we hold that the 1st Defendant, being aggrieved by the certificate of re-entry on Stand 12094, had no option but to appeal to the Lands Tribunal, in its challenge of the certificate of re-entry. The 1st Defendant did not do so. On the facts of this case, we hold that the learned trial Judge had no jurisdiction to entertain the 1st Respondent's counterclaim on fraud and negligence in this action, which was commenced by writ of summons."

10.20 The Supreme Court observed that all the cases which had been referred to by Mr. Songolo were distinguishable, primarily because they did not specifically deal with re-entry. It was stated that even the case of **Faramco Limited v Camel Freight and others** ⁽⁴⁾ upon which much reliance was placed, dealt with the question of a declaration as the main relief sought.

10.21 They stated that in the case of **Faramco**, the Court referred to the case of **Union Gold (Zambia) Limited v Attorney General** ⁽³⁾ as the basis for the High Court's jurisdiction not being ousted by the Lands Tribunal in land matters. It was stated that it should be noted that the **Union Gold** case involved a declaration, and not a re-entry under **Section 13**

(3) of the Lands Act, and that the explanation which followed with regard the High Court's jurisdiction did not cover **Section 13 (3) of the Lands Act**, and the unlimited jurisdiction of the High Court should be understood within that context.

10.22 The Supreme Court stated that the correct position therefore was that, while the High Court has unlimited jurisdiction in land matters, its' jurisdiction is limited as in that case, by **Section 13 (3) of the Lands Act**.

10.23 On the question of costs, the Supreme Court took the view that while costs generally follow the event, the position on interpretation of **Section 13 (3) of the Lands Act** was rather unclear, owing to the interpretation of the High Court's jurisdiction in its' earlier judgements.

10.24 Therefore, the Supreme Court noted that while there had been lack of clarity on the jurisdiction of the High Court and the Lands Tribunal in land matters, they had been very consistent on the fact that a person who was aggrieved with a decision relating to the re-entry of land under **Section 13 of the Lands Act**, had to appeal to the Lands Tribunal. They ordered that each party bears their own costs, as the case clarified on the question of jurisdiction.

10.25 Therefore, it can be seen from the decision above, that a person who is aggrieved with a decision, which is made by the Commissioner of Lands to re-enter land has to appeal to the Lands Tribunal. In this matter, the reliefs as sought by Chibwe Lwamba are:

- i. A declaration that Chibwe Lwamba is the legal and rightful owner of the property known as LUS/13598;
- ii. A declaration that the invitation to treat which was in favour of Kelvin Mumbuna was erroneously generated by the State through the Commissioner of Lands;
- iii. Possession of the property No LUS/13598;
- iv. An Order for the preservation of the property No LUS/13598, Lusaka pending determination of the matter;
- v. Damages for trespass which are in the alternative and different from an Order for possession of the property;
- vi. Costs of and incidental to the proceedings;
- vii. Any other relief that the Court deems fit to award in the circumstances.

10.26 On the face of it, the reliefs as sought, are for declarations, and do not challenge the repossession of the property from Chibwe Lwamba.

10.27 In the case of **Faramco Limited v Camel Freight and others** ⁽⁴⁾, the question of whether the High Court had jurisdiction to hear the respondents' counter-claims which challenged the decision of the Commissioner of Lands to re-enter Stand No. 14695, Lusaka, and re-number it as Stand No. 21633, given the provisions of **Sections 13(3) and 15(1) of the Lands Act, Chapter 184 of the Laws of Zambia** arose.

10.28 The facts of that case, revealed that on 19th February, 2002, the Commissioner of Lands caused to be issued a

notice of intention to re-enter the property due to non-development. A certificate of re-entry was issued on 26th February, 2003. Thereafter, the property was allocated to Jimmy Sinkala who obtained a certificate of title on 11th April, 2003. In May, 2003, Jimmy Sinkala sold the property to Kavanda Investments Limited (the 3rd respondent).

10.29 The 3rd respondent then took out judicial review proceedings in the High Court against the appellant, Attorney-General, Commissioner of Lands and Jimmy Sinkala to challenge the Orders of the Subordinate Court. On 14th May, 2004 the High Court granted an Order of certiorari, quashing the Consent Judgment, and the Order of eviction and possession.

10.30 The directives of the Commissioner of Lands to cancel and renumber the property were also set aside.

10.31 In an appeal to the Supreme Court, that Court set aside the High Court Judgment, and directed that a fresh action to impeach the Consent Judgment had to be commenced by Writ of Summons, since the 3rd respondent was not a party to the Consent Order. In that matter, the appellant had actually acknowledged that the notice of renumbering and certificate of re-entry were not served on Lambat Ibrahim Hussain and Lambat Aisha Ibrahim contrary to **Section 13 of the Lands Act**.

10.32 Proceedings were thereafter commenced in the Subordinate Court, and on 14th May, 2010, the Subordinate Court set aside the Consent Judgment and the Order of Eviction and

possession, on the basis firstly, that the Attorney General who was a party to the action did not consent to the Judgment, and secondly, that the Commissioner of Lands erroneously and fraudulently cancelled Stand No. 14695 and renumbered it as Stand No. 21633, and pursuant to the Consent Judgment being challenged, offered the land to the appellant.

10.33 The appellant launched proceedings in the High Court seeking several declarations and other orders, which included that it was the registered owner of the subject property; that Stand 14695 no longer existed on the Lands Register, as it was cancelled by the Commissioner of Lands; that the 4th respondent's interest in Stand 14695 extinguished upon re-entry by the Commissioner of Lands; and that the 1st, 2nd and 3rd respondents' interest in the property no longer existed.

10.34 The appellant's claims were disputed, and the 1st, 2nd, 3rd and 4th respondents put up individual counter-claims, also claiming individual interest in the subject property. The 3rd and 4th respondents further challenged the re-entry and cancellation and renumbering of the property by the Commissioner of Lands, as being illegal and *void ab initio* for being in breach of the mandatory provisions of the law.

10.35 The Attorney General admitted that the notice of intention to re-enter and the certificate of re-entry were null and void as the records at the Ministry of Lands showed no proof of service of the notice on the 4th respondent, and that her

interest in the property did not extinguish upon re-entry nor was the property cancelled or renumbered, thus invalidating the appellant's claim as registered owner of Stand 21633.

10.36 On 31st July, 2015, the appellant filed the notice to raise preliminary objections on points of law advancing three issues:

- 1. Whether the 3rd respondent could assert a claim to Stand 14695 purely based on a contract of sale signed with a non-party to the action.**
- 2. Whether the High Court had jurisdiction to hear and determine the 4th Respondent's counterclaim challenging the re-entry of the disputed property by the Commissioner of Lands considering the provisions of section 13(3) and section 15(1) of the Lands Act.**
- 3. Whether the High Court had jurisdiction to hear the Respondents' counter-claims challenging the decision of the Commissioner of Lands to cancel Stand 14695 and to re-number it as Stand no. 21633 bearing in mind the provisions of section 15(1) of the Lands Act.**

10.37 The learned High Court Judge on hearing the objections, opined that the provisions of **Section 15 of the Lands Act** are couched in similar words to **Section 13**, and that ordinarily, an aggrieved person had to appeal to the Lands Tribunal, that is, in a situation where the cancellation by the Commissioner of Lands was done in accordance with the law

and the aggrieved person had been duly notified by the Commissioner of Lands, so that an opportunity was accorded to such a person to make representations.

10.38 He also opined that the allegations by the respondents that the whole process of cancellation was fraught with fraud could only be dealt with at trial. The High Court Judge therefore dismissed the preliminary objections which were raised.

10.39 On appeal, the Supreme Court stated that the pleadings in the case were very clear, and they noted that the appellant sought, as a main relief, a declaration that it was the registered owner of the subject property. Further, that it also sought declaratory orders that Stand 14695 no longer existed on the Lands Register, as it was cancelled by the Commissioner of Lands; that the 4th respondent's interest in Stand 14695 extinguished upon re-entry by the Commissioner of Lands; and that the 1st, 2nd and 3rd respondents' interest was in Stand 14695 which no longer existed. All the respondents dispute those claims.

10.40 Note was made that in particular, the 4th respondent averred in her defence, that the decision of the Commissioner of Lands to re-enter the property was illegal and null and void for non-compliance with the mandatory provisions of the law. It was stated that she put up the counterclaim that was being attacked, as did the other respondents.

10.41 The Supreme Court held as follows in the matter:

“We held in the cases of Anort Kabwe and Charity Mumba Kabwe v James Daka, Attorney General and Albert Mbazima and Shadrick Wamusula Simumba v Juma Banda and Lusaka City Council, that the purpose of the requirements under Section 13 of the Lands Act is to afford a lessee who is in default an opportunity to dialogue with the Commissioner of Lands with an intention to extend the period within which he is required to develop the property.

We also held that a repossession effected in circumstances where a lessee is not afforded such opportunity is not valid, and the Commissioner of Lands cannot be justified in making the land available to another developer.

Section 13(3) of the Lands Act provides that a party aggrieved by a certificate of re-entry entered in the register may within 30 days appeal to the Lands Tribunal for an order that the register may be rectified. In contrast, Section 15(1) provides that any person aggrieved with a direction or decision of a person in authority may apply to the Lands Tribunal for determination.

Indeed, we held in that case (following our decisions in the Newplast Industries Limited case and Chikuta v Chipata Rural Council, that the 1st Defendant being aggrieved by the certificate of re-

entry on stand 12094 had no option but to appeal to the Lands Tribunal in its challenge of the certificate of reentry; and that on the facts of that case, the learned trial Judge had no jurisdiction to entertain the counterclaim on fraud and negligence, which was commenced by writ of summons.

However, we had occasion again, seven years later, in the case of Attorney General, Commissioner of Lands, Livingstone City Council and Captain John Mwamulima v Ambex Clothing Manufacturing Limited to consider the question of whether Section 13 (3) of the Lands Act has served to oust the jurisdiction of the High Court in land matters. In our judgment delivered on 15th November, 2017 we held, applying our decision in the Union Gold (Zambia) Limited case that the High Court's jurisdiction is not ousted by the Lands Tribunal in land matters and that an aggrieved party can choose between proceeding in the High Court or the Lands Tribunal to have his grievances redressed. Therefore, we found no merit in the argument that the matter was improperly commenced. In view of the above, the core issue raised by this appeal is settled, and we find that the Respondents can maintain their counterclaims in this action.

Obviously, we have restated the dual jurisdiction of the High Court and Lands Tribunal in land matters in other cases such as Beatrice Mulamfu v Kelvin Mukuka Mwamba and Yakub Falir Mulla and others v Mohamed Jabi cited by learned counsel for the 3rd respondent.

On the particular facts of this case, which we deliberately set out in detail, we find no basis for faulting the learned High Court judge's conclusion that the Respondents' counterclaims, both challenging the re-entry and the cancellation and renumbering of the subject property are legitimately before the Court and that it has jurisdiction to hear the matter."

10.42 The appeal was therefore dismissed. I have highlighted that the Supreme Court in the recent case of **Aaron Chungu v Peter Chanda and others** ⁽⁸⁾ clarified the position relating to the jurisdiction of the High Court in land matters that involve the re-entry of land, and the basis for the decision which was given in the above case.

10.43 The decision in the case of **Aaron Chungu v Peter Chanda and others** ⁽⁸⁾ is clear, that matters involving the re-entry of land are within the jurisdiction of the Lands Tribunal, and not the High Court. Based on the clarification that was given, the case of **Faramco Limited v Camel Freight and others** ⁽⁴⁾ which would have supported Chibwe Lwamba's argument

that as he seeks declarations, then I proceed to determine the matter, is no longer applicable.

10.44 I have also observed that the claims as pleaded by Chibwe Lwamba on the face of it, do not reveal that he is challenging the re-entry of the property LUS/13598.

10.45 However, from the pleadings in his statement of claim and from the defences and counterclaims which were filed by Kelvin Mumbuna Mututwa and the Attorney General, it is clear that in fact, what the crucial challenge is, is whether the property LUS/13598 was repossessed under **Section 13 of the Lands Act**, before an invitation to treat was given to Kelvin Mumbuna Mututwa, before I can even consider whether Chibwe Lwamba is the legal owner of the said property.

10.46 As the jurisdiction to challenge a re-entry or repossession of land pursuant to **Section 13 of the Lands Act**, lies with the Land Tribunal, I have no jurisdiction to determine the matter.

10.47 In the case of **Crossland Mutinta and Bashir Seedat v Donovan Chipanta and others** ⁽²⁾, the Supreme Court noted as follows:

“It is the duty of an appellate court to entertain a plea as to jurisdiction at any stage, even if the point was not raised in the Court below.’ This authority clearly places an obligation upon us to allow a plea of want of jurisdiction to be raised, even where, as in this case, the issue was not

raised in the Court below. The rationale for this lies in the consequence of the court exercising jurisdiction which it does not possess. Halsbury's at paragraph 715 states, in this regard, that where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before Judgment is given."

10.48 Although this matter has not come up on appeal, the principle to take home from the above case, is that if I proceed to determine the matter when I lack jurisdiction, the decision will be a nullity.

10.49 Therefore, while Chibwe Lwamba in his claims, has not expressly stated that he is challenging the re-entry or repossession of the property LUS/13598, the fact is that if I were to consider his claim for a declaration that he is the rightful owner of the property, I can only make that determination after I have considered whether the repossession of the property from him by the Commissioner of Lands was done in line with **Section 13 of the Lands Act.**

11. CONCLUSION

11.1 As already seen, I do not have jurisdiction to make such a determination, as any person who is aggrieved with the re-entry of land must appeal to the Lands Tribunal. That being the position, I have no jurisdiction to determine the matter, and I dismiss the matter for want of jurisdiction.

11.2 In view of the position that the Supreme Court took in the case of **Aaron Chungu v Peter Chanda and others** ⁽⁸⁾ that there had been lack of clarity on the jurisdiction of the High Court and the Lands Tribunal in land matters, they ordered that each party bears their own costs, as the case clarified on the question of jurisdiction, I accordingly Order that each party shall bear their own costs of these proceedings.

11.3 Leave to appeal is granted.

DATED AT LUSAKA THE 25th DAY OF JULY, 2024

S. Kaunda
S. KAUNDA NEWA
HIGH COURT JUDGE

