

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

2019/HP/0880



BETWEEN:

**AGNESS ZULU**

(Suing as Administrator and title holder of the  
estate of the late Esther Mwila Tepeka)

**1<sup>st</sup> PLAINTIFF****NELSON MULALA**

(Suing as beneficiary and on behalf of other siblings  
of the estate of the Esther Mwila Tepeka who died  
intestate)

**2<sup>nd</sup> PLAINTIFF**

AND

**DAVY TEMBO****JOE SAKAUMBA****JOSEPH ZULU****CHILESHE (MALE) AND UNKNOWN OTHERS****COMMISSIONER OF LANDS****ATTORNEY GENERAL****1<sup>st</sup> DEFENDANT****2<sup>nd</sup> DEFENDANT****3<sup>rd</sup> DEFENDANT****4<sup>th</sup> DEFENDANT****5<sup>th</sup> DEFENDANT****6<sup>th</sup> DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 4<sup>th</sup> DAY OF JANUARY,  
2024.**

*For the Plaintiffs* : *Mr S. Nyirongo, Messrs Chilao, Nyirongo  
Mwiinde Legal Practitioners*

*For the 1<sup>st</sup>-4<sup>th</sup> Defendants* : *Mr Wezi Mwandila, Messrs OMM Banda and  
Company*

*For the 5<sup>th</sup> and 6<sup>th</sup> Defendants* : *No appearance*

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**J U D G M E N T**

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CASES REFERRED TO:

1. *Honorius Maurice Chilufya v Chrispin Haluwa Kangunda 1999 ZR 166*
2. *Sablehand Zambia Limited v Zambia Revenue Authority 2005 ZR 109*

3. *Hanif Mohammed Bhura (Suing pursuant to a power of Attorney granted in his favour by Mehrunisha Bhura) v Yusuf Ibrahim Issa Ismail Appeal No 146 of 2013*
4. *Corpus Legal Practitioners v Mwanandani Holdings Limited SCZ No 50 of 2014*
5. *Sailas Ngowani and others v Flamingo Farms Limited SCZ No 5 of 2019*

LEGISLATION REFERRED TO:

1. *The Rules of the Supreme Court of England, 1999 Edition*
2. *The Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia*

## **1. INTRODUCTION**

1.1 The issues in dispute in this matter relate to how much land the Plaintiffs, Agness Zulu and Nelson Mulala who have sued as Administrator and beneficiary of the estate of the late Esther Mwila Tepeka respectively own. Therefore, seeking to enforce the right to ownership to land, they commenced these proceedings by Writ of Summons which is accompanied by a statement of claim on 12<sup>th</sup> June, 2019, which documents were amended on 23<sup>rd</sup> November, 2019 claiming:

- i. *Immediate vacant possession of the entire Farm F/610/C Foxdale Lusaka.*
- ii. *An Order for the demolition of all structures erected on the said farm by the illegal occupants (the Defendants herein).*
- iii. *An Order that any sale agreements made between Davy Tembo and any other Defendants is null and void.*

- iv. An Order declaring Agness Zulu as the legal and bona fide title holder of the stated Farm No F/610/C Foxdale, Lusaka.*
- v. Unliquidated damages for inconvenience caused and loss of usage of the said farm land, which damages ought to be assessed.*
- vi. Any other relief that the Court may deem fit.*
- vii. Costs.*

## **2. STATEMENT OF CLAIM**

- 2.1 The statement of claim, in setting out the basis for the reliefs claimed, states that Agness Zulu was a biological sister to the late Esther Mwila Tepeka, who died intestate on 11<sup>th</sup> November, 2016. Agness Zulu avers that she was appointed Administrator of the estate of the said late Esther Mwila Tepeka. Nelson Mulala on the other hand is stated as being a biological son to the late Esther Mwila Tepeka.
- 2.2 The Commissioner of Lands and the Attorney General are sued as custodian and Legal Advisor of the Government respectively, adding that the Commissioner of Lands issued the certificate of title to Agness Zulu.
- 2.3 Agness Zulu and Nelson Mulala allege that the 1<sup>st</sup> Defendant, Davy Tembo is a cadre, who has been illegally selling portions of the land, Farm No F/610/C that they claim ownership of, to the other Defendants. It is further stated that Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendants are illegal purchasers of portions of the said land.

- 2.4 Still in averment, Agness Zulu and Nelson Mulala contend that the late Esther Mwila Tepeka left land in extent of 6,639 square metres, which is a property on title number 42855, and which has since been changed into Agness Zulu's names. It is also stated that following the demise of the late Esther Mwila Tepeka, Agness Zulu was appointed as Administrator of her estate.
- 2.5 Thus, she subsequently proceeded to have title to the property changed into her names on behalf of the children of the late Esther Mwila Tepeka. Agness Zulu and Nelson Mulala contend that Davy Tembo, who they believe is a political cadre, chased Nelson Mulala and he illegally sold portions of the land to Joe Sakaumba, Joseph Zulu and Chileshe, who have put up housing projects on the land.
- 2.6 It is further stated that Davy Tembo has been summoned by various Government agencies with a view to stop him from selling the land. However, the same has proved futile. The allegation is that Nelson Mulala and his siblings have been deprived of the land as rightful owners, as Davy Tembo has been acting rudely and with impunity.
- 2.7 Further, Agness Zulu and Nelson Mulala are now living in poverty, as Davy Tembo has deprived them of the property for which they have received offers of purchase from big companies, such as AVIC in the sum of Two Million Five Hundred Thousand Kwacha (K2, 500, 000.00), which amount of money would have helped to alleviate their poverty levels.

**3. DAVY TEMBO, JOE SAKAUMBA, JOSEPH ZULU CHILESHE  
AND THE OTHER UNKNOWN DEFENDANT'S DEFENCE AND  
COUNTERCLAIM**

- 3.1 Davy Tembo, Joe Sakaumba, Joseph Zulu Chileshe and the other unknown Defendants, in an amended defence and counterclaim, that was filed on 23<sup>rd</sup> June, 2021, state that the capacities in which Agness Zulu and Nelson Mulala have sued is within their peculiar knowledge. They deny that Davy Tembo is a cadre who illegally sold portions of the land that belongs to Agness Zulu and Nelson Mulala to Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendants.
- 3.2 It is their contention that subdivision No 328 of Farm 610 under certificate of title No 83762, was given as alternative land to them by the Zambia Episcopal Conference (ZEC). Thus, it is denied that the late Esther Mwila Tepeka owned 6,639 square metres of land on certificate of title number 42855, which has since been changed into Agness Zulu's names.
- 3.3 Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendants, therefore repeat that the alleged piece of land that they occupy, belonged to the Zambia Episcopal Conference (ZEC) under certificate of title number 83762 (subdivision No 328 of Farm 610) and not certificate of title No 42855 as alleged by Agness Zulu and Nelson Mulala.
- 3.4 The averments relating to Agness Zulu being appointed Administrator of the estate of the late Esther Mwila Tepeka,

and that on that basis, she proceeded to change title into her names, is said to be within her peculiar knowledge. Whilst agreeing that they have put up houses on the property, Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendants, deny that Davy Tembo is a cadre who illegally sold the land to Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendants, or that he chased Nelson Mulala from the land.

- 3.5 Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendants, state that they are not privy to Davy Tembo having been reported to various Government agencies over his illegal sale of the land, and that efforts to stop him from doing the same have proved futile. They contend that the eventual change of ownership of the land into Agness Zulu's names, instead of the land being shared equally with Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendants, has gravely disadvantaged and imperiled their rights and interests.
- 3.6 Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendants, state that Davy Tembo reported Agness Zulu and Nelson Mulala to the Ministry of Lands and the Zambia Episcopal Conference to stop them from interfering with or selling their land.
- 3.7 The averments relating to Agness Zulu and Nelson Mulala being the owners of the land who have been deprived of the same, and who have been unable to sell the land to big companies, such as AVIC, and thereby alleviate their poverty

is said to be within their peculiar knowledge. Agness Zulu and Nelson Mulala are challenged to prove documentary proof of how they obtained title deeds from the Ministry of Lands when the same were in the names of the Zambia Episcopal Conference, which land has not been legally subdivided.

- 3.8 Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendants, counterclaim that Agness Zulu and Nelson Mulala have deprived them of their entitled share in the said piece of land, namely F/610 which was erroneously re-numbered and marked subdivision F/610/C by Agness Zulu with the help of the Commissioner of Lands, when in fact the land was supposed to be equally divided among Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendants, and the deceased Esther Mwila Tepeka Sambwa.
- 3.9 They further allege that the said piece of land Farm No 610/328 and the certificate of title No 83762 was cancelled for purposes of renumbering and subdivision, and thereafter to be shared among Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendants and the late Esther Mwila Tepeka Sambwa. Thus, Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendants have suffered damages, loss, great inconvenience and anguish.

3.10 They therefore counterclaim as follows:

- i. *Damages for loss of use of its' legitimate piece of land to be assessed.*
- ii. *An Order for the cancellation of the certificate of title No 42855 and survey diagram No 13213 of 2017.*
- iii. *An Order for the rectification of the Lands Register relating to Farm 610, Lusaka.*
- iv. *Damages for inconvenience, anguish and pain suffered as a result of the dubious activities by Agness Zulu and Nelson Mulala in forcefully alienating the said piece of land, which piece of land belonged to Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendants and the late Esther Mwila Tepeka Sambwa.*
- v. *Further or other relief that the Court may deem fit.*
- vi. *Interest on all amounts found due.*
- vii. *Costs.*

#### **4. COMMISSIONER OF LANDS AND ATTORNEY GENERAL'S DEFENCE**

4.1 In a defence that was filed on 5<sup>th</sup> October, 2020, the Commissioner of Lands and the Attorney General make no comment as to the capacities in which Agness Zulu and Nelson Mulala have sued. No comment is further made to the assertion that Davy Tembo is a cadre who has illegally sold portions of the land F/610/C to Joe Sakaumba, Joseph Zulu and Chileshe and the other unknown defendants, as well as the contention that the late Esther Mwila Tepeka

owned 6,639 square metres of land on title number 42855, which has since been changed into Agness Zulu's names.

- 4.2 It is however admitted that on the demise of the late Esther Mwila Tepeka, Agness Zulu was appointed Administrator of her estate, and that she has assumed ownership of the property on behalf of the late Esther Mwila Tepeka's children. Further admission is made to the allegation that Davy Zulu is a political cadre who has sold portions of the land to Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendants, who have since put up housing projects on the land.
- 4.3 It is further stated that according to the records that are held at the Ministry of Lands, Agness Zulu was allocated F/610/C and she was given a direct lease by the Commissioner of Lands on 6<sup>th</sup> April, 2018. No comment is made to the assertion that Davy Tembo has been summoned to various Government Ministries with a view to stop him from illegally selling the property, to no avail.
- 4.4 No comment is also made as regards the allegation that Nelson Mulala and his siblings are the rightful owners of the property, but have been denied the same as Davy Tembo is rude and acts with impunity, and that as a result, Agness Zulu and Nelson Mulala are living in poverty, and they had offered the property for sale to big companies such as AVIC at Two Million Five Hundred Thousand Kwacha (K2, 500, 000.00) which would have alleviated their poverty levels.

## **5. EVIDENCE LED AT TRIAL**

5.1 At trial, Agness Zulu and Nelson Mulala testified, and they did not call any witnesses. Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other Defendants called Three (3) witnesses. The Commissioner of Lands and the Attorney General did not appear at trial, so they did not call any witnesses.

## **6. EVIDENCE BY AGNESS ZULU AND NELSON MULALA**

### **PW1- AGNESS ZULU**

6.1 The first witness was Agness Zulu. In her very brief testimony, she stated that when her late sister, Esther Mwila Tepeka died on 11<sup>th</sup> November, 2016 in Ngombe, her children had failed to stay there. She also testified that the children were better placed to explain everything.

### **CROSS EXAMINATION OF AGNESS ZULU**

6.2 In cross examination, Agness Zulu's evidence was that her names are Agness Zulu, and that her husband Japhan Amis died in 2016. It was also her testimony, that her names on her national registration card are Agness Zulu. She stated that her late sister Esther Mwila Tepeka was married to Mr Sambwa, and that they had Four (4) children, Two (2) who are now surviving.

6.3 The Two (2) surviving children were named as Nelson Mulala and Mutale Musakanya, and Agness Zulu told the Court that the Two (2) deceased children were Elizabeth and Lute. She explained that her late sister's first born child was Nelson Mulala and that his father's young brother got him the

national registration card, and that was how his surname was changed from Sambwa to Mulala.

- 6.4 It was further Agness Zulu's testimony that the second born child was Elizabeth, the third Mutale, and the last born was Lute who died in October, 2021.
- 6.5 She testified that the certificate of title at page 2 of the bundle of documents for Davy Tembo, Joe Sakaumba, Joseph Zulu and Chileshe and the unknown Defendants was in her names. Agness Zulu explained to the Court that she cannot read. However, on the documents being read to her, her testimony was that the certificate of title was for Farm subdivision No 328 of Farm 610 in extent of 1.6146 hectares for the unexpired term of One Hundred (100) years.
- 6.6 It was her evidence that when the late Esther Mwila Tepeka died in 2016, there was a letter of offer for the land. Thus, Agness Zulu agreed that at the time of the late Esther Mwila Tepeka's death, certificate of title 42855 did not exist, even though paragraphs 5 and 6 of the statement of claim stated so. Page 2 of Agness Zulu and Nelson Mulala's bundle of documents was identified as an invitation to treat that was given to Esther Mwila Tepeka on 26<sup>th</sup> October, 2016 for the property No F/610/C.
- 6.7 The letter of offer for the said property at page 1 of the said bundle of documents, was said to be dated 2<sup>nd</sup> December, 2016. Agness Zulu told the Court that the letter of offer came out a month after the death of the late Esther Mwila Tepeka. She agreed that at page 1b of the said bundle of documents,

was an offer in her names dated 12<sup>th</sup> December, 2017, for the property F/610/C.

- 6.8 Agness Zulu agreed that the title deed, which was at page 4 of her bundle of documents, was processed in her name, stating that this was on the basis that the late Esther Mwila Tepeka had died. As to the extent of land that was indicated on the said title deed, Agness Zulu testified that it was 6639 square metres, and she stated that it was a big piece of land. She agreed that in the memorials of the certificate of title at page 5, dated 3<sup>rd</sup> April, 2018, it showed that she was the first person to own the land, and not that Esther Mwila Tepeka was the first owner.
- 6.9 Her evidence still in cross examination, was that the letter appointing her as Administrator of the estate of the late Esther Mwila Tepeka's estate was there, stating that the family chose her as Administrator, and they went to the Local Court to obtain the letters of appointment. She denied that there was fraud in the process.
- 6.10 On the certificate of title at page 2 of Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendant's bundle of documents, Agness Zulu agreed that it was a certificate of title pursuant to the Land Conversion of Titles Act, 1975 for the property, subdivision No 328 of Farm 610, for the unexpired term of 100 years from 1<sup>st</sup> July, 1975, in extent of 1.6146 hectares.
- 6.11 Her evidence was that the certificate of title that was in her names, was for the property F/610/C/2 for 99 years. Agness

Zulu did not know that a statutory lease for 100 years could not be converted into a lease for 99 years before the expiration of 100 years. She did however agree that at page 18 of Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendant's bundle of documents was the Lands Register for the property F/610/328.

- 6.12 She also testified that at page 6 of the said bundle of documents, was a letter that was authored by the Zambia Episcopal Conference on 21<sup>st</sup> December, 2011, giving a list of persons who were to be compensated, and those who would benefit for being vulnerable on the land, being subdivision 328 of Farm 610, as their plots were taken up by St Faustina Parish. Agness Zulu's testimony was that she did not know whether that said letter was from Davy Tembo.
- 6.13 It was stated that the Lusaka City Council, and the Ministry of Lands were to be involved, while the Zambia Episcopal Conference should have surrendered the certificate of title to the Ministry of Lands so that the Commissioner of Lands should have re-entered the property, so that the property could have been cancelled.
- 6.14 Still on the said bundle of documents, Agness Zulu's evidence was that the Lands Register at pages 18-19 for the property F/610/328, at entry No 3, showed a Notice of Intention to re-enter, while at Entry No 4 was the Notice of Re-entry. When referred to page 14 of her and Nelson Mulala's bundle of documents dated 4<sup>th</sup> August, 2021, Agness Zulu told the Court, that it was a letter that was

written to the Town Clerk on 20<sup>th</sup> April, 2016, by the Senior Estates and Valuation Officer on behalf of the Commissioner of Lands for approval of the proposed cancellation and re-planning of Subdivision No 328 of Farm 610.

- 6.15 She agreed that page 4 of Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendant's bundle of documents was the diagram for the proposed re-planned land, and that page 5 was the proposed subdivision. Agness Zulu told the Court that she could see the proposed subdivision C at the said page 5. Her testimony was that she had a certificate of title for the said subdivision C of Farm 610.
- 6.16 She agreed that page 6 of her and Nelson Mulala's bundle of documents dated 4<sup>th</sup> August, 2021, was a diagram dated 22<sup>nd</sup> June, 2017, and that it captured the entire proposed subdivisions that were reflected at page 5 of Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendant's bundle of documents.
- 6.17 Agness Zulu's continued testimony in cross examination, was that at page 21 of her and Nelson Mulala's bundle of documents, was a letter that they wrote to the Commissioner of Lands on 10<sup>th</sup> February, 2017 to intervene over F/610 Subdivision C as they had paid the survey fees and the survey was done on 9<sup>th</sup> February, 2017.
- 6.18 It was stated that Agness Zulu did not know that at the time, AVIC was in the picture. She agreed that at page 14 of Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other

unknown Defendant's bundle of documents was an agreement for the sale of a plot by Lute Sambwa. Her evidence was that she did not know the property that was indicated on the document, but she testified that Lute Sambwa was a child of the late Esther Mwila Tepeka.

- 6.19 It was Agness Zulu's evidence, that Frederick Chileshe is the 4<sup>th</sup> Defendant in this matter, but she denied that Lute Sambwa sold Frederick Chileshe a portion of the land measuring 10.70 x 36 metres. It was agreed that page 15 of the said bundle of documents was a national registration card for Lute Sambwa, and not for Davy Tembo. Agness Zulu, however, contended that Davy Tembo sold the land that belonged to Esther Mwila Tepeka.
- 6.20 Still in cross examination, Agness Zulu's testimony was that she had no evidence to show that Davy Tembo sold Esther Mwila Tepeka's land. She did not know that the confirmation of sale at page 20 of Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendant's bundle of documents, was written at the police, and that on that document, Lute Sambwa was the seller of the land to Brighton Mubanga Katula on 20<sup>th</sup> December, 2016 confirming the sale of 16<sup>th</sup> July, 2016.
- 6.21 Agness Zulu agreed that at page 22 of her and Nelson Mulala's bundle of documents dated 4<sup>th</sup> August, 2021, she had written to the Minister of Lands on 23<sup>rd</sup> February, 2017, requesting for a meeting over the dispute over the property known as F/610/C. Her evidence was that Jean Kapata was

the Minister of Lands at the time, and that she wrote the letter as she had a dispute with the Zambia Episcopal Conference.

- 6.22 It was stated that they went for the meeting, but the Minister of Lands was not there, and they were given other dates. However, Davy Tembo and the other Defendants did not show up for the meeting. Agness Zulu agreed that pages 24-25 of Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendant's bundle of documents, were minutes of the meeting over the late Esther Mwila Tepeka's land. Agness Zulu denied ever having spoken with AVIC over sale of the land.
- 6.23 She expressed ignorance over paragraph 11 of the statement of claim at page 3 of her and Nelson Mulala's bundle of pleadings, which stated that AVIC had offered them Two Million Five Hundred Thousand Kwacha (K2, 500, 000.00) for the land. While stating that in 2010 she worked as a maid in Emmasdale, and she earned K800.00 a month, and her husband was alive at the time, Agness Zulu testified that she was not poor, as they could afford to eat.
- 6.24 She further testified that in 2010, her late sister Esther Mwila Tepeka lived at the farm, but denied that it was in a one (1) roomed grass thatched house, stating that it was made of bricks. She also denied that the late Esther Mwila Tepeka's house collapsed due to heavy rains, which was reported on the news, and the late Maxwell Nkole built her a Two (2) roomed house.

6.25 She did however, agree that the Zambia Episcopal Conference mobilized funds from well-wishers, while the late Maxwell Nkole and Davy Tembo mobilized the construction. It was denied that the late Esther Mwila Tepeka lived in abject poverty, but Agness Zulu agreed that she used to help the late Esther Mwila Tepeka. She denied that she worked with others, including Jean Kapata to process title deeds into her name.

#### **RE-EXAMINATION OF AGNESS ZULU**

6.26 The clarification that Agness Zulu gave, was that she did not know that Lute sold the house. Her evidence was that after the late Esther Mwila Tepeka died, the children were chased from the land and thereafter, police from Central Police helped her. However, before her late sister Esther Mwila Tepeka died, they had started the process of acquiring title to the land.

6.27 It was stated that the late Esther Mwila Tepeka started living on the land in 1972, and that Agness Zulu would help her from the time her husband died.

#### **PW2-NELSON MULALA**

6.28 Nelson Mulala's testimony was that he was complaining over the land that belonged to his late mother, Esther Mwila Tepeka, which is on title, and is known as F/610/C. Nelson Mulala further told the Court that the title deed for the land is in Agness Zulu's name, which he identified as that at pages 1-4 of Agness Zulu and his bundle of documents, adding that it was obtained in 2018.

- 6.29 Still in his testimony, he stated that all the people that had built on the land were before Court. It was further Nelson Mulala's testimony, that he had approached Davy Tembo and the others, and asked them why they were building on the land. That in response, they had informed him that they owned the land. However, they did not show him any documents of proof of ownership.
- 6.30 Nelson Mulala stated that page 2 of Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendant's bundle of documents, was a certificate of title in the name of the Zambia Episcopal Conference.
- 6.31 The evidence that Nelson Mulala further gave, was that the Zambia Episcopal Conference is not a Defendant in this matter, and that the land which is theirs, and which they claim is F/610/C. It was added that the Ministry of Lands gave them the certificate of title for F/610/C, after surveyors surveyed the land. He could not recall the name of the Surveyor who surveyed the land, but told the Court, that he was from the Ministry of Lands.
- 6.32 The continued testimony was that police officers from Central Police were there, when the survey of the land was done, as there was confusion at the land. Nelson Mulala identified page 6 of Agness Zulu and his bundle of documents dated 4<sup>th</sup> August, 2021, as the survey diagram that was generated after the survey was done, adding that it came from the Ministry of Lands.

6.33 He expressed ignorance over the site plan at page 5 of Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendant's bundle of documents. Nelson Mulala asked the Court to give them the land, and that it Orders that all the illegal structures that had been built on the said land be demolished. He denied that they sold the land, stating that the certificate of title that they hold is for bare land.

6.34 It was stated that Nelson Mulala did not know how Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendants found themselves on the land, stating that, that was the reason that they had brought them to Court.

**CROSS EXAMINATION OF NELSON MULALA**

6.35 It was Nelson Mulala's evidence in cross examination, that even though he did not work, he survived. His testimony was that Mavis Chiyuni Kamanga is his sister, and that the late Esther Mwila Tepeka was his mother. Nelson Mulala told the Court that he processed the documents at the Ministry of Lands with his sister Mavis Chiyuni Kamanga, as his late mother was unwell at the time.

6.36 It was further his evidence, that Mr. Sambwa did not have any children with his late mother. Nelson Mulala agreed knowing Mutale Sambwa, and he testified that Mutale Sambwa's father was deceased. As to when his late mother died, Nelson Mulala's evidence was that it was on 16<sup>th</sup>

November, 2016. He added that on her demise, she left the property F/610/C, and that it was on title.

- 6.37 When referred to paragraph 5 of the statement of claim, Nelson Mulala testified that on his late mother's death, title to the property did not change into Agness Zulu's names. His testimony was that according to the survey diagram in the certificate of title, at page 6 of Agness Zulu and his bundle of documents, the property was surveyed on 22<sup>nd</sup> June, 2017.
- 6.38 He reiterated that Surveyors went with police officers to the land to survey it, as there was confusion there, because when the Ministry of Lands went there Three (3) times, Mr. Zulu would send cadres to throw stones.
- 6.39 Still on the survey, Nelson Mulala testified that the survey was done twice before his mother died, and once after she had died. He agreed that at the time the offer for the land was made, the size of the land had not been ascertained. It was Nelson Mulala's evidence that Agness Zulu was the first owner of the land, after the offer for the land was made to his late mother in 2016.
- 6.40 He stated that page 5 of Agness Zulu and his bundle of documents, which was the memorials of the certificate of title, showed that the property was first registered on 3<sup>rd</sup> April, 2018, while at page 4 of the said bundle of documents, the size of the land was indicated as 6639 square metres. He agreed that Agness Zulu was indicated as the beneficial

owner of the land on the certificate of title, and not as Administrator.

- 6.41 Nelson Mulala further agreed that the letter appointing Agness Zulu as Administrator of the estate of the late Esther Mwila Tepeka was not in the bundle of documents. He did not know whether initially Farm 610 was just One (1) piece of land that was on a 100 year lease, and it was later subdivided as subdivision No 328 of Farm 610, and was subject of the Land Conversion of Titles Act, 1975.
- 6.42 It was also Nelson Mulala's testimony, that as shown on the certificate of title at page 2 of Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendant's bundle of documents, the land was processed in 2005, as described on diagram No 659 of 2005.
- 6.43 He agreed that on the certificate of title at page 4 of Agness Zulu and his bundle of documents, subdivision No C of Farm 610, showed the land as being for 99 years, and that at page 5 of the same bundle of documents, the land was reflected as a Presidential lease, and not as a statutory lease. Nelson Mulala's evidence was that in processing the certificate of title, he worked closely with officials from the Ministry of Lands and the police.
- 6.44 His testimony, when referred to pages 18-19 of Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and other unknown Defendant's bundle of documents, was that it was the Lands Register for land that was owned by the Zambia Episcopal Conference. Nelson Mulala agreed that at entry No 4 at page

19, was a certificate of re-entry that was dated 22<sup>nd</sup> April, 2015. It was also agreed that the letter dated 21<sup>st</sup> December, 2011, at page 6 of Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendant's bundle of documents, was on the letterhead for the Zambia Episcopal Conference, with the list of beneficiaries who were to be compensated on subdivision No 328 of Farm 610.

6.45 Nelson Mulala agreed that at number 4 on the list, was Esther Mwila Tepeka, and at No 6 was Davy Tembo, the 1<sup>st</sup> Defendant. It was also agreed that at pages 7-13 of the said bundle of documents, were the letters that the Zambia Episcopal Conference wrote to the beneficiaries of the land, with the letter that was written to Davy Tembo being at page 13. Nelson Mulala testified that the said letter did not state that Davy Tembo was a seller of the land.

6.46 Further in cross examination, Nelson Mulala agreed that at page 14 of Agness Zulu and his bundle of documents dated 4<sup>th</sup> August 2012, was a letter dated 20<sup>th</sup> April, 2016, from the Ministry of Lands to the Town Clerk approving the cancellation of the certificate of title and re-planning subdivision 328 of Farm 610. Nelson Mulala was not aware that the re-planning of subdivision 328 of Farm 610 Foxdale began in 2005.

6.47 He stated that the diagram at page 15 of Agness Zulu and his bundle of documents, was a proposed re-planning of Farm 328 of Farm 610 Foxdale, which was similar to the one at page 4 of Davy Tembo, Joe Sakaumba, Joseph Zulu,

Chileshe and the other unknown Defendant's bundle of documents. He testified that he could see subdivision C on the said diagrams.

- 6.48 As to the diagram in the certificate of title at page 6 of Agness Zulu and his bundle of documents dated 4<sup>th</sup> August, 2021, the evidence that Nelson Mulala gave was, that it was similar to the one at page 15 of the same bundle of documents and it was for land in extent of about Two (2) hectares. It was agreed that the letter at page 21 of the said bundle of documents, dated 4<sup>th</sup> August, 2021, was written by them to the Ministry of Lands on 10<sup>th</sup> February, 2017, stating that they had paid the survey fees for a big piece of land.
- 6.49 He explained that he paid survey fees of Three Thousand Kwacha (K3, 000.00) in 2017, after his late mother had died. Nelson Mulala also testified that as seen at page 26 of Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendant's bundle of documents, the meeting was not held at the Ministry of Lands due to the confusion that had erupted.
- 6.50 It was agreed that on the document at page 14 of Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendant's bundle of documents, Lute Sambwa was the seller of the land, and the buyer was Frederick Chileshe. Nelson Mulala further agreed that at page 15 of the said bundle of documents, was a national registration card for Lute Sambwa, who was the late Esther Mwila Tepeka's daughter.

6.51 Then at page 16, was a national registration card for Frederick Chileshe who bought the land for Ten Thousand Five Hundred Kwacha (K10, 500.00). Nelson Mulala while denying that he knew anything about the document, agreed that Davy Tembo's name did not appear on the document. Further in cross examination, it was agreed that at page 20 of the said bundle of documents, was a letter of sale which showed that Lute Sambwa sold a portion of the land to Brighton Mubanga Katula on behalf of Esther Mwila Tepeka's family.

6.52 Nelson Mulala told the Court that he knew nothing about that document. He stated that the copy of the national registration card, at page 21 was not clear, but he could see Lute's name on it. It was testified that Agness Zulu wrote the letter at page 22 of Agness Zulu and Nelson Mulala's bundle of documents, on 23<sup>rd</sup> February, 2017, requesting to meet the Minister of Lands after the survey was done on 9<sup>th</sup> February, 2017.

6.53 His evidence was that he did not attend the meeting, and he denied that they had sold the land to AVIC, or that he had met the Zambia Episcopal Conference outside the Ministry of Lands. In conclusion, Nelson Mulala testified that he does not work, and that in 2011, he was working at the Zambia Airforce as a civilian. His testimony was that he is poor.

#### **RE-EXAMINATION OF NELSON MULALA**

6.54 Nelson Mulala in re-examination, clarified that the issues in this matter do not relate to Subdivision No 328 of Farm 610,

as their land is F/610/C. It was also his evidence that on the letters of sale at pages 14 and 20 of Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendant's bundle of documents, no property numbers were indicated, and that Lute Sambwa did not sell F/610/C. He also stated that they knew the extent of F/610/C after the Ministry of Lands showed it to them.

6.55 That marked the close of the case for Agness Zulu and Nelson Mulala.

## **7. EVIDENCE BY DAVY TEMBO, JOE SAKAUMBA, JOSEPH ZULU, CHILESHE AND OTHER UNKNOWN DEFENDANTS**

### **7.1 DW1-FR CHIBEZA ZULU**

7.2 The first witness for the defence, was Fr Chibeza Zulu, a Catholic priest. He told the Court that the piece of land that is in contention, belongs to the Zambia Episcopal Conference, and that it is situated in Foxdale Lusaka. Fr Chibeza Zulu, further testified that the land was originally known as Farm 610, and at some point, it was subdivided for purposes of helping some vulnerable people, as well as compensating some people from whom the Church had bought land.

7.3 It was his testimony that the only church in the area for the Catholic Church was Roma Parish, which is situated along Zambezi Road. He stated that the Church used to cater for parishioners from Ngombe Compound who were a lot. Thus, a decision was made with time, to erect a Parish in Ngombe

Compound, and a piece of land was found for establishment of a Parish.

- 7.4 Fr Chibeza Zulu's evidence was that individuals who occupied the piece of land that was identified, agreed to surrender their pieces of land on the basis of swapping. That in that process, it was discovered that on the land for the Church, there were people who had been cultivating there, who on assessment, were established to be vulnerable. He added that the process of assessment began in 2003.
- 7.5 Continuing with his testimony, he stated that thereafter, the Zambia Episcopal Conference on humanitarian grounds, divided the land so that it could give some small portions to the vulnerable who were cultivating on the said land, and compensate those who had agreed to swap their pieces of land for the establishment of St Faustina Parish.
- 7.6 His evidence was that the process of parceling out the pieces of land began with the City Council, adding that the subdivision was different for those who were compensated for surrendering their pieces of land, so that St Faustina Parish could be established, and those who were vulnerable. Fr Chibeza Zulu, in that regard, testified that those who were compensated were given bigger pieces of land, that ranged 25x30 metres and 25x40 metres in size, while the vulnerable were given smaller pieces of land that measured 15 x15 metres.
- 7.7 He stated that Farm 610 was held on a 100 year lease from July, 1975, and that the subdivision in issue was No 328. Fr

Chibeza Zulu also testified that thereafter, letters of offer, which were at pages 6-13 of Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendant's bundle of documents were written. His testimony was that the names of those to be compensated were at page 6.

7.8 The certificate of title for Subdivision 328 of Farm 610 was identified as being at pages 2-4 of the said bundle of documents, with Fr Chibeza Zulu adding that on the site plan at page 5, were the subdivisions A, B, C, D, E, F, G H and I. His evidence was further that the site plan at page 5 was attached to the letters of offer.

7.9 Fr Chibeza Zulu also told the Court that after the subdivision was done, confusion ensued, as some people claimed the entire land. He explained that this disturbed the Zambia Episcopal Conference, as the intention was to compensate those who had surrendered their land, so that St Faustina Parish could be established. Secondly, the Zambia Episcopal Conference sought to assist the vulnerable.

7.10 It was his evidence, that engagement was done at the initiative of the people who claimed the entire land, after they organised a meeting with the Ministry of Lands. He stated that surprisingly, and disturbingly, the said conveners did not show up for the meeting.

#### **CROSS EXAMINATION OF FR CHIBEZA ZULU**

7.11 It was Fr Chibeza Zulu's evidence in cross examination, that he understood that subdivision C of subdivision 328 of Farm 610 was part of the land for the Zambia Episcopal

Conference. On being referred to the certificate of title at page 4 of Agness Zulu and Nelson Mulala's bundle of documents dated 4<sup>th</sup> August, 2021, he testified that it indicated the property number as subdivision C of Farm 610.

7.12 He agreed that the property number was not the same as subdivision C of subdivision 328 of Farm 610. It was further Fr Chibeza Zulu's testimony that subdivision C had not been processed. The evidence that was also given, when Fr Chibeza Zulu was referred to the site plan at page 5 of Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendant's bundle of documents, was that subdivision C appeared on that document, and that it would be subdivision C of subdivision 328 of Farm 610.

7.13 He stated that his testimony did not touch on subdivision C of Farm 610.

**DW2-DAVID TEMBO**

7.14 The 1<sup>st</sup> Defendant, David Tembo was DW2. In his evidence, he told the Court that he was a beneficiary of the land as compensation at subdivision 328 of Farm 610, which the Catholic Church gave them in exchange for their land, so that St Faustina Catholic Church could be built on the land in Foxdale Kasisi. He explained that prior to that Church being built, parishioners from New and Old Ngombe, as well as from Kasisi would have to go the Roma Parish.

7.15 Davy Tembo's evidence was in that process, there were a lot of accidents, and some people would not attend church at all, due to the distance. Further in his testimony, David

Tembo testified that they met the Church leadership sometime between 2003 and 2005, and they were taken to some reserve land which is outside the community, which had been identified for their occupation.

- 7.16 He stated that after they were shown the land, they were also shown the certificate of title for the land, and they were informed that the land would be subdivided, and they would be given certificates of title. It was stated that the process commenced, and they were given correspondence.
- 7.17 Then after sometime, some family members for Esther Mwila Tepeka who was given a piece of land, after she was identified as having been cultivating on it, raised some issues. He testified that other than Esther Mwila Tepeka, the late Mr. Mwanza, the late Mr. Nkhoma and Mr. Phiri, had also been cultivating on the said land.
- 7.18 Like Fr Chibeza Zulu, David Tembo's testimony was that the late Esther Mwila Tepeka and the others who had been cultivating on the land, were given smaller pieces of land by the Zambia Episcopal Conference, that measured 15 x15 metres. He added that those who were compensated were given 25x30 metres of land.
- 7.19 It was also David Tembo's evidence that the surveyor from the Zambia Episcopal Conference, Kantumoya went, and he measured the plots, and drew up a sketch plan which was at page 5 of Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendants bundle of documents. Still in his testimony, David Tembo testified that

they were given the letters of offer between 2014 and 2015, as per the list at page 6 of the said bundle of documents, which was dated 21<sup>st</sup> December, 2011.

- 7.20 He stated that from that list, the person at number 5, Misael Nkhoma was deceased, as was Esther Mwila at number 4 and Christin Mwanza at number 3. He told the Court that the late Esther Mwila Tepeka's family raised issues, and they took military officers who were in Zambia Airforce uniforms, led by Nelson Mulala to the land, alleging that the entire land was theirs, and they wanted to sell it.
- 7.21 David Tembo testified that he had explained to the military officers that the land belonged to the Zambia Episcopal Conference, and the officers went. He stated that he thereafter went to the Zambia Episcopal Conference with the late Esther Mwila Tepeka, a lady called Kamanga from the Ministry of Lands and Nelson Mulala. It was his evidence that there, the late Esther Mwila Tepeka and Nelson Mulala were warned that the land belonged to the Zambia Episcopal Conference.
- 7.22 David Tembo further testified that the meeting even wanted to remove the late Esther Mwila Tepeka from the land, as she was taking confusion there. However, they pleaded with the Church, and the late Esther Mwila Tepeka even apologised to the Church, stating that Nelson Mulala was instigating the confusion. Then from there, the confusion stopped, and in 2016, some people went to the land with Nelson Mulala,

stating that they wanted to build the late Esther Mwila Tepeka a house.

7.23 However, after they carried out investigations, they discovered that they were saying that the land belonged to the Esther Mwila Tepeka, and they wanted to buy it. David Tembo stated that they reported the matter to the Zambia Episcopal Conference, but Three (3) armed police officers went to the land with some people, stating that they wanted to put beacons.

7.24 That was how David Tembo rushed to the Zambia Episcopal Conference to collect a Priest, and they proceeded to the land in Foxdale. His evidence was that the Priest, Fr Musimuko talked to the police, who informed them that Nelson Mulala had an offer for the land, and they wanted to protect him. His testimony was that the police officers left after they slapped Fr Musimuko.

7.25 Further in his evidence, Davy Tembo testified that the matter was reported to police, and instructions were issued that no one should go to the land until the matter was resolved. David Tembo also told the Court that they lodged a complaint with the Ministry of Lands, and present in the meeting were the Minister of Lands, Jean Kapata, the Deputy Commissioner of Lands, Mr. Chazya, a Secretary from the Member of Parliament's office and themselves.

7.26 However, Nelson Mulala did not turn up, Esther Mwila Tepeka having died at the time. He testified that it was resolved in that meeting, that Mr. Kakubo from the Legal

Department and the Director Estates should visit the land, as the report showed that only Esther Mwila Tepeka was on the land. It was stated that Mr. Kakubo and an officer from estates went to the land, and they did a report that was different from the one that the officers from the Survey Department had done.

7.27 David Tembo testified that they were assured that the offer for the late Esther Mwila Tepeka would be revoked, as it was wrongly issued. However, to his surprise, they were sued, and together the Zambia Episcopal Conference, they went to the Ministry of Lands to find out why a certificate of title was issued. The Ministry of Lands in response, had stated that as the matter was in Court, there was nothing that they could do.

#### **CROSS EXAMINATION OF DAVID TEMBO**

7.28 In cross examination, David Tembo explained that page 2 of Agness Zulu and Nelson Mulala's bundle of documents dated 4<sup>th</sup> August, 2021, was an invitation to treat that was issued to the late Esther Mwila Tepeka. He surmised that Nelson Mulala could have been the late Esther Mwila Tepeka's son. He agreed that at page 25 of the said bundle of documents, was an invitation to treat in Agness Zulu's names dated 17<sup>th</sup> October, 2017, while page 1b of that bundle of documents, was an offer of the land to Agness Zulu.

7.29 It was agreed that page 3 of the said bundle of documents was the certificate of title for Subdivision C of Farm 610 in Agness Zulu's name, and that at page 4, the size of the land

was indicated as 6639 square metres. David Tembo's evidence was that the Zambia Episcopal Conference gave them land which measured 25x30 metres, and that 6639 square metres, translated into 80x 80 metres.

7.30 He agreed that he did not have a certificate of title in his names, adding that none of the Defendants did. Davy Tembo contended that even the late Esther Mwila Tepeka did not have a certificate of title. It was further agreed that the land for the Zambia Episcopal Conference was subdivision 328 of Farm 610, which was not the same as the land on the certificate of title at page 3 of Agness Zulu and Nelson Mulala's bundle of documents.

7.31 Davy Tembo maintained that Mr. Kakubo on going to the land, found that what the Surveyors had informed the Ministry of Lands, was not what was on the ground. David Tembo disagreed that the position as given by the Surveyors was correct, as the land was different from that which is owned by the Zambia Episcopal Conference.

#### **RE-EXAMINATION**

7.32 David Tembo clarified that none of the land that was given by the Zambia Episcopal Conference had been numbered.

#### **DW3-KISHA JERE**

7.33 The last witness was a subpoenaed witness, Kisha Jere. She is a Lands Officer at the Ministry of Lands. Her testimony was that the land in issue is subdivision 328 of Farm 610, that belongs to the Zambia Episcopal Conference Registered Trustees. Kisha Jere stated that the Zambia Episcopal

Conference Registered Trustees obtained the land from the President in 2008.

- 7.34 However, Ten (10) beneficiaries were allocated some parcels of land from the said land, as an alternative by the Zambia Episcopal Conference Registered Trustees. It was stated that subsequently, the process of re-planning, to facilitate the subdivision into Ten (10) parcels of land commenced. Thus, a notice of intention to re-enter the land was registered on the property on 22<sup>nd</sup> April, 2015, and a certificate of re-entry was also registered on the property, to allow for the re-planning, so that the land could be allocated to the beneficiaries.
- 7.35 Her evidence was that erroneously, the whole land was allocated to One (1) beneficiary who died in 2018, as the Survey Department at the Ministry of Lands gave an erroneous report that the land was in fact bare. However, upon an inspection visit being done on the land by the Lands Office and the Estates Valuation Department, it was established that Ten (10) beneficiaries were on site with developments on the property.
- 7.36 Kisha Jere further testified that a meeting was held at the office of the Minister of Lands, at which the Deputy Commissioner of Lands, the Legal Officer, representatives from the Zambia Episcopal Conference, and representatives from those who were aggrieved, were present, and it was discovered that the Zambia Episcopal Conference intended to give Ten (10) parcels of land to the Ten (10) beneficiaries.

7.37 Her evidence was that however, the file for the land could not be found at the Ministry of Lands to help the Ministry of Lands establish how the property was given to One (1) person as opposed to the Ten (10). Kisha Jere testified that from the new inspection report and the revelations of the meeting, it was decided that a certificate of cancellation of the re-entry be registered on the property, to enable the land to be registered back into the names of the Zambia Episcopal Conference on 4<sup>th</sup> September, 2020.

7.38 She stated that as things stood, the property had been reverted to the Zambia Episcopal Conference, and Kisha Jere asked the Court to cancel the certificate of title that was issued to Agness Zulu for the whole property, so that all the ten (10) beneficiaries could obtain title to their pieces of land.

#### **CROSS EXAMINATION OF KISHA JERE**

7.39 In cross examination, Kisha Jere testified that the property Subdivision 328 of Farm 610 appeared on the Lands Register at page 1 of Agness Zulu and Nelson Mulala's bundle of documents. When referred to the certificate of title at page 3 of Agness Zulu and Nelson Mulala's bundle of documents dated 4<sup>th</sup> August, 2021, Kisha Jere's evidence was that it was for Subdivision C of Farm 610.

7.40 She agreed that in the amended statement of claim, the relief sought was for an Order for possession of subdivision C of Farm 610 Foxdale. Kisha Jere did not agree that the said property appeared at page 2 of Agness Zulu and Nelson

Mulala's supplementary bundle of documents. However, when cross examined further, she agreed that it did.

- 7.41 She stated that in her evidence in chief, she had referred to the property that appeared at page 1 of Agness Zulu and Nelson Mulala's supplementary bundle of documents. It was denied that Kisha Jere's evidence had nothing to do with the property that appears at page 2 of Agness Zulu and Nelson Mulala's supplementary bundle of documents. Her explanation was that her evidence was in relation to page 1 of Agness Zulu and Nelson Mulala's supplementary bundle of documents.
- 7.42 Further in cross examination, Kisha Jere testified that the claims by Agness Zulu and Nelson Mulala had nothing to do with the property at page 1 of their supplementary bundle of documents. It was her testimony that she was a witness in relation to the property at page 2 Agness Zulu and Nelson Mulala's supplementary bundle of documents. She stated that the property at page 1 was not the same as that at page 2 of Agness Zulu and Nelson Mulala's supplementary bundle of documents.
- 7.43 However, she stated that the property number indicated at page 3 of the pleadings was the same, as that at page 2 of Agness Zulu and Nelson Mulala's supplementary bundle of documents. Kisha Jere testified that the property numbers for the properties were different, and that at page 1 of Agness Zulu and Nelson Mulala's supplementary bundle of documents, the first holder of the property was the Zambia

Episcopal Conference Registered Trustees, being F/610/328.

7.44 Then at page 2 of Agness Zulu and Nelson Mulala's supplementary bundle of documents, the property number was F/610/C, which measured 6639 square metres, with Agness Zulu as the first owner of the property. Kisha Jere stated that the property at page 2 of Agness Zulu and Nelson Mulala's supplementary bundle of documents was a creation from the property at page 1 of the said bundle of documents, which measured 1.646 Square metres.

#### **RE-EXAMINATION OF KISHA JERE**

7.45 The clarity that Kisha Jere gave, was that the property F/610/C was the same property as F/610/328, as it was a creation C from F/610/328, as a result of a re-planning.

7.46 That marked the close of the case for Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendants.

### **8. DECISION OF THIS COURT**

8.1 I have considered the evidence and the submissions.

#### **COMMON CAUSE FACTS**

8.2 It is common cause that Agness Zulu claims that she is the Administratrix of the estate of the late Esther Mwila Tepeka who died intestate on 16<sup>th</sup> November, 2016. It is not in dispute that Nelson Mulala is the son to the late Esther Mwila Tepeka. The facts that are further not in dispute, are that Agness Zulu obtained a certificate of title for the

property F/610/C Foxdale Lusaka which measures 6639 square metres.

- 8.3 It is not in issue, that the Zambia Episcopal Conference is the owner of the property known as F/610/328 Foxdale Lusaka, which is 1.6146 hectares in extent. The facts that are also common cause, are that Agness Zulu and Nelson Mulala claim ownership and an Order for the possession of the property known as F/610/C.
- 8.4 It is not in contention, that Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendants claim that title to the property F/610/C was erroneously issued to Agness Zulu, as it is part of the land that belonged to the Zambia Episcopal Conference, as F/610/328, and was supposed to be shared among them and the late Esther Mwila Tepeka.

**FACTS IN DISPUTE**

- 8.5 It is in contention whether Agness Zulu is entitled to ownership and possession of F/610/C, and whether the structures that have been built on that property should be demolished. It is further in dispute whether the certificate of title for F/610/C should be cancelled, and that a rectification should be made on the Lands Register for Farm 610.
- 8.6 Also, in dispute, is whether Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other Defendants are entitled to damages for inconvenience, pain and suffering at the hands of Agness Zulu and Nelson Mulala's actions.

**ANALYSIS**

- 8.7 The evidence as given Agness Zulu, was that after her late sister Esther Mwila Tepeka died, her children were chased from the said piece of land. Nelson Mulala on the other hand told the Court that after Agness Zulu obtained title to the land, he went and complained to the Task Force on illegal land allocation, that Davy Tembo and the others had illegally built of the land. His evidence was that he knew nothing about the certificate of title for the Zambia Episcopal conference.
- 8.8 Nelson Mulala further told the Court that he went with a Surveyor in the company of police officers to go and have the land surveyed, due to the confusion that had erupted on the land.
- 8.9 In defence however, Fr Chibeza told the Court that the Zambia Episcopal Conference decided to subdivide subdivision 328 of Farm 610, after the Church resolved to build St Faustina Parish. That in that process, a piece of land on which to build the church was identified, and it was agreed that those people who occupied that land, would be compensated by swapping their pieces of land, with the land that the Zambia Episcopal Conference owned.
- 8.10 Fr Chibeza Zulu also told the Court that in that process, it was discovered that there were vulnerable people who were cultivating on the land, and the Zambia Episcopal Conference decided to give those vulnerable people who included the late Esther Mwila Tepeka, smaller pieces of land

than those who were being compensated for swapping their pieces of land to enable St Faustina Parish to be built.

- 8.11 It was stated that the process was commenced with engaging the Council to have the land re-planned and thereafter, letters of offer were given to the beneficiaries. However, some people caused confusion as they claimed the whole land.
- 8.12 Davy Tembo, one of the beneficiaries of land who swapped his land to enable the construction of St Faustina Parish, confirmed the evidence as given by Fr Chibeza Zulu. He stated that he was involved in that process, and he explained that the late Esther Mwila Tepeka started claiming the entire land. It was his testimony that as a result, the late Esther Mwila Tepeka was called to a meeting by the Zambia Episcopal Conference at which Nelson Mulala was present.
- 8.13 There, they were warned that the land belonged to the Zambia Episcopal Conference, and Esther Mwila Tepeka even apologised after she was almost removed from the land for causing confusion there. David Tembo further told the Court that after that, everything was okay, until Nelson Mulala later went there with some people, stating that he wanted to build a house for the late Esther Mwila Tepeka.
- 8.14 However, investigations established that they wanted to sell the land on the basis of claiming ownership to it. Then later, Nelson Mulala went with officers who were clad in Zambia Airforce uniforms claiming ownership of the land, and David Tembo went with Fr Musimuko, who explained that the land was owned by the Zambia Episcopal Conference.

- 8.15 Then from there, David Tembo and others went and lodged a complaint at the Ministry of Lands but Nelson Mulala did not turn up at that meeting, and Esther Mwila Tepeka had died at the time. The meeting saw Mr. Kakubo and officers from the Estates and Valuation office of the Ministry of Lands being directed by the Minister of Lands to go and verify what was on the ground, as the report by the Survey Office reflected that only Esther Mwila Tepeka was on the ground.
- 8.16 He stated that the visit revealed otherwise as there were other families on the ground, and thereafter, these proceedings were commenced.
- 8.17 Kisha Jere, a Lands Officer at the Ministry of Lands on the other hand, testified confirming the intentions by the Zambia Episcopal Conference as given by Fr Chibeza Zulu. She added that the re-planning process was started to enable the land to be offered to the Ten (10) beneficiaries. However, erroneously, the Survey Department at the Ministry of Lands gave a report that indicated that the land was bare which saw the entire land being allocated to One (1) beneficiary, who has since died.
- 8.18 Kisha Jere further testified that an inspection visit was conducted on the land, which established that there were Ten (10) beneficiaries on site with developments on the property. That based on the inspection report and the meeting that was held in the Minister's office, it was resolved that a certificate of cancellation of the re-entry be registered

to enable the property to be restored to the Zambia Episcopal Conference on 4<sup>th</sup> September, 2020, which had since been done.

- 8.19 She asked that the certificate of title that was issued in Agness Zulu's name be cancelled.
- 8.20 In their submissions, Agness Zulu and Nelson Mulala state that under **Section 33 of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia**, a certificate of title is conclusive evidence of proof of ownership of land. They contend that no allegations of fraud have been made by Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendants in the acquisition of the certificate of title.
- 8.21 They state that in a desperate attempt to justify their interests in the property, Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendants brought in issues of re-planning the property known as F/610/328, which is a totally different property with a different location from the property F/610/C. The submission is that Kisha Jere the Lands Officer from the Ministry of Lands stated that F/610/328 belongs to the Zambia Episcopal Conference.
- 8.22 It is also submitted that as shown at pages 1 and 2 of Agness Zulu and Nelson Mulala's supplementary bundle of documents, the two properties are distinct, and the Zambia Episcopal Conference does not appear on the Lands Register

at page 2 of the said supplementary bundle of documents for the property F/610/C.

- 8.23 Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendants, on the other hand submit that while Agness Zulu and Nelson Mulala have submitted that subdivision C of Farm 610 is different from subdivision 328 of Farm 610 and therefore, they are two distinct properties that have no bearing on each other, it is true that the properties are distinct, but they contend that they have a bearing on each other.
- 8.24 In support of this submission, it is stated that this can be seen from the survey diagram at page 4 of Agness Zulu and Nelson Mulala's bundle of documents dated 7<sup>th</sup> November, 2019, where it is indicated as AD, and that indicated as AC at page 4 of Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendants bundle of documents. It is stated that AD of subdivision C of Farm 610 measures 6639 square metres, while AC of subdivision 328 of Farm 610 measures 1.6146 hectares.
- 8.25 The contention is that the testimony that was given by Agness Zulu, reveals either fraud or mistake in the creation of subdivision C of Farm 610 from subdivision 328 of Farm 610, as subdivision 328 of Farm 610 is a statutory lease that is held under 100 years, and it is subject to Part I of the Land Conversion of Titles Act, 1975. The submission is that Subdivision C of Farm 610 on the other hand, is held on a 99 year lease.

- 8.26 It is contended that it is impossible to create a lease on a 99 year tenure, out of a 100 year lease. The submission is further that the evidence is clear that Agness Zulu was just being used as a rubber stamp in the creation of subdivision C of Farm 610, to the exclusion of the Defendants as evidenced by the testimony of Fr Chibeza Zulu. Thus, the creation of the property was to facilitate sale of the said land to AVIC at Two Million five Hundred Thousand Kwacha (K2, 500, 000.00).
- 8.27 The allegation is also that Agness Zulu and Nelson Mulala even produced doctored documents in their supplementary bundle of documents, which show that subdivision 328 of Farm 610 is 1.6146 square metres, and not 1.6416 hectares. It is further submitted that the certificate of title in Agness Zulu's name, was processed in her names, and not in her capacity as Administrator of the estate of the late Esther Mwila Tepeka.
- 8.28 Therefore, it should be cancelled to facilitate subdivision to include the Defendants, as intended by the Zambia Episcopal Conference. That this is more so, as it was established that the certificate of title was erroneously issued. **Section 11 of the Lands and Deeds Registry Act** is referred to, as well as the decision in the case of **Corpus Legal Practitioners v Mwanandani Holdings Limited** <sup>(4)</sup>.
- 8.29 The submission is that **Section 48 of the Lands and Deeds Registry Act** places a duty on the Lands and Deeds Registry to make all enquiries into any title that it issues, including

any outstanding interests. In reiterating that the certificate of title should be cancelled, the decision in the case of **Honorius Maurice Chilufya v Chrispin Haluwa Kangunda** <sup>(1)</sup> is called to aid as authority, stating that the Court in that matter held that **Section 54 of the Lands and Deeds and Registry Act** does not authorise fraud and that **Section 33 of the said Act** vitiates a certificate of title on the ground of fraud.

8.30 The submissions in reply, state that the Davy Tembo, Joseph Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendants in their submissions, allege fraud in Agness Zulu and Nelson Mulala's conduct, on the basis of the size of the land for subdivision 328 of Farm 610 on the Lands Register in Agness Zulu and Nelson Mulala's supplementary bundle of documents.

8.31 The contention is that both parties were aware of that document, and therefore, fraud cannot be alleged at this juncture. The provisions of **Order 18/12/12 of the Rules of the Supreme Court of England** are referred to on the requirement for pleadings to distinctly allege and particularise the allegations of fraud. The cases of **Sablehand Zambia Limited v Zambia Revenue Authority** <sup>(2)</sup> and **Hanif Mohammed Bhura (Suing pursuant to a power of Attorney granted in his favour by Mehrunisha Bhura) v Yusuf Ibrahim Issa Ismail** <sup>(3)</sup> are cited as authority that gave effect to the provisions of **Order**

***18/12/18 of the Rules of the Supreme Court of England,  
1999 Edition.***

**DECISION**

- 8.32 In this matter, as already noted, the evidence on record reveals that the Zambia Episcopal Conference intended to give Ten (10) beneficiaries portions of land on subdivision 328 of Farm 610 Foxdale Lusaka. That land, according to the certificate of title at page 2 of Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendant's bundles of documents, was issued on 18<sup>th</sup> April, 2008, for the unexpired residue term of 100 years from 1<sup>st</sup> July, 1975, and was in extent of 1.6416 hectares.
- 8.33 The process of re-planning that land began which saw a Notice to re-enter, which is at entry No 3 of the Lands Register dated 22<sup>nd</sup> April, 2015, at page 18 of Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendant's bundles of documents. Thereafter, a certificate of re-entry, which is at page 19, at entry No 4 of the said bundle of documents being registered on 22<sup>nd</sup> April, 2015.
- 8.34 The evidence that was led by David Tembo, the 1<sup>st</sup> Defendant herein, was that the late Esther Mwila Tepeka started claiming ownership of the entire subdivision 328 of Farm 610 which saw the Zambia Episcopal Conference being involved, and they warned her and Nelson Mulala that it owned the land. Then after the late Esther Mwila Tepeka's

death, Nelson Mulala went to the land to have it surveyed in the presence of police officers.

8.35 Nelson Mulala did not deny those assertions, and in fact in cross examination, he told the Court that he processed title to the land with his sister Mavis Kamanga as his mother Esther Mwila Tepeka was unwell at the time. He further agreed in cross examination, that he went with Surveyors to the land in presence of police officers, as there was confusion there.

8.36 Agness Zulu, did not produce the letters of Administration that appointed her as Administrator of the estate of the late Esther Mwila Tepeka. However, she obtained the certificate of title in person capacity, and not as Administrator. So, by not producing the letters of Administration that is not fatal.

8.37 Nelson Mulala, as a person who claims ownership of subdivision C of Farm 610, did not tell this Court the basis for his claim, for the portion of the land that he claims, when the evidence on record shows that his late mother, Esther Mwila Tepeka was but only One (1) of the Ten (10) beneficiaries on that piece of land. His only contention is that subdivision C of Farm 610 is distinct from subdivision 328 of Farm 610, hence they are separate properties, and the land is held on a certificate of title, which is conclusive evidence of ownership of land.

8.38 While the two properties have different property numbers and can be said to be different, the testimony that was given by Kisha Jere, a Lands Officer from the Ministry of Lands

was that subdivision C of Farm 610 was a creation out of subdivision 328 of Farm 610 which is owned by the Zambia Episcopal Conference.

- 8.39 It will further be noted that the late Esther Mwila Tepeka was identified by the Zambia Episcopal Conference as being vulnerable, and she was offered land on subdivision 328 of Farm 610 Foxdale. However, she turned against the Church and started claiming the land. This can best be described as biting the hand that feeds you, and is evidence of pure greed.
- 8.40 She obviously started claiming the whole land as her daughter Lute had sold the portion of the land that she was given, and possibly more than that, even though the documents evidencing the sales by Lute do not indicate the property numbers. That is because the property had not been numbered following the proposed subdivision.
- 8.41 As if that was not enough, Nelson Mulala her son, continued to push to grab land that was not even given to his late mother, by obtaining a certificate of title which is at 3-10 of Agness Zulu and Nelson Mulala's bundle of documents dated 4<sup>th</sup> August, 2021, for land in extent of 6639 square metres which is far more than the 15x15 metres of land that the Zambia Episcopal Conference gave to the late Esther Mwila Tepeka, as a vulnerable person who was farming on the land.
- 8.42 The basis of that size of land being included in the certificate of title, as testified by Kisha Jere, was that officers from the Survey Department erroneously gave a report that the land was bare. She also told the Court that the file for the property

at the Ministry of Lands was missing. Thus, they were unable to establish how the piece of land was only given to the late Esther Mwila Tepeka when there were Ten (10) beneficiaries of the land that the Zambia Episcopal Conference had given.

8.43 The assertion by Agness Zulu and Nelson Mulala that F/610/C is distinct and separate from F/610/328 cannot stand, in light of what I have highlighted above. F/610/C is a creation from F/610/328, and it is therefore the same piece of land.

8.44 The submissions by Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendants, have alleged fraud on the part of Agness Zulu and Nelson Mulala in obtaining a certificate of title for subdivision C of Farm 610, after Agness Zulu and Nelson Mulala submitted that a certificate of title is conclusive evidence of ownership of land and no fraud in its' acquisition was alleged.

8.45 As rightly submitted by Agness Zulu and Nelson Mulala, fraud must be distinctly pleaded and particularised in the pleadings. Further, at trial evidence must be led to distinctly prove the allegations of fraud.

8.46 ***Order 18 Rule 12 (1) of the Rules of the Supreme Court of England*** states that:

***“(1) Subject to paragraph (2), every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including,***

*without prejudice to the generality of the foregoing,*

*(a) particulars of any misrepresentation, fraud, breach of trust, willful default or undue influence on which the party pleading relies;"*

8.47 The Supreme Court in the case of **Sablehand Zambia Limited v Zambia Revenue Authority** <sup>(2)</sup> held that:

*"Where fraud is an issue in the proceedings, then a party or wishing to rely on it must ensure that it is clearly and distinctly alleged. Further, at the trial of the cause, the party alleging fraud must equally lead evidence, so that the alleging fraud must equally lead evidence, so that the allegations is clearly and distinctly proved.*

*Allegations of fraud must, once pleaded, be proved on a higher standard of proof, than on a mere balance of probabilities, because they are criminal in nature."*

8.48 There is no pleading in the defence and counterclaim, alleging fraud. Thus, any allegations of fraud cannot stand. It is however noteworthy that fraud is not the only ground upon which a certificate of title may be cancelled. The Supreme Court in the case of **Sailas Ngowani and 6 others v Flamingo Farms Limited** <sup>(5)</sup> held that;

*"We agree therefore with Counsel for the appellants that fraud as prescribed in Section 33*

*of the Lands and Deeds Registry Act does not provide the only pathway of the law as circumvention of the procedure prescribed in law, which would render null and void, the allocation of land would be just as fatal.”*

8.49 What is pleaded in the defence and counterclaim is that subdivision C of Farm 610 Foxdale was erroneously numbered by Agness Zulu with the help of officers from the office of the Commissioner of Lands. Kisha Jere’s evidence did in fact establish so.

8.50 Thus, subdivision C of Farm 610 Foxdale Lusaka having been erroneously numbered out of sub division 328 of Farm 610 Foxdale, and as a result, the certificate of title having been issued to Agness Zulu, what is the fate of such a certificate of title?

8.51 **Section 33 of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia** provides that:

*“33. A Certificate of Title shall be conclusive as from the date of its issue and upon and after the issue thereof, notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the President or otherwise, which but for Parts III to VII might be held to be paramount or to have priority; the Registered Proprietor of the land comprised in such Certificate shall, except in case of fraud, hold the same subject only to such encumbrances, liens,*

***estates or interests as may be shown by such Certificate of Title and any encumbrances, liens, estates or interests created after the issue of such Certificate as may be notified on the folium of the Register relating to such land but absolutely free from all other encumbrances, liens, estates or interests whatsoever:***

- (a) Except the estate or interest of a proprietor claiming the same land under a current prior Certificate of Title issued under the provisions of Parts III to VII; and***
- (b) Except so far as regards the omission or misdescription of any right of way or other easement created in or existing upon any land; and***
- (c) Except so far as regards any portion of land that may be erroneously included in the Certificate of Title, evidencing the title of such Registered Proprietor by wrong description of parcels or of boundaries.***

8.52 The effect is the such certificate of title, is prima facie evidence of ownership of land, except as provided in the exceptions listed under (a) to (c) which include that it won't be evidence of ownership of any land that is erroneously included in the said certificate of title.

8.53 Then, under **Section 34 of the said Act**, it stipulates the instances in which an action may be brought against a registered holder of land as follows:

**“34. (1) No action for possession, or other action for the recovery of any land, shall lie or be sustained against the Registered Proprietor holding a Certificate of Title for the estate or interest in respect to which he is registered, except in any of the following cases, that is to say:**

- (a) the case of a mortgage as against a mortgagor in default;**
- (b) the case of the President as against the holder of a State Lease in default;**
- (c) the case of a person deprived of any land by fraud, as against the person registered as proprietor of such land through fraud, or against a person deriving otherwise than as a transferee bona fide for value from or through a person so registered through fraud;**
- (d) the case of a person deprived of or claiming any land included in any Certificate of Title of other land by misdescription of such other land, or of its boundaries, as against the Registered Proprietor of such other land, not being a transferee, or deriving from or**

*through a transferee, thereof bona fide for value;*

*(e) the case of a Registered Proprietor claiming under a Certificate of Title prior in date in any case in which two or more Certificates of Title have been issued under the provisions of Parts III to VII in respect to the same land.*

*(2) In any case other than as aforesaid, the production of the Register or of a copy of an extract therefrom, certified under the hand and seal of the Registrar, shall be held in every Court of law or equity to be an absolute bar and estoppel to any such action against the Registered Proprietor of land the subject of such action, and in respect of which a Certificate of Title has been issued, any rule of law or equity to the contrary notwithstanding.”*

8.54 Therefore, an action can be maintained against the holder of a certificate of title to land as prescribed above. Agness Zulu and Nelson Mulala did not tell the Court the procedure that they adopted to acquiring the certificate of title to the property subdivision C of Farm 610, which was created out of subdivision 328 of Farm 610, after a certificate of re-entry was entered in respect of subdivision 328 of Farm 610 Foxdale.

8.55 The evidence as given by Kisha Jere, establishes that officers from the Ministry of Lands were not honest, in reporting that

the land was bare, when in fact there were families there who had put up developments there. The report in fact went against the desire by the Zambia Episcopal Conference to empower the vulnerable who had been cultivating on the said land, and compensate those who had given up their land to enable the construction of St Faustina Parish.

8.56 Thus, it is highly recommended that officers from the Ministry of Lands, such as Francis Ngoma who authored the letter which is at page 14 of Agness Zulu and Nelson Mulala's bundle of documents dated 4<sup>th</sup> August, 2021 who wrote to the Lusaka City Council requesting for cancellation and re-planning subdivision 328 of Farm C attaching the proposed site plan for that purpose, which was obviously at variance with the site plan at 5 of Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendants bundle of documents to be disciplined.

8.57 The officers at the Ministry of Lands had an obligation pursuant to **Section 38 of the Lands and Deeds Registry Act** to make proper investigations and enquiries into any title, before the certificate of title in Agness Zulu's name was processed, on the application being made. That provision of the law is as follows:

***“38. (1) Upon the receipt of such application, the Registrar shall examine the title of the applicant and make all proper investigations and inquiries into the title to the land specified therein.*”**

the Lands Register for Farm 610 shall accordingly be rectified.

8.60 While Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendants have counterclaimed damages for inconvenience, no evidence was led to support that claim. It therefore fails.

## **9. CONCLUSION**

9.1 Davy Tembo, Joe Sakaumba, Joseph Zulu, Chileshe and the other unknown Defendants having succeeded in the main, on their counterclaim, they are awarded costs against Agness Zulu and Nelson Mulala, as well as the Commissioner of Lands and the Attorney General whose officers were at the centre of confusion in the creation of the property subdivision C of Farm 610. Leave to appeal is granted.

**DATED AT LUSAKA THE 4<sup>th</sup> DAY OF JANUARY, 2024**

*S. Kaunda*

**S. KAUNDA NEWA  
HIGH COURT JUDGE**

