

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

2020/HP/0784



BETWEEN:

**ANDREW MUNUNGA SIWABAMUNDI****PLAINTIFF**

AND

**THE CHIEF REGISTRAR OF LAND AND DEEDS  
ATTORNEY GENERAL  
PRECIOUS MUIMO  
NEW FUTURE FINANCE LIMITED**

**1<sup>ST</sup> DEFENDANT  
2<sup>ND</sup> DEFENDANT  
3<sup>RD</sup> DEFENDANT  
4<sup>TH</sup> DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 30<sup>th</sup> DAY OF JANUARY,  
2024.**

*For the Plaintiff* : Ms. J. Mwenya, Messrs M.C. Hamachila Legal Practitioners  
*For the 1<sup>st</sup> & 2<sup>nd</sup> Defendants* : Ms. M. K. Chongo – Assistant Senior State Advocate and Mr. C. Lusholo – State Advocate  
*For the 3<sup>rd</sup> Defendant* : Mr. S. Mbewe – Messrs Keith Mweemba Advocates  
*For the 4<sup>th</sup> Defendant* : Mr. G. Hakainsi – Messrs LM Chambers.

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

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CASES REFERRED TO:

1. *Hunt v Luck* 1902 1 Ch D P 428
2. *Mobil Oil (Zambia) Limited v Loto Petroleum Distributors Limited* 1977 ZR 336
3. *Tito v Waddel (No 2)* 1977 CH. D 106
4. *Gideon Mundanda v Timothy Mulwani and the Agricultural Finance Co. Ltd and S.S.S. Mwiinga* 1978 ZR 29
5. *Elijah Bob Litana v Bernard Chimba and the Attorney General* 1987 ZR 26
6. *Mwenya and Randee v Kapinga* 1988 SJ 12
7. *Zambia Consolidated Copper Mines Limited v Eddie Katalayi and Max Chilongo* 2001 ZR 28
8. *Nora Mwaanga Kayoba and Alizani Banda v Eunice Kumwenda Ngulube and Andrew Ngulube* SCZ Judgment No. 19 of 2003

- 9. *Anti-Corruption Commission v Barnett Development Corporation Limited* 2008 ZR 69 Vol 1**
- 10. *Banda and another v Mudimba* 2011 Vol 3 ZR 162**

LEGISLATION REFERRED TO:

- 1. *The Lands and Deeds Registry Act Chapter 185 of the Laws of Zambia***
- 2. *The Land Survey Act, Chapter 188 of the Laws of Zambia***

OTHER WORKS REFERRED TO:

- 1. *Black Law's Dictionary, 8<sup>th</sup> Edition, by Bryan A. Garner* 2004 Thomas Reuters**
- 2. *Land Law in Zambia, by F. Mudenda, 2007 UNZA Press***
- 3. *Trietel on The Law of Contract***

## **1. INTRODUCTION**

1.1 The Plaintiff, Andrew Mununga Siwabamundi, commenced this matter, initially by Originating Summons on 10<sup>th</sup> August, 2020. However, by an Order dated 10<sup>th</sup> February, 2021, I directed that the originating process be amended to a Writ of Summons, as there was need for evidence to be adduced by the witnesses. Thus, by Writ of Summons, accompanied by a statement of claim which were filed on 23<sup>rd</sup> February, 2021, Andrew Mununga Siwabamundi seeks the following reliefs:

- i. An Order of specific performance of the contract entered into between the Andrew Mununga Siwabamundi and Precious Muimo dated 9<sup>th</sup> January, 2012;*
- ii. An Order for the cancellation of Certificate of Title No. CT\_78943 in respect of Subdivision No. 2 of Subdivision U of Farm No. 2303 which was issued in favour of New Future Finance Limited herein;*

- iii. *That the discharge of the caveat entered by Andrew Mununga Siwabamundi dated 15<sup>th</sup> August, 2012 on property number F/2303/4/2 Lusaka was illegal and should be restored;*
- iv. *That all the entries on the Lands and Deeds Register made after the discharge of the caveat referred to in (3) above should be reversed and or cancelled;*
- v. *That Andrew Mununga Siwabamundi should proceed to register the Deed of Assignment and other related documentation to obtain title in respect of the aforesaid property;*
- vi. *That the Chief Registrar of Lands and Deeds, the Attorney General, Precious Muimo and New Future Finance Limited should bear the costs; and*
- vii. *Further or other relief.*

## **2. STATEMENT OF CLAIM**

2.1 In setting out the basis of the reliefs claimed, the statement of claim, shows that Andrew Mununga Siwabamundi was at all material times, the purchaser of the property known as proposed Subdivision 2 of Subdivision U of Farm 2303 Lusaka. The Chief Registrar of Lands and Deeds, is sued as the Chief Principal Officer of the Deeds Registry at the Ministry of Lands and Natural Resources. The Attorney General on the other hand, is sued as the Chief Legal Advisor of the Government pursuant to the ***State Proceedings Act, Chapter 71 of the Laws of Zambia.***

- 2.2 Precious Muimo is said to have been at all material times, the owner of Subdivision 2 of Subdivision U of Farm No. 2303 (Farm No. 2303), Lusaka, while New Future Finance Limited is a financial lending institution, that has its' registered office in Lusaka.
- 2.3 It is stated that on 9<sup>th</sup> January, 2012, Andrew Mununga Siwabamundi executed a contract of sale with Precious Muimo, in respect of proposed Subdivision 2 of Subdivision U of Farm 2303 Lusaka. The contention is that Andrew Mununga Siwabamundi made payments to Precious Muimo towards the purchase price, in respect of the contract of sale that was executed on 9<sup>th</sup> January, 2012 and 17<sup>th</sup> August, 2012.
- 2.4 He alleges that Precious Muimo acknowledged payment for the property on 7<sup>th</sup> March, 2012 and 17<sup>th</sup> August, 2012. Then thereafter, Andrew Mununga Siwabamundi and Precious Muimo executed a Deed of Assignment. Andrew Mununga Siwabamundi further avers that he proceeded to apply for State Consent to Assign for the transaction, which was later granted on 22<sup>nd</sup> November, 2013. He states that however, the State Consent to Assign expired, and he renewed the same. It was further granted on 27<sup>th</sup> July, 2018.
- 2.5 Andrew Mununga Siwabamundi, still in averment contends that on 16<sup>th</sup> November, 2012, Precious Muimo applied for the subdivision of Farm No. 2303 at the Lusaka City Council. Then thereafter, on 22<sup>nd</sup> November, 2012, she applied to the said Lusaka City Council, for change of use of land, from agricultural to residential. He goes on to aver that the Lusaka

City Council approved the proposed subdivision of Farm No. 2303 on 22<sup>nd</sup> November, 2018.

- 2.6 It is also stated that on 17<sup>th</sup> October, 2012, Andrew Mununga Siwabamundi proceeded to make payment of property transfer tax. His averment is that the approved subdivision of the property that he bought, is known as Subdivision B of Subdivision 2 of Subdivision U of Farm 2303, Lusaka. Andrew Mununga Siwabamundi further avers that he has since caused to be made, survey diagrams for his subdivision. He states that he registered a caveat on the land, to protect his interest as an intending purchaser, on 15<sup>th</sup> August, 2012.
- 2.7 The contention is that Precious Muimo gave him a copy of the original certificate of title, at the time the contract of sale was executed, and he was awaiting the original copy in order to transfer title into his own name. Andrew Mununga Siwabamundi states that he later obtained a printout of the Lands Register on 30<sup>th</sup> July, 2020, and found that Precious Muimo had sold the whole of Farm No. 2303, Lusaka to New Future Finance Limited.
- 2.8 Thus, on 27<sup>th</sup> July, 2020, Andrew Mununga Siwabamundi wrote a letter of complaint to the Chief Registrar at Ministry of Lands Natural Resources and Environmental Protection concerning the issuance of the certificate of title to New Future Finance Limited. It is stated that the sale has caused him damage and loss, and that the certificate of title in favour of New Future Finance Limited encompasses land that Andrew Mununga Siwabamundi bought from Precious Muimo.

### **3. DEFENCE BY THE CHIEF REGISTRAR OF LANDS AND THE ATTORNEY GENERAL**

3.1 The Chief Registrar of Lands and the Attorney General did not enter appearance or file a defence in this matter.

### **4. PRECIOUS MUIMO'S DEFENCE/ADMISSION**

4.1 Precious Muimo admits the capacity in which she has been sued, as well the capacity in which New Future Finance Limited has been sued. She further admits the averments relating to how she executed a contract of sale for the land, known as proposed Sub division 2 of Subdivision U of Farm 2303 Lusaka on 9<sup>th</sup> January, 2012 with Andrew Mununga Siwabamundi.

4.2 Precious Mumimo agrees that payment was made for the property, and that she applied for State Consent to Assign the property. She also admits that State Consent to Assign was granted, as alleged, which was renewed on expiration. It is further agreed that Precious Muimo applied to sub divide the land at the Lusaka City Council, and to change use of the said land. Other admissions made, are that the Lusaka City Council approved the sub division of the land, and that property transfer tax was paid for the land that she sold.

4.3 It is agreed that the land that Andrew Mununga Siwabamundi bought from Precious Muimo is now known as Subdivision B of Subdivision 2 of Subdivision U of Farm 2303, Lusaka. Further admission is made to the assertion that Precious Muimo had survey diagrams made for the said property.

4.4 The assertion that Andrew Mununga Siwabamundi placed a caveat on the property to secure his interests is said to be

within his peculiar knowledge. Precious Muimo however agrees that she gave Andrew Mununga Siwabamundi a copy of the original certificate of title when the contract of sale was executed, and that he awaited the original certificate of title so that he could change title into his name.

- 4.5 It is denied that on Andrew Mununga Siwabamundi obtaining a printout of the Lands Register on 30<sup>th</sup> July, 2021, he found that Precious Muimo had sold the entire Subdivision 2 of Subdivision U of Farm 2303 Lusaka to New Future Finance Limited, which included the land that Andrew Mununga Siwabamundi had bought.
- 4.6 The assertion that Andrew Mununga Siwabamundi wrote a complaint letter to the Chief Registrar of Lands on 27<sup>th</sup> July, 2020, over the issuance of the certificate of title to New Future Finance Limited, is said to be within Andrew Mununga Siwabamundi's peculiar knowledge. It is denied that the certificate of title in respect of Subdivision 2 of Subdivision U of Farm 2303, which was issued in favour of New Future Finance Limited encompasses the land that Andrew Mununga Siwabamundi bought from Precious Muimo.
- 4.7 Thus, it is denied, that as a result, Andrew Mununga Siwabamundi has suffered damage and loss. Precious Muimo's defence is that the property Farm No. 2303, was used as security for a loan facility that she obtained from New Future Finance Limited, but she was made to sign a purported contract of sale with a vague purported buy back clause, contrary to the rules and intention of the parties

4.8 It is also Precious Muimo's defence, that she did not consent to New Future Finance Limited transferring the interest in Subdivision B of Subdivision 2 of Subdivision U of Farm 2303, Lusaka. Her averment is that the certificate of title that was issued to New Future Finance Limited is erroneous, as it encompasses Subdivision B of Subdivision 2 of Subdivision U of Farm 2303, Lusaka, the property for Andrew Mununga Siwabamundi.

## **5. NEW FUTURE FINANCE LIMITED'S DEFENCE AND COUNTERCLAIM**

5.1 New Future Finance Limited makes no comment on the capacity that Andrew Mununga Siwabamundi has sued or the capacities in which he has sued the Chief Registrar of Lands, the Attorney General and Precious Muimo. It admits the capacity in which it has been sued, adding that it also buys properties from willing sellers and those who agree to execute contracts of sale, in the event that the proposed collateral for borrowing, does not meet the threshold for a loan, according to its' terms and conditions.

5.2 The contention that Andrew Mununga Siwabamundi purchased proposed Subdivision 2 of Subdivision U of Farm 2303 Lusaka, is said to be within his peculiar knowledge. The same goes, as regards the averments relating to how he paid for the land, how Precious Muimo applied for State Consent to assign the land, and for sub division of the land, and for change of land use at the Lusaka City Council.

- 5.3 Also, said to be within Andrew Mununga Siwabamundi's peculiar knowledge, is his assertion that State Consent to Assign was obtained, and that it was renewed on expiration, as well as Precious Muimo obtaining survey diagrams for the land that she sold to Andrew Mununga Siwabamundi.
- 5.4 The averment is that the caveat alleged to have been placed by Andrew Mununga Siwabamundi on the property to protect his interests, does not appear to have been duly registered. The further contention is that at the time of the alleged application for registration of the caveat by Andrew Mununga Siwabamundi, there was already a caveat that was registered on the same property on behalf of Reeves Malambo, as of 30<sup>th</sup> August, 2011, which was only withdrawn on or about 9<sup>th</sup> February, 2014.
- 5.5 New Future Finance Limited confirms having bought the property F/2303/U/2, and it contends that it is a bona fide purchaser for value, without notice of any encumbrance, let alone that of Andrew Mununga Siwabamundi. The averment that Andrew Mununga Siwabamundi wrote a complaint letter to the Chief Registrar of Lands on 27<sup>th</sup> July, 2020 over the issuance of a certificate of title to New Future Finance Limited, is said to be within his peculiar knowledge.
- 5.6 New Future Finance Limited denies having bought land alleged to have been purchased by Andrew Mununga Siwabamundi, on the basis that there was nothing to put it on notice of any interest. The defence is further that there was no registered interest for Andrew Mununga Siwabamundi of his presence on

the ground, at the time of the purchase. Thus, the contention is that Andrew Mununga Siwabamundi is not entitled to any of the reliefs sought in this action.

- 5.7 New Future Finance Limited counterclaims, stating that at the time that it bought Stand No. F/2303/U/2 Lusaka, there was no registered encumbrance on the Lands Register. Further, there was nothing on the ground to put it on notice of Andrew Mununga Siwabamundi's alleged interest in the land in issue.
- 5.8 It states that it was surprised when Andrew Mununga Siwabamundi went to interfere with it taking possession of the property, after it had already obtained a certificate of title for the property in issue. The allegation is that New Future Finance Limited, has been prevented from taking possession of the property due to the resistance being faced from Andrew Mununga Siwabamundi.
- 5.9 The contention is that as a result, New Future Finance Limited has suffered loss and damage. It counterclaims as follows:
- i. An Order granting possession of Stand F/2303/U/2 Lusaka to New Future Finance Limited;*
  - ii. Damages for inconvenience;*
  - iii. Interest on any amounts found due;*
  - iv. Costs against Andrew Mununga Siwabamundi; and*
  - v. Any other relief the Court may deem fit.*

## **6. REPLY AND DEFENCE TO NEW FUTURE FINANCE LIMITED'S DEFENCE AND COUNTERCLAIM**

- 6.1 Andrew Mununga Siwabamundi joins issue with New Future Finance Limited on its' defence, in so far as the same consists of admissions.
- 6.2 In defence to the counterclaim, he denies that at the time New Future Finance Limited bought the property, there was no encumbrance on the Lands Register, and that there was nothing to put New Future Finance Limited on notice, of his interest in the land. Andrew Mununga Siwabamundi also denies having interfered with New Future Finance Limited's possession of the property in issue.
- 6.3 His defence is that he lodged documents for the registration of a caveat on the land, that he bought, as an intending purchaser with the Chief Registrar of Lands and Deeds. It is further Andrew Mununga Siwabamundi's defence, that he has not prevented New Future Finance Limited from taking possession of the land in issue. He contends that it has not suffered loss and damage. Thus, it is not entitled to the reliefs sought.

## **7. EVIDENCE AT TRIAL**

- 7.1 At trial, Andrew Mununga Siwabamundi testified, and he called no witnesses. The Chief Registrar of Lands and the Attorney General did not call any witnesses, while Precious Muimo testified in her defence, and she did not call any witnesses. New Future Finance Limited called One (1) witness.

## **8. ANDREW MUNUNGA SIWABAMUNDI'S EVIDENCE**

### **PW1 -ANDREW MUNUNGA SIWABAMUNDI**

- 8.1 Andrew Mununga Siwabamundi identified his witness statement, and he relied on it, as his evidence before the Court. His evidence as contained in that witness statement, is that on or about 9<sup>th</sup> January, 2012, he executed a contract of sale with Precious Muimo in respect of the property known as proposed Subdivision 2 of Subdivision U of Farm 2303.
- 8.2 He stated that he made payments towards the land on 9<sup>th</sup> January, 2012, and 17<sup>th</sup> August, 2012. It was further his evidence, that Precious Muimo acknowledged receipt of payment for the land on 7<sup>th</sup> March 2012 and 17<sup>th</sup> August, 2012. Thereafter, they executed a Deed of Assignment. Andrew Mununga Siwabamundi testified that he then proceeded to apply for State Consent to Assign, and it was granted on 22<sup>nd</sup> November, 2013.
- 8.3 He told the Court that however, the State Consent to Assign expired, and he proceeded to renew it, and it was further granted on 27<sup>th</sup> July, 2018. Then thereafter, Precious Muimo, applied for subdivision of the land on 16<sup>th</sup> November, 2012 at the Lusaka City Council. Andrew Mununga Siwabamundi added that on 22<sup>nd</sup> November, 2012, Precious Muimo applied to the Lusaka City Council for change of use of the land from agricultural to residential.
- 8.4 It was also his evidence, that the Lusaka City Council approved the proposed subdivision of the land, and on 17<sup>th</sup> October, 2018, he proceeded to make payment for property transfer tax.

Andrew Mununga Siwambamundi testified that the approved subdivision of the land that he bought was renumbered, and it is now known as Subdivision B of Subdivision 2 of Subdivision U of Farm 2303, Lusaka. He stated that he proceeded to have the survey diagrams for the land prepared.

- 8.5 Then on 15<sup>th</sup> August, 2012, he applied to register a caveat on the land at the Ministry of Lands, to protect his interest, as an intending purchaser. Still in his testimony, Andrew Mununga Siwabamundi testified that Precious Muimo gave him a copy of the original certificate of title at the time the contract of sale was executed, and he had been waiting for the original copy from Precious Muimo, so that he could transfer title into his own name.
- 8.6 It was stated that later, Andrew Mununga Siwabamundi obtained a printout of the Lands Register on 30<sup>th</sup> July, 2020, and found that Precious Muimo had sold the whole of Farm No. 2303, Lusaka to New Future Finance Limited. Thus, he wrote a letter of complaint on 27<sup>th</sup> July, 2020, to the Chief Registrar at the Ministry of Lands Natural Resources and Environmental Protection, concerning the issuance of the certificate of title to New Future Finance Limited.
- 8.7 By way of concluding his testimony, Andrew Mununga Siwabamundi stated that Precious Muimo sold the land that he bought to New Future Finance Limited, and that the certificate of title in respect of Subdivision 2 of Subdivision U of Farm 2303 that was issued in favour of New Future Finance Limited encompassed the land, that he bought from Precious Muimo.

**CROSS EXAMINATION OF ANDREW MUNUNGA  
SIWABAMUNDI BY COUNSEL FOR THE CHIEF REGISTRAR  
OF LANDS AND THE ATTORNEY GENERAL**

8.8 There was no cross examination.

**CROSS EXAMINATION BY COUNSEL FOR PRECIOUS  
MUIMO**

8.9 In cross examination, by Counsel for Precious Muimo, and on being referred to pages 1 to 3 of Precious Muimo's bundle of documents, Andrew Mununga Siwabamundi stated that it was a contract of sale between himself and Precious Muimo. He also testified that pages 4 and 5 of the said bundle of documents, was evidence of the payments that he made by cheque to Precious Muimo.

8.10 His continued testimony was that at page 10 of the same bundle of documents, Precious Muimo obtained consent to assign, while at pages 11 and 12, was an application for subdivision of the land that he bought from Precious Muimo, dated 22<sup>nd</sup> November, 2013.

8.11 Andrew Mununga Siwabamundi testified that at page 14 of the said bundle of documents, was an approved plan of his subdivision and numbering, which was dated 21<sup>st</sup> March, 2014, and at page 15, was a survey diagram for his subdivision dated 24<sup>th</sup> July, 2014. His evidence was that it was part of the certificate of title that New Future Finance Limited holds.

8.12 Finally, Andrew Mununga Siwabamundi, testified that as a result of his portion of the land being encompassed in New

Future Finance Limited's certificate of title, he could not obtain title to his land.

**CROSS EXAMINATION BY COUNSEL FOR NEW FUTURE FINANCE LIMITED**

- 8.13 When cross examined by Counsel for New Finance Limited, and on being referred to pages 1 to 4 of his bundle of documents, it was Andrew Mununga Siwabamundi's testimony that according to the contract, he was to buy a proposed subdivision, which was an acre in size, as seen in the particulars at page 3.
- 8.14 On further being referred to page 16 of his bundle of documents, he stated that the Consent to Assign was for a subdivision, and not the whole property. He added that his subdivision was indicated as F/2303/U/2, which was the number for the property.
- 8.15 Continuing with cross examination, Andrew Mununga Siwabamundi's evidence was that at page 22, was the diagram that represented his subdivision, being Subdivision B of Subdivision 2 of Subdivision U of Farm 2303, and that it did not appear on the Consent to Assign at page 16. His testimony was that the Consent to Assign did not reflect the portion of land that he was supposed to buy, but the whole property.
- 8.16 He explained that if the Consent to Assign had been obtained, it would have assigned him the entire property, and that it did not reflect what he was supposed to buy. It was testified that the Consent to Assign was dated 27<sup>th</sup> July, 2018, while his diagram at page 22 was dated 24<sup>th</sup> July, 2014.

- 8.17 Andrew Mununga Siwabamundi's evidence was also that at the time the Consent to Assign was given, there was already an approved diagram of the subdivision. He told the Court that when he applied for Consent to Assign in 2018, the diagram had been approved, and it would therefore not be accurate to state that the diagram had not been obtained, as that was in reference to the earlier Consent to Assign.
- 8.18 Further in cross examination, Andrew Mununga Siwabamundi testified that he was not aware that the Consent to Assign could not be given before approval of a subdivision. His evidence was that when he first applied for Consent to Assign, he did not have an approved survey diagram.
- 8.19 He stated that at page 19 of his bundle of documents, was a tax clearance certificate, and that it described the land without reference to B on the property number. It was also Andrew Mununga Siwabamundi's evidence, that he used an agent to lodge the documents, and that he was aware that it is the duty of the seller to obtain Consent to Assign, and to pay property transfer tax. He however testified that he was with Precious Muimo when the applications were made.
- 8.20 Also, in cross examination, Andrew Mununga Siwabamundi stated that according to paragraph 5 of his witness statement, he proceeded to apply for Consent to Assign, and that Precious Muimo signed the application to assign. It was stated that Andrew Mununga Siwabamundi placed a caveat on the property as an interested or intending purchaser. He added that he paid for registration of the caveat, and that as far as he

was concerned, the caveat was registered at the Ministry of Lands.

- 8.21 In continued cross examination, the evidence that Andrew Mununga Siwabamundi gave, was that he had produced a Lodgement Schedule, and he made payment. Therefore, the Ministry of Lands was supposed to register the caveat, as he did his part. On being referred to page 40 of his bundle of documents, being the Lands Register, he stated that the Ministry of Lands was a party to the matter, as it did not register his caveat.
- 8.22 Andrew Mununga Siwabamundi testified that he did not put a structure on the land, stating that there was only an orchid. He also stated that he did not fence off the portion of land that he bought, contending that it was demarcated at the front. His evidence was that he entered into a contract of sale with Precious Muimo, as did New Future Finance Limited.
- 8.23 It was also his testimony, that the particulars of the contract of sale at page 3 of New Future Finance Limited's bundle of documents, described the piece of land that was sold, which was the remaining extent of Subdivision 2 of Subdivision U of Farm 2303 in extent of 0.6966 hectares.
- 8.24 Still in cross examination, Andrew Mununga Siwabamundi's evidence was that entry No. 13 on the Lands Register at page 39 of his bundle of documents, was the caveat that New Future Finance Limited registered, as an intending purchaser. He stated that Precious Muimo remained with the original certificate of title.

8.25 It was further stated that Andrew Mununga Siwabamundi did not come across any document that showed that Precious Muimo had advised New Future Finance Limited, at the time of entering into the contract of sale with it, that she had sold part of the land to him. His testimony was that his subdivision had not been marked off from the original certificate of title.

**RE-EXAMINATION OF ANDREW MUNUNGA SIWABAMUNDI**

8.26 In re-examination, Andrew Mununga Siwabamundi stated that the Consent to Assign, at page 16, was the second one that he had obtained after expiry of the first one. He explained that he got it in pursuance of the marking off, but his property had not been marked off, as Precious Muimo was holding on to the certificate of title.

8.27 That marked the close of the case for Andrew Mununga Siwabamundi.

**9. PRECIOUS MUIMO'S EVIDENCE**

**DW1 - PRECIOUS MUIMO**

9.1 Precious Muimo, identified her witness statement, and she relied on it, as her testimony before Court. In her witness statement, she stated that she is the legal owner of F/2303/U/2, and holder of the certificate of title, which was at pages 16 to 24 of her bundle of documents.

9.2 She recalled that on 9<sup>th</sup> January, 2012, she sold a portion of her property to Andrew Mununga Siwabamundi which was evidenced by the contract of sale and the payment receipts, which were at pages 1 to 8 of her bundle of documents.

- 9.3 Precious Muimo stated that she obtained State Consent to Assign and she paid property transfer tax, as shown in her bundle of documents, at pages 10 and 13. Her further evidence was that she obtained planning permission to subdivide the portion of land, and it was later numbered as Subdivision B of Subdivision 2 of Subdivision U of Farm 2303, Lusaka, with pages 11 and 12 of her bundle of documents, evidencing the same.
- 9.4 It was also testified that Precious Muimo obtained the survey diagrams that appeared at pages 14 and 15 of her bundle of documents. She stated that after the numbering, she remained the legal owner of the Remaining Extent F/2303/U/2, Lusaka. Then on or about 13<sup>th</sup> December, 2018, she approached New Future Finance Limited, with a view to obtain a loan in the sum of USD\$35,000.00, for her moringa project. She testified that New Future Finance Limited availed her the loan, on condition that she signed a contract of sale and an Assignment.
- 9.5 It was explained that those documents would not become operative unless she defaulted on repayment of the loan. Pages 37 to 43 of her bundle of documents were identified as the said documents. Precious Muimo told the Court that when executing those documents, she categorically stated to New Future Finance Limited, that the certificate of title that she was depositing with it, as security for the loan, only related to the Remaining Extent of F/2303/U/2, because Andrew Mununga Siwabamundi's land had already been numbered and surveyed in April, 2014.

- 9.6 She further stated that on 30<sup>th</sup> July, 2019, she paid New Future Finance Limited the sum of USD\$250.00 as the first instalment. However, to her surprise, on 17<sup>th</sup> July, 2020, New Future Finance Limited changed the certificate of title for the property F/2303/U/2 as a whole, without taking into consideration the already numbered and surveyed Subdivision B of Subdivision 2 of Subdivision U of Farm 2303, which belonged to Andrew Mununga Siwabamundi.
- 9.7 Thus, she later engaged her advocates of record, to write to New Future Finance Limited on the preceding anomaly, which was done on 5<sup>th</sup> August, 2020. Her evidence was further that New Future Finance Limited was asked to reverse the transfer of the title, to no avail. The said letter was identified as that at pages 34 to 35 of her bundle of documents.
- 9.8 Then from there, New Future Finance Limited wrote to her Advocates, threatening to sell the entire piece of land described in the certificate of title, without considering Andrew Mununga Siwabamundi's interest. Precious Muimo identified the said letter, as being at page 36 of her bundle of documents. She asked that New Future Finance Limited's counterclaim be dismissed, and that the Court should uphold Andrew Mununga Siwabamundi's claim.

**CROSS EXAMINATION OF PRECIOUS MUIMO BY COUNSEL FOR THE CHIEF REGISTRAR OF LANDS AND THE ATTORNEY GENERAL**

- 9.9 In cross examination, by Counsel for the Chief Registrar of Lands and the Attorney General, and when referred to the

particulars of the land that was sold, at page 3 of New Future Finance Limited's bundle of documents, Precious Muimo testified that the size of the land was 0.6966 hectares. Her evidence, on being referred to the application for Consent to Assign at page 17 of the same bundle of documents, was that the size of the land indicated on that document was also 0.6966 hectares.

9.10 Precious Muimo when referred to page 21 of the said bundle of documents, being the Deed of Assignment, testified that the size of the land indicated on that document, was 0.6966 hectares. She stated that page 26, which was the certificate of title, also showed the size of the land as 0.6966 hectares.

9.11 With regard to the survey diagram for Subdivisions C and D at pages 27 and 28 of the said bundle of documents, her evidence was that the marking off of the said subdivisions C and D was 0.3267 hectares, leaving 0.6966 hectares. When referred to the Lands Register page 14 of the same bundle of documents, Precious Muimo testified that Entry No. 16, had the size of the land as 1.0230 hectares, and that the size was not the same as that in the contract of sale and the Deed of Assignment.

**CROSS EXAMINATION BY COUNSEL FOR NEW FUTURE FINANCE LIMITED**

9.12 When cross examined by Counsel for New Future Finance Limited, Precious Muimo was referred to the contract of sale at page 1 of the New Future Finance Limited's bundle of documents. In response, she testified that the contract of sale was for land that was indicated in the contract, and not the

whole land. She explained that the whole land had a total of Four (4) subdivisions.

9.13 On being referred to page 17 of the same bundle of documents, she testified that she did not obtain Consent to Assign for subdivision F/2303/U/2, and that it was Consent to Assign for the land in the contract of sale. Precious Muimo's evidence when referred to page 23 of the said bundle of documents, was that property transfer tax was paid according to the documents.

9.14 With regard to the size of the land, she explained that page 17 showed the size as 0.6996 hectares, which was the same size that was indicated at page 26, and in the Deed of Assignment. It was her testimony that the certificate of title was in the name of New Future Finance Limited.

9.15 Still in cross examination, and on being referred to paragraphs 6 and 8 of her witness statement, Precious Muimo told the Court, that the certificate of title was in line with the description of the property in the contract of sale and the consent to assign. She also testified that she had verbal proof that there was a pending marking off, of the subdivisions with her lawyers, as they had the certificate of title when she entered into the contract of sale, and she had informed New Future Finance Limited.

9.16 It was also her testimony, that the proof of the loan was the receipt for transfer of One Hundred and Sixty Thousand Kwacha (K160,000.00). She added that she was given Twenty-Six Thousand Kwacha (K26,000.00) cash at the office, and that

the receipt for that amount should be at page 16 of New Future Finance Limited's bundle of documents.

**CROSS EXAMINATION BY COUNSEL FOR ANDREW MUNUNGA SIWABAMUNDI**

- 9.17 In cross examination by Counsel for Andrew Mununga Siwabamundi, Precious Muimo testified that she sold Andrew Mununga Siwabamundi a portion of F/2303/U/2 on 9<sup>th</sup> January, 2012, as stated in paragraph 3 of her witness statement. Her evidence when referred to page 2 of her bundle of documents, was that it was the contract of sale between herself and Andrew Mununga Siwabamundi.
- 9.18 On being referred to page 20 of New Future Finance Limited's bundle of documents, Precious Muimo stated that the Deed of Assignment at that page, was registered at the Ministry of Lands, Eight (8) years after she entered into a contract of sale with Andrew Mununga Siwabamundi.
- 9.19 As regards paragraph 5 of her witness statement, her evidence was that she proceeded to obtain planning permission to subdivide the land to Andrew Mununga Siwabamundi, as she had sold him the land. Still on her witness statement, the testimony given, was that paragraph 15 of the said witness statement, stated that New Future Finance Limited did not take into consideration Andrew Mununga Siwabamundi's interest, as they exceeded the land that was sold to them.
- 9.20 Precious Muimo, with regard to paragraph 12 of her witness statement, testified that she was surprised that title for the whole property was now in the name of New Future Finance

Limited. She told the Court that Andrew Mununga Siwabamundi was entitled to what he bought, and New Future Finance Limited to the remaining extent.

9.21 She explained that she got a loan, and that she did not sell the land. However, she failed to pay back the loan, and therefore, New Future Finance was entitled to the remaining extent.

9.22 That marked the close of the case for Precious Muimo.

## **10. NEW FUTURE FINANCE LIMITED'S EVIDENCE**

### **DW2 – FENG SHENGHU**

10.1 Feng Shenghu, a Business Manager at New Future Finance Company Limited identified his witness statement, and he relied on it, as his testimony before the Court. It was his testimony in that witness statement, that New Future Finance Limited is into real estate, retail and other financial activities. Further, that as part of its' business under real estate, it buys properties from willing sellers.

10.2 He stated that on 13<sup>th</sup> December, 2018, Precious Muimo and New Future Finance Limited entered into a contract of sale for the remaining extent of Subdivision No. 2 of Subdivision U of Farm 2303, Lusaka, for the sum of USD\$35,000.00. He identified the contract of sale and the receipts for the purchase as those at pages 1 to 5 and 16 of the New Future Finance Limited's bundle of documents.

10.3 Feng Shenghu testified that New Future Finance Limited also obtained a printout of the Lands Register at the Ministry of Lands on 13<sup>th</sup> December, 2018, which showed no encumbrance or caveat that was placed by Andrew Mununga Siwabamundi.

In that regard, he referred to the Lands Register at pages 8 to 11 of the same bundle of documents.

- 10.4 It was further stated that New Future Finance Limited lodged a caveat on the property on 14<sup>th</sup> December, 2018, with Feng Shenghu stating that it was duly registered. He explained that payment for the caveat was made, and he identified pages 6 and 7 of the same bundle of documents, as the caveat and the receipt for its' payment respectively. In his continued statement, Feng Shenghu stated that the transaction between the parties was concluded in line with the contract of sale.
- 10.5 He referred to page 17 of New Future Finance Limited's bundle of documents, as the application for Consent to Assign, and he testified that page 18 was the Consent to Assign, while pages 19 to 22 was the Deed of Assignment, page 23, the property transfer tax clearance certificate, page 24, the receipt for payment of tax, and pages 25 to 34 as the certificate of title in the name of New Future Finance Limited.
- 10.6 Feng Shenghu added that pages 12 to 14 was the Lands Register, whose entry showed New Future Finance Limited as the registered holder of the land in issue, with zero interest registered on behalf of Andrew Mununga Siwabamundi. It was also Feng Shenghu's testimony, that when New Future Finance Limited bought the land in issue, there was nothing to warn it of Andrew Mununga Siwabamundi's interest in the land in issue, as the searches that were done, revealed zero registration of such interest.

10.7 He further testified, that on the ground, there were no activities or any developments that were done by Andrew Mununga Siwabamundi, to put New Future Finance Limited on notice. Feng Shenghu's evidence was that Andrew Mununga Siwabamundi only showed up when New Future Finance Limited was taking possession of the property, and prevented it from taking full and complete possession of the property.

**CROSS EXAMINATION OF FENG SHENGHU BY COUNSEL FOR PRECIOUS MUIMO**

10.8 In cross examination by Counsel for Precious Muimo, and on being referred to pages 1 to 5 of New Future Finance Limited's bundle of documents, Feng Shenghu stated that it was a contract of sale between Precious Muimo and New Future Finance Limited, dated 13<sup>th</sup> December, 2018.

10.9 His testimony was that page 3 indicated the size of the land as 0.6966 hectares, which at page 1, was stated as the remaining extent of Subdivision 2 of Subdivision U of Farm 2303. He however contended that page 1 did not show the extent of land that was indicated at page 3. Feng Shenghu's testimony when referred to page 11 of Andrew Mununga Siwabamundi's bundle of pleadings, being paragraph 12 of New Future Finance Limited's defence and counterclaim, stated that New Future Finance Limited, bought Stand F/2303/U/2, Lusaka, and that the paragraph did not state the size of the land that was bought.

10.10 Feng Shenghu on being referred to page 21 of New Future Finance Limited's bundle of documents, testified that it was part of the Deed of Assignment, and it indicated the extent of

the land as 0.6966 hectares of the remaining extent of F/2303/U/2.

10.11 On further reference to page 26 of the same bundle of documents, the testimony that was given, was that the certificate of title in the name of New Future Finance Limited dated 17<sup>th</sup> July, 2020, stated the extent of the land as 0.6966 hectares. Feng Shenghu told the Court that at page 27 of said the bundle of documents, was a survey diagram that is attached to a certificate of title, on which the size of the land indicated was 2.0234 hectares.

10.12 His evidence was that the said size was different from that in the contract of sale, the Deed of Assignment and the first page of the certificate of title.

10.13 When referred to page 28 of New Future Finance Limited's bundle of documents, Feng Shenghu stated that it was the marking off, of 0.6966 hectares, dated 6<sup>th</sup> November, 2018. He added that at page 27, it showed the marking off, of subdivisions A, C, and D and their remaining land.

10.14 It was testified in continued cross examination, that the contract of sale at page 3 of Precious Muimo's bundle of documents dated 9<sup>th</sup> January, 2012, which was executed between Precious Muimo and Andrew Mununga Siwabamundi was an earlier contract. Feng Shenghu's evidence was that in the said contract of sale, at page 3, the extent of the land sold to Andrew Mununga Siwabamundi, was 4047 square meters of the portion of land, known as proposed subdivision of Subdivision 2 of Subdivision U of Farm 2303, Lusaka.

- 10.15 It was also Feng Shenghu's testimony, when he was referred to page 14 of Precious Muimo's bundle of documents, that it was a site plan for the proposed subdivision of Subdivision 2 of Subdivision U of Farm 2303. His evidence was that at the bottom of that page, was the date 24<sup>th</sup> February, 2014, as the date for approval of the numbering. He however testified that he could not see the stamp clearly on the document, and he could not confirm if it was from the Ministry of Lands. It was nevertheless Feng Shenghu's evidence, that the size of Subdivision B was 40475 square meters.
- 10.16 Still in cross examination, his testimony was that the date was earlier than the date on the contract of sale between Precious Muimo and New Future Finance Limited, and that page 14 of Precious Muimo's bundle of documents, was a remainder of the subdivision 2 as reflected. He stated that their diagram did not show Subdivision B, but that it was the same property.
- 10.17 Feng Shenghu testified that page 15 of Precious Muimo's bundle of documents was a survey diagram of Subdivision B of Subdivision 2 of Subdivision U of Farm 2303, whose size was indicated as 4054 square meters. He told the Court that the said survey diagram was approved on 24<sup>th</sup> July, 2014, before their contract.
- 10.18 It was also his testimony that page 27 of New Future Finance Limited's bundle of documents, was the mother title with the subdivisions marked off at page 28, which was the back of the survey diagram. Further in cross examination, the evidence

that was given, was that Feng Shenghu did not have a survey diagram for 0.6966 hectares.

10.19 He further stated that the survey diagram at page 15 of the Precious Muimo's bundle of documents, showed the remaining extent of Subdivision 2 of Subdivision U of Farm 2303, and the empty space, that was not numbered at page 27. On being referred to the Lands Register at page 30 of Precious Muimo's bundle of documents, his testimony was that it related to the property F/2303/U/2, and that it showed the certificate of title No. 78943 for land in extent of 1.0230 hectares.

10.20 Feng Shenghu testified that the said size of the land was more than the land that they had contracted to buy. He stated that it was a mistake, and it was not correct.

**CROSS EXAMINATION BY COUNSEL FOR ANDREW  
MUNUNGA SIWABAMUNDI**

10.21 In cross examination by Counsel for Andrew Mununga Siwabamundi, and when referred to paragraph 4 of his witness statement, Feng Shenghu testified that they bought 0.6966 hectares. He agreed that page 1 of Andrew Mununga Siwabamundi's bundle of documents, was a contract of sale between Andrew Mununga Siwabamundi and Precious Muimo dated 9<sup>th</sup> January, 2012.

10.22 He told the Court that he had never read Precious Muimo's witness statement. Further in cross examination, Feng Shenghu stated that Precious Muimo went to get a loan sometime before 13<sup>th</sup> December, from New Future Finance Limited. However, she did not meet the requirements.

- 10.23 It was his testimony, when he was referred to the receipt at page 42 of Precious Muimo's bundle of documents, that she received USD\$35,000.00 from New Future Finance Limited on 13<sup>th</sup> December, 2018, according to the document. He agreed that in the last three lines at page 42, it stated that she could buy back the property at an agreed rate. However, Feng Shenghu's position was that it was not a sale agreement.
- 10.24 As for page 37 of Precious Muimo's bundle of documents, Feng Shenghu stated that it was a contract of sale, whose receipt was at page 42. He added that in the particulars at page 39 of the said bundle of documents, the size of the property that she sold was indicated. Feng Shenghu testified that when they bought the land from Precious Muimo, she had already sold 4047 square meters to Andrew Mununga Siwabamundi.
- 10.25 When referred to paragraph 5 of his witness statement, Feng Shenghu's evidence was that he conducted a search at the Ministry of Lands on the property before buying it, to establish whether there was a caveat or mortgage on the land. He stated that there was no development on the land at the time. It was also his testimony, that he was not aware of the contract of sale between Andrew Mununga Siwabamundi and Precious Muimo at the time.
- 10.26 However, he was now aware that Andrew Mununga Siwabamundi bought part of the land. He stated, when referred to the letter dated 5<sup>th</sup> August, 2020, that was authored to New Future Finance Limited by Keith Mweemba Advocates at page 34 of Precious Muimo's bundle of documents, and paragraphs

13 to 15 of his witness statement, that there was an error in the size of the land that they obtained at Ministry of Lands. Feng Shenghu testified that the letter at page 34 of Precious Muimo's bundle of documents reflected so. He also stated that the land that Precious Muimo sold to them, belonged to them, as per contract.

### **RE-EXAMINATION OF FENG SHENGHU**

10.27 Feng Shenghu, clarified that page 27 of New Future Finance Limited's bundle of documents was the survey diagram for the mother title, which showed the area as 2.0234 hectares. It was also stated that when Precious Muimo, the title holder, sold any portions of the land, the Land Surveyor would indicate the subdivisions at the back at page 28, and mark off the sold properties at page 27 in the shaded parts.

10.28 That marked the close of the case for New Future Finance Limited.

## **11. DECISION OF THIS COURT**

11.1 I have considered the evidence and the submissions that were filed by Andrew Mununga Siwabamundi and New Future Finance Limited.

### **FACTS NOT IN DISPUTE**

11.2 It is a fact that Precious Muimo, was the owner of land in extent of 2.0234 hectares, being Subdivision 2 of Subdivision U of Farm No. 2303 in Lusaka. It is also further common cause, that she entered into separate sale agreements in relation to different portions of the land, Subdivision 2 of Subdivision U of Farm No. 2303, with both Andrew Mununga Siwabamundi, and

New Future Finance Limited on 9<sup>th</sup> January, 2012 and 13<sup>th</sup> December, 2018 respectively.

11.3 The facts that are also not in contention, are that New Future Finance Limited obtained a certificate of title for the remaining extent of Subdivision 2 of Subdivision U of Farm 2303 on 17<sup>th</sup> July, 2020.

#### **ISSUES IN DISPUTE**

11.4 The questions in dispute are whether Andrew Mununga Siwabamundi and New Future Finance Limited are entitled to the reliefs that they claim?

11.5 Andrew Mununga Siwabamundi claims for an Order for specific performance of the contract of sale that was entered into between himself and the Precious Muimo on 9<sup>th</sup> January, 2012. He also claims an Order for the cancellation of the certificate of title that was obtained by New Future Finance Limited. The claim is further for an Order that the discharge of the caveat was illegal, and that it should be restored, and that all the entries made after the discharge of the caveat should be reversed and cancelled.

11.6 Andrew Mununga Siwabamundi also claims an Order that he proceeds to register all his documents to enable him obtain title.

11.7 New Future Finance Limited on the other hand claims an Order for possession of F/2303/U/2, as well as damages for inconvenience.

**ANALYSIS**

- 11.8 The first relief that is claimed by Andrew Mununga Siwabamundi is an Order for specific performance of the contract of sale between himself and Precious Muimo. He testified that he entered into a contract of sale with Precious Muimo on 9<sup>th</sup> January, 2012, for the purchase of the property, which at the time, was known as proposed Subdivision 2 of Subdivision U of Farm No. 2303 Lusaka. His evidence was that he made payments towards the purchase of the property, which he stated, were acknowledged by Precious Muimo.
- 11.9 It was also Andrew Mununga Siwabamundi's evidence that they executed a Deed of Assignment, and an application for State Consent to Assign was made, which was granted. He further stated that Precious Muimo applied for subdivision of the land, which was approved, and his portion of the land was renumbered as Subdivision B of Subdivision 2 of Subdivision U of Farm No. 2303.
- 11.10 Andrew Mununga Siwabamundi told the Court that he paid property transfer tax, and he proceeded to have the survey diagrams prepared. It was his testimony, that in Order to protect his interest, he registered a caveat on the property, on 15<sup>th</sup> August, 2012. However, he later discovered that Precious Muimo had sold the entire property, inclusive of the portion that he had bought, to New Future Finance Limited.
- 11.11 As owner of the Farm No. 2303, Precious Muimo admitted that she sold a portion of her land to Andrew Mununga Siwabamundi, and that she subsequently received payment for

it. Her evidence was that in line with the transaction, she obtained State Consent to Assign, paid for property transfer tax, obtained planning permission to subdivide the said portion and obtained the survey diagrams. Precious Muimo also testified that the portion of the land, that was sold to Andrew Mununga Siwabamundi, was renumbered as Subdivision B of Subdivision 2 of Subdivision U of Farm 2303, Lusaka.

11.12 Also, in her testimony, Precious Muimo stated that on 13<sup>th</sup> December, 2018, she obtained a loan in the amount of USD\$ 35,000.00 from New Future Finance Limited. She explained that the loan was availed to her, on condition that she signed a contract of sale and a Deed of Assignment, which would only become operative, if she defaulted on her payments. Precious Muimo testified that she had informed New Future Finance Limited of Andrew Mununga Siwabamundi's interest in the land, and that the loan was only in relation to the remaining extent of the land.

11.13 However, she later learned that New Future Finance Limited had changed title of the whole land into its' names, without taking into consideration Andrew Mununga Siwabamundi's interest.

11.14 On the other hand, Feng Shenghu testified that New Future Finance Limited entered into a contract of sale with Precious Muimo on 13<sup>th</sup> December, 2018, for the remaining extent of the land, at a sum of USD\$ 35,000.00. He stated that New Future Finance Limited registered a caveat on the property on 14<sup>th</sup> December, 2018.

11.15 Feng Shenghu also testified, that the transaction between the parties, was concluded in line with the contract of sale, and that there was nothing to warn it of Andrew Mununga Siwabamundi's interest in the land. In that regard, his evidence was that there was no encumbrance registered on the Lands Register at the Ministry of Lands, such a mortgage or a caveat by Andrew Mununga Siwabamundi.

11.16 In support of the claim for an Order for specific performance, Andrew Mununga Siwabamundi, in his submissions, relies on the case of ***Elijah Bob Litana v Bernard Chimba and the Attorney General*** <sup>(5)</sup>. He also relies on the case of ***Mobil Oil (Zambia) Limited v Loto Petroleum Distributors Limited*** <sup>(2)</sup> where it was held that:

***“(iv) A Court will not grant a decree for specific performance of a contract if the party seeking the decree can obtain a sufficient remedy by a Judgment for damages, and such a decree will not be made when it would be impracticable to secure compliance with it.”***

11.17 Further reliance is placed on the book, ***Trietel on The Law of Contract***, in which he submits that the learned authors write as follows at page 1230:

***“The traditional view is that specific performance will not be ordered where damages are an “adequate” remedy. The burden is on the claimant to show that damages are not an adequate remedy.”***

11.18 In line with the above authorities, Andrew Mununga Siwabamundi submits that he has demonstrated that damages would not be a sufficient remedy. He states that there is evidence on record, that shows that Precious Muimo and New Future Finance Limited entered into a contract of sale for the remaining extent of the Land. However, Precious Muimo told this Court that the land that New Future Finance Limited obtained by virtue of the certificate of title that was issued to it, was in excess of what was agreed to be sold.

11.19 New Future Finance Limited in contradiction, submits that the caveat that was purportedly placed on the land by Andrew Mununga Siwabamundi, was not in the system at the Ministry of Lands, because it was never registered at all. It also submits that it conducted due diligence through a search at the Ministry of Lands to ensure that the property had no encumbrances and there was no registered interest.

11.20 The submission by New Future Finance Limited is that there should be no blame, on an innocent purchaser for value without notice, which it claims to be. It contends that it bought 0.6966 hectares of land, and the size of that land, was also confirmed by Precious Muimo.

### **DECISION**

11.21 The evidence on record shows that Andrew Mununga Siwabamundi and Precious Muimo entered into a written contract of sale for a portion of the land to which New Future Finance Limited holds title to, entirely. The contract of sale dated 9<sup>th</sup> January, 2012, is at pages 1 to 4 of Andrew Mununga

Siwabamundi's bundle of documents. At page 3 of the said contract, it shows that the sale was for a piece of land in extent of 4047 square meters, being more or less a proposed subdivision on Subdivision 2 of Subdivision U of Farm 2303 in Lusaka.

- 11.22 The purchase price as indicated at page 2, was ZMK 155,000,000.00. A perusal of the documents on record, show that Andrew Mununga Siwabamundi and Precious Muimo completed the sale transaction. Payment was made for the purchase of the portion of the land, and Precious Muimo acknowledged receipt of the payment, as evidenced at pages 5 to 9 of Andrew Mununga Siwabamundi's bundle of documents.
- 11.23 The other documents evidencing the transaction, are the Deed of Assignment, State Consent to Assign, application for permission to subdivide, and the tax clearance certificate.
- 11.24 It is noteworthy that Precious Muimo admitted having sold a portion of her land to Andrew Mununga Siwabamundi, which land is now known as Subdivision B of Subdivision 2 of Subdivision U of Farm 2303, following the approval and numbering of the subdivision. However, when Andrew Mununga Siwabamundi was cross examined by Counsel for New Future Finance Limited, it was brought out that while Andrew Mununga Siwabamundi had referred to the portion of land that he bought as Subdivision B of Subdivision 2 of Subdivision U of Farm 2303, as shown at page 22 of his bundle of documents, the Consent to Assign at page 16 of the same bundle of documents did not refer to that subdivision.

- 11.25 Further in the cross examination, Andrew Mununga Siwabamundi testified that the Consent to Assign was given after the diagram had been approved.
- 11.26 A perusal of the documents, shows that the Consent to Assign dated 27<sup>th</sup> July, 2018, which is at page 16 of Andrew Mununga Siwabamundi's bundle of document is for Farm No. F/2303/U/2. The Consent to Assign therefore refers to the entire property, and not to a particular subdivision. The survey diagram dated 24<sup>th</sup> July, 2014, at page 22 of the same bundle of documents on the other hand, is for Subdivision B of Subdivision 2 of Subdivision U of Farm 2303.
- 11.27 Therefore, the Consent to Assign as obtained was irregular, as it did not relate to the portion of the land that was bought by Andrew Mununga Siwabamundi, but the whole land.
- 11.28 That notwithstanding, all the documents on record that refer to the transactions between Andrew Mununga Siwabamundi and Precious Muimo, refer to the particular portion of the property that was purchased by Andrew Mununga Siwabamundi, save for the Consent to Assign. Andrew Mununga Siwabamundi's testimony that the Consent to Assign, was given after the diagram had been approved, does not regularize the defective Consent to Assign.
- 11.29 It is not in dispute, and it has been established that Andrew Mununga Siwabamundi did purchase a portion of land, which has now been numbered as Subdivision B of Subdivision 2 of Subdivision U of Farm 2303 from Precious Muimo.

11.30 Andrew Mununga Siwabamundi seeks specific performance of the contract of sale with Precious Muimo. A plethora of authorities have favoured the granting of an Order for specific performance in matters involving land. One such authority, is the case of ***Gideon Mundanda v Timothy Mulwani and the Agricultural Finance Co. Ltd and S.S.S. Mwiinga*** <sup>(4)</sup> where the Supreme Court quoted from the authors of *Chitty on Contracts* as follows:

***“The law concerning specific performance of contracts relating to or the sale of land is quite clearly set out in paragraph 1764 of Chitty on Contracts 25th Edition, which reads in part:***

***“Land***

***The law takes the view that damages cannot adequately compensate a party for breach of a contract for the sale of an interest in a particular piece of land or of a particular house (however ordinary) ...”***

11.31 The Supreme Court also referred to the above decision, in the case of ***Mwenya and Randee v Kapinga*** <sup>(6)</sup>.

11.32 In this matter, it has been seen that Andrew Mununga Siwabamundi entered into a contract of sale for a portion of the land with Precious Muimo, earlier than the agreement between New Future Finance Limited and Precious Muimo. It has also been seen that all the documents, that are required for a land transaction were executed by Andrew Mununga Siwabamundi

and Precious Muimo, and the purchase price was also paid in 2012.

11.33 Therefore, there was a valid contract of sale between Precious Muimo and Andrew Mununga Siwabamundi, that is enforceable at law. In the premises, and in view of the trite principle, that in contracts for the sale of land, damages would not be an adequate, the remedy specific performance would be a more appropriate remedy. This position is further supported by the case of *Tito v Waddel*<sup>(3)</sup> where it was held as follows, at page 322:

***“...whether specific performance will do more perfect and complete justice than an award of damages.”***

11.34 I will return to the claim for specific performance when I consider the counterclaim by New Future Finance Limited for possession of the remaining extent of Subdivision 2 of Subdivision U of Farm 2303.

11.35 The next claim is for an Order for the cancellation of the certificate of title that was issued to New Future Finance Limited. Andrew Mununga Siwabamundi testified that the discharge of the caveat that he placed on the property, dated 15<sup>th</sup> August, 2012 was illegal. Consequently, it should be restored, and that all the transactions on the Lands Register that were made after the caveat was placed, should be cancelled and reversed.

11.36 As earlier stated, Andrew Mununga Siwabamundi and Precious Muimo's contention is that New Future Finance Limited obtained a certificate of title, that encompasses the whole

property, inclusive of that which belongs to Andrew Mununga Siwabamundi. Precious Muimo testified that this was done despite her having informed New Future Finance Limited of Andrew Mununga Siwabamundi's interest in the property.

11.37 It was Andrew Mununga Siwabamundi's evidence, that he registered the caveat on the land on 15<sup>th</sup> August, 2012. When cross examined by Counsel for New Future Finance Limited, he stated that he paid for the registration of the caveat, and as far as he was concerned, it was registered at the Ministry of Lands. He further testified that he had produced the Lodgment Schedule, which he paid for, and the Ministry of Lands was supposed to register it, as he had done his part.

11.38 Conversely, New Future Finance Limited denies that Andrew Mununga Siwabamundi had any interest in the land, its' submission being that due diligence was done, and there was nothing to put it on notice of Andrew Mununga Siwabamundi's interest in the property on the Lands Register, as no encumbrances on his part were registered. Feng Shengu also stated that Precious Muimo did not mention Andrew Mununga Siwabamundi's interest in the property.

11.39 The contention by New Future Finance Limited is that it is a bona fide purchaser for value without notice of any interest. It relies on the case of **Zambia Consolidated Copper Mines Limited v Eddie Katalayi and Max Chilongo** <sup>(7)</sup> where the Supreme Court held that:

***“However, the legal position, as we see it, was that it was not possible without proper basis to ignore the***

*rights of Kangali who was an innocent purchaser for value and who had no reason to suspect there was to be an adverse claim. There would be no justification to inflict injustice on the third party in the name of justice for the appellants.”*

11.40 Further reliance is placed on the case of ***Banda and another v Mudimba*** <sup>(10)</sup> where it was held that:

*“In sum, the following requirements need to be fulfilled when relying on the doctrine:*

*(a) a purchaser must act in good faith;*

*(b) purchaser is a person who acquires an interest in property by grant rather than operation of law. The purchaser must also have given value for the property;*

*(c) the purchaser must generally have obtained the legal interest in the property; and*

*(d) the purchaser must have had no notice of the equitable interest at the time he gave his consideration for the conveyance. A purchaser is affected by notice of an equity in three cases:*

*i. actual notice; where the equity is within his own knowledge;*

*ii. constructive notice; where the equity would have come to his own knowledge if proper inquiries had been made; and*

**iii. imputed notice; where his agent as such in the course of the transaction has actual, or constructive notice of the equity.”**

11.41 Also cited as authority, is the book, *Land Law in Zambia, 2007 UNZA PRESS by F.Mudenda at pages 153 to 158* where he states as follows:

**“The basic doctrine of notice provides that an equitable interest will bind all persons other than ‘equity’s darling’. i.e the bona fide purchaser for value of the legal estate without notice. The doctrine of notice is fundamental to property law.”**

11.42 New Future Finance Limited, in relation to the above principles that govern a bona fide purchaser for value, submits that the first requirement is that one must be a bona fide purchaser, meaning that the purchaser must act in good faith. In that regard, there must be no fraud or sharp practice. It states that there is no evidence of fraud that was produced by Andrew Mununga Siwabamundi or Precious Muimo that it acquired the property fraudulently. Therefore, it acted in good faith.

11.43 With regard to Andrew Mununga Siwabamundi’s contention alleging that he had earlier placed a caveat on the property, New Future Finance Limited submits that he had a chance to register his interest, but he neglected to do so, leaving Precious Muimo at will to enter into a contract with any other person.

11.44 On the alleged placing of the caveat on the property by Andrew Mununga Siwabamundi, it will be noted that he indeed applied to have it registered on 15<sup>th</sup> August, 2012, as shown by the

Lodgement Schedule at page 23 of his bundle of documents. The caveat related to the property F/2303/U/2, and the date stamp on the said Lodgement Schedule for the Ministry of Lands is for the year 2012.

11.45 The Lands Register at page 36 of Andrew Mununga Siwabamundi's bundle of documents for the property F/2303/U/2 shows that at entry No 5, Reeves Malambo of Agrotech (Z) Limited registered a caveat on the property on 30<sup>th</sup> August, 2011. This was prior to Andrew Mununga Siwabamundi filing the Lodgement Schedule in 2012 for purposes of registration of the caveat on the property. Therefore, while he may have done his part in applying to lodge the caveat on the property, there was already a caveat on the property that had not been withdrawn.

11.46 It was incumbent upon Andrew Mununga Siwabamundi to conduct due diligence before entering into the contract of sale with Precious Muimo to have conducted a search on the property at the Ministry of Lands, to search for any encumbrances on the property. Had he done so, he would have found that the property was encumbered by Reeves Malambo, who had registered a caveat on the property.

11.47 He would therefore have taken steps to have that caveat removed before he could register a caveat on the property to protect his interest. The Chief Registrar of Lands cannot be faulted for not having registered the caveat that Andrew Mununga Siwabamundi lodged, there having already been another caveat on the property at the time. Thus, there was no

illegal discharge of the caveat, and the claim in that respect fails.

11.48 Entry No 6 on the said Lands Register, shows that the caveat that Reeves Malambo of Agrotech (Z) Limited placed on the property, was only removed from the Lands Register on 9<sup>th</sup> April, 2014. No explanation was given as to why the application to place the caveat on the property by Andrew Mununga Siwabamundi was not registered after that, by the Ministry of Lands.

11.49 Precious Muimo contended that she informed New Future Finance Limited of Andrew Mununga Siwabamundi's interest in the property, which allegation has not been seriously denied, other than New Future Finance Limited just merely stating that it was not informed. The position of New Future Finance Limited, is that there was no building on the property, that could have alerted it, that Andrew Mununga Siwabamundi had an interest in the property.

11.50 Andrew Mununga Siwabamundi agreed that he did not put up any structure on the property that he bought, his position being that the property was demarcated at the front. He did however state that there was an orchid on the property.

11.51 **Black Law's Dictionary, 8<sup>th</sup> Edition, by Bryan A. Garner 2004 Thomas Reuters at pages 3897 and 3898** defines a *bona fide purchaser* as:

***“One who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities,***

***claims, or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims.***”

11.52 It is trite, that when one is buying real property, it is prudent that they undertake serious inquiries into the property, to ensure that there are no encumbrances on the said property. This position was reiterated in the case of ***Nora Mwaanga Kayoba and Alizani Banda v Eunice Kumwenda Ngulube and Andrew Ngulube*** <sup>(8)</sup> where the Supreme Court held that:

***“Also, in purchasing of real properties, parties are expected to approach such transactions with much more serious inquiries to establish whether or not the property in question has no encumbrances. Buying real property is not as casual as buying household goods or other personal property.”***

11.53 In that case, the Supreme Court also considered the issue of the caveat, that was allegedly placed on the property, and stated as follows:

***“There was a caveat lodged by Messrs Pikiti and Company on behalf of the Respondents at the time the 1st Appellant was buying the property from the 2nd Appellant. Surely, with serious investigations that caveat should have been found on record.”***

11.54 In this matter, it has already been stated that New Future Finance Limited could not have known of Andrew Mununga Siwabamundi’s interest in the property through a search at the

Ministry of Lands, as the caveat was not registered on the Lands Register.

11.55 Further, as earlier established, Andrew Mununga Siwabamundi purchased Subdivision B of the property earlier than when the transaction between New Future Finance Limited and Precious Muimo was executed for the purchase of the remaining extent of the property. The Lands Register at entry No 7 shows that assignment of subdivision A of F/2303/U/2 was registered on the Lands Register on 25<sup>th</sup> July, 2013. Then at entry No 11, at page 38 of Andrew Mununga Siwabamundi's bundle of documents, the assignment of subdivisions 'C' and 'D' of F/2303/U/2 was registered on 16<sup>th</sup> November, 2018.

11.56 The contract of sale between Precious Muimo and New Future Finance Limited which is at pages 1-5 of New Future Finance Limited's bundle of documents was entered into on 13<sup>th</sup> December, 2018. This was after the assignments for subdivisions A, C, and D of F/2303/U/2 had been registered on the Lands Register.

11.57 Therefore, as a prudent buyer, New Future Finance Limited having conducted a search on the Lands Register, as it claims, it was put to notice that in fact, the property F/2303/U/2 had been subdivided. The contract of sale shows that it entered into a contract of sale with Precious Muimo for the remaining extent of F/2303/U/2 for 0.6966 hectares, which position further establishes that the property had in fact been subdivided.

11.58 In the case of **Hunt v Luck** <sup>(1)</sup>, it was held that;

**“...if a purchaser has notice that the vendor is not in possession of the property, he must make inquiries of a person in possession or the tenant who is in possession and find out from him what his rights are and, if he does not choose to do that then whatever title he acquires as purchaser will be subject to the title or rights of the tenant in possession.”**

11.59 The evidence on record in this matter, shows that New Future Finance Limited did in fact conduct a physical inspection of the land, and found that Andrew Mununga Siwabamundi had not built any structure on the land. Therefore, in that respect, New Future Finance Limited can be said to have acted bona fide, by inspecting the land.

11.60 However, the question that arises is whether, it was bona fide in acquiring a certificate of title for the remaining extent of Subdivision B of Subdivision 2 of Subdivision U of Farm 2303 for land in excess of the 0.6966 hectares that it contracted to buy from Precious Muimo?

11.61 In its’ submissions, New Future Finance Limited states that it acquired the certificate of title to the land in issue, and that it is trite law, that a certificate of title is conclusive evidence of ownership of land. In support of this submission, reliance is placed on **Section 33 of the Lands and Deeds Registry Act Chapter 185 of the Laws of Zambia.**

11.62 Also relied on, is the case of **Anti-Corruption Commission v Barnett Development Corporation Limited** <sup>(9)</sup> where the Supreme Court held that:

***“We agree that under Section 33 of the Lands and Deeds Registry Act, a certificate of title is conclusive evidence of ownership of land by the holder of the certificate, in this case the Respondent. But we also know that under the same section or Section 34, a certificate of title can be challenged and cancelled for fraud or for reasons of impropriety in its acquisition. So, the statement that a certificate of title is conclusive evidence of ownership of land is only true when there is no challenge based on fraud.”***

11.63As rightly submitted by New Future Finance Limited, a certificate of title is indeed conclusive evidence of ownership of land, as stated in **Section 33 of the Lands and Deeds Registry Act**, but that is subject to the exceptions provided in that Section. In this matter, the certificate of title that New Future Finance Limited holds for the land, is at page 25 to 34 of its’ bundle of documents.

11.64The said certificate of title states that it is for the Remaining Extent of Subdivision No. 2 of Subdivision U of Farm No. 2303. The extent of the land, as shown at page 2 of the certificate of title is 0.6966 hectares.

11.65What is noteworthy is that the survey diagram in the certificate of title at page 27 does not contain the subdivision that was purchased by Andrew Mununga Siwabamundi, which was numbered as Subdivision B of Subdivision 2 of Subdivision U of Farm No. 2303, on the subdivision being approved. There is however a blank subdivision on that survey diagram.

- 11.66 The contention by Andrew Mununga Siwabamundi and Precious Muimo, is that the land as contained in the certificate of title, that was obtained by New Future Finance Limited is inclusive of the portion that Andrew Mununga Siwabamundi bought from Precious Muimo. A perusal of the Lands Register at entry No 15 at page 13 of New Future Finance Limited's bundle of documents, shows that New Future Finance Limited obtained a certificate of title for land in extent of 1.0230 hectares, instead of 0.6966 hectares.
- 11.67 This extent of land is not consistent with the 0.6966 hectares that is indicated on the contract of sale between Precious Muimo and New Future Finance Limited at page 3 of the contract of sale, which is at pages 1-5 of New Future Finance Limited's bundle of documents. Further the size of 1.0230 hectares is at variance with the 0.6966 hectares that is indicated in the assignment that Precious Muimo and New Future Finance Limited executed, which is at pages 19-22 of New Future Finance Limited's bundle of documents.
- 11.68 It will further be seen that even in the certificate of title that New Future Finance Limited holds for the remaining extent of Subdivision No 2 of Subdivision U of Farm 2303 at pages 25-27 of New Future Finance Limited's bundle of documents, page 26 describes the extent of remaining extent of Subdivision No 2 of Subdivision U of Farm 2303, as 0.6966 hectares.
- 11.69 However, when one goes to the survey diagram in the said certificate of title at page 27, they will note that the remaining extent of Subdivision No 2 of Subdivision U of Farm 2303 is

indicated as 2.0234 hectares. The diagram on that page as already noted, shows the subdivisions that have been made on the property, Subdivision No 2 of Subdivision U of Farm 2303, with a blank or unnumbered sub division.

11.70 The marking off of the subdivisions is indicated at page 28 which is the back of the survey diagram for sub divisions A, C and D. The marking off clearly shows that the remaining extent of Subdivision No 2 of Subdivision U of Farm 2303 is 0.6966 hectares in extent.

11.71 In light of this, there is clearly an error on the Lands Register to indicate the remaining extent of Subdivision No 2 of Subdivision U of Farm 2303 as 1.0234 hectares, which is the extent of land that is held on the certificate of title for New Future Finance Limited. Further, there is error on the survey diagram in the certificate of title that is held by New Future Finance Limited in indicating the extent of the remaining extent of Subdivision No 2 of Subdivision U of Farm 2303 as 2.0234 hectares.

11.72 The said certificate of title therefore, encompasses the extent of land that Andrew Mununga Siwabamundi bought from Precious Muimo. Consequently, the error is liable to be corrected. **Section 22 of the Land Survey Act, Chapter 188 of the Laws of Zambia** provides as follows:

***“22. (1) Whenever the owner of a surveyed parcel of land desires to subdivide the same and to effect separate registration of one or more portions of such land, each of the portions to be so registered shall be***

*surveyed and a diagram thereof, prepared in accordance with this Act, shall be submitted to the Surveyor-General for approval:*

*Provided that, if it is desired to effect a separate registration of the remaining extent of such parcel of land, no diagram of such remaining extent shall be submitted to the Surveyor-General or approved unless it be designated as a subdivision of the parcel of land.*

*(2) Upon separate registration of any subdivision of a parcel of land being effected, a Government surveyor shall, in accordance with the provisions of paragraph (c) of section five, define on the copy of the registered diagram of the parcel of land so divided belonging to the owner of such remaining extent, and on the copy of such diagram registered in the Registry, the geometrical figure representing such subdivision, the numerical extent thereof and the numerical extent of the remaining portion after deduction of the subdivision from the parcel of land: Provided that, in such cases as may be prescribed, such definition and deduction may be made on a supplementary plan to be attached to the registered diagram or registered separately instead of on such diagram.”*

11.73 In light of the above, as Andrew Mununga Siwabamundi obtained a survey diagram for Subdivision B of Subdivision 2

of Subdivision U of Farm 2303, the said sub division should be registered, so that it can be marked off from the certificate of title. This shall ensure that the remaining extent, which is for New Future Finance Limited is also properly defined.

11.74 It follows from the above findings, that New Future Finance Limited is not entitled to relief by way of counterclaim for possession of the land as contained on the Lands Register and the survey diagram in the certificate of title, as it has been found that it is indeed occupying land in excess of what it purchased from Precious Muimo.

11.75 The subdivision that Andrew Mununga Siwabamundi bought from Precious Muimo was not registered on the Lands Register even after the subdivision was approved by the Lusaka City Council on 21<sup>st</sup> March, 2014 and the survey diagram was produced on 24<sup>th</sup> July, 2014. However, as seen from the provisions of **Section 22 of the Land Survey Act**, there was supposed to be a survey diagram that reflected the remaining extent of Subdivision No 2 of Subdivision U of Farm 2303 in Order for New Future Finance Limited to register its' purchase of that land, and obtain a certificate of title for the said land.

11.76 In view of that, New Future Finance Limited was not bona fide, and in fact Feng Shenghu conceded that the land indicated in the survey diagram in the certificate of title for New Future Finance Limited, and on the Lands Register, was not correct.

11.77 New Future Finance Limited was aware of the size of the remaining extent of Subdivision No 2 of Subdivision U of Farm 2303 that it had bought from Precious Muimo, which was

0.6966 hectares, as reflected in the contract of sale and the Deed of Assignment. It cannot lawfully claim as a result, that it was not aware of Andrew Mununga Siwabamundi's interest in the land, on the basis of being a bona fide purchaser for value.

11.78As New Future Finance Limited did not obtain a survey diagram for the land that it had purchased, the portion of land for Andrew Mununga Siwabamundi was encompassed in the certificate of title that it obtained. To that extent, the entries on the Lands Register reflecting the caveat that was placed on the property by New Future Finance Limited shall accordingly be removed by Chief Registrar of Lands to enable Andrew Mununga Siwabamundi to register his interest in the land.

11.79In complying with my directions above, the parties will have complied with the provisions of **Section 18 of the Land Survey Act**, which states that:

***“18. (1) Whenever it is established to the satisfaction of the Surveyor-General that the diagram of any registered parcel of land or attached to any registered document (in this section referred to as the existing diagram) does not correctly represent the boundaries of such parcel of land-***

***(a) the owner thereof may apply to the Surveyor-General for the cancellation of the existing diagram and the approval in lieu thereof of a new diagram of such land for registration; or***

***(b) the Surveyor-General may in writing call upon the owner thereof to arrange within a specified***

***period for a new approved diagram to be registered which shall supersede the existing diagram;***

***and, in the event of an owner failing to comply with any requirement mentioned in paragraph (b), the Surveyor-General may apply to the Court for orders to be made for the execution of such obligations by the said persons:***

***Provided that the provisions of section sixteen shall, mutatis mutandis, apply in regard to such new diagram and to all matters in connection therewith, or with the survey upon which it is based, and that it shall not be approved unless the said provisions have been complied with.***

11.80 The compliance shall be done within Six (6) months from today, at Precious Muimo, the vendor's cost. Andrew Mununga Siwabamundi testified that he had been unable to register the property for marking off, as Precious Muimo was in possession of the original certificate of title. Precious Muimo on the other hand, stated that she deposited the original certificate of title for the property with New Future Finance Limited when she obtained the loan from it. This was not disputed in any way.

11.81 I accordingly Order that New Future Finance Limited shall forthwith surrender the original certificate of title for the property to Precious Muimo so that she can have the subdivision that Andrew Mununga Siwabamundi bought registered. Any failure to oblige the Order of the Court, will

result in Precious Muimo and New Future Finance Limited being cited for contempt of Court.

11.82 **Section 17 of the said Land Survey Act** is as follows in provision:

***“17. (1) Whenever a dispute in regard to any boundary or beacon of contiguous parcels of land has been finally determined by the Judgment of the Court or by the award of an arbitrator or arbitrators, the owners of any land affected by such Judgment or award, or such of them as may be specially directed thereby, shall take such steps as may be necessary to produce an amended title to such land, and such amended title shall be based upon a diagram correctly representing the boundaries and beacons of such land as determined by such Judgment or award. (2) Any Judgment or award mentioned in subsection (1) shall determine in what proportion the costs of any survey for the purpose of framing any diagram or otherwise giving effect to such Judgment or award, and of the amended title, shall be borne by the owners of any land affected by such Judgment or award.”***

11.83 While New Future Finance Limited has submitted that a certificate of title is conclusive evidence of ownership of land, **Section 33 of the Lands and Deeds Registry Act**, I have stated that the said Section provides exceptions to this general rule. It 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.”***

11.84 The evidence on record has established that the certificate of title that is held by New Future Finance Limited for the remaining extent of Subdivision No 2 of Subdivision U of Farm 2303 in the survey diagram, covers land that is more than what it contracted to buy from Precious Muimo. The result of this, was that there was erroneous inclusion of land in the said certificate of title, which should be rectified.

**12. CONCLUSION**

- 12.1 Thus, after the sub division for Andrew Mununga Siwabamundi is registered and marked off, and an appropriate application made for Consent to Assign Subdivision B of Subdivision 2 of Subdivision U of Farm 2303 to him, Precious Muimo together with New Future Finance Limited shall take up all the necessary steps to ensure that the certificate of title for New Future Finance Limited is corrected to reflect the correct portion of the land that it bought from her.
- 12.2 Any disobedience of the Order of the Court shall result in the party disobeying the Order being liable to be cited for contempt of Court. The Chief Registrar of Lands shall accordingly cancel the certificate of title that was issued to New Future Finance Limited, and replace it with the correct one that reflects the correct size of the land that New Future Finance Limited bought from Precious Muimo.
- 12.3 Correspondingly, the entries on the Lands Register regarding the particulars on the certificate of title for New Future Finance

Limited shall also be cancelled and be corrected to reflect the correct size of the land for New Future Finance Limited, being 0.6966 hectares.

- 12.4 Andrew Mununga Siwabamundi is therefore entitled to specific performance of the contract of sale for the portion of land that he bought from Precious Muimo in the extent of 4054 square metres. In that regard, as already directed he shall proceed to do all the acts that are necessary to ensure the obtaining of a certificate of title for the land, once the subdivision is registered.
- 12.5 Costs of the action go to Andrew Mununga Siwabamundi against Precious Muimo and New Future Finance Limited, which shall be taxed in default of agreement. Leave to appeal is granted.

**DATED AT LUSAKA THE 30<sup>th</sup> DAY OF JANUARY, 2024**

*S. Kaunda*  
**S. KAUNDA NEWA  
HIGH COURT JUDGE**

