

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

2020/HP/1059

BETWEEN:

CHITUKULA NYIRENDA

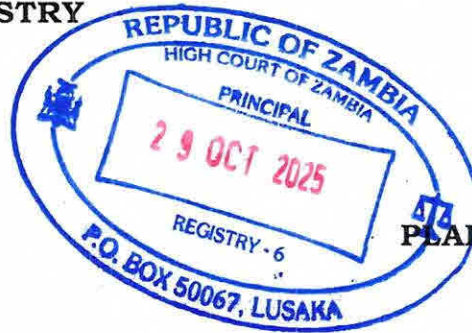
AND

NEW FUTURE FINANCIAL COMPANY LIMITED  
DORICA NYIRENDA  
KAMIMA NYIRENDA  
SUZYO NYIRENDA  
MARY CLAIRE NYIRENDA  
MAUNGA NYIRENDA

PLAINTIFF

DEFENDANT

1<sup>ST</sup> INTERVENING PARTY  
2<sup>ND</sup> INTERVENING PARTY  
3<sup>RD</sup> INTERVENING PARTY  
4<sup>TH</sup> INTERVENING PARTY  
5<sup>TH</sup> INTERVENING PARTY



BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 29<sup>th</sup> DAY OF  
OCTOBER, 2025

For the Plaintiff : Mr. A.S. Kokowe, Messrs Milimo Chooka &  
Associates  
For the Defendant : Mr. G. Hakainsi, Messrs L.M. Chambers  
For the Intervening Parties : Ms. M.S. Namwila Mwala, Mr. F. Muzimu, Mr. C.  
Chikoya – Messrs. Corpus Legal Practitioners

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## J U D G M E N T

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### CASES REFERRED TO:

1. *Edith Nawakwi v Lusaka City Council and another Appeal No. 26 of 2001.*
2. *Kayoba and another v Ngulube and another SCZ Judgment No. 19 of 2003*
3. *Borniface Kafula and Others v Billings Choonga Mudenda Appeal No. 202 of 2003*
4. *Sablehand Zambia Limited v Zambia Revenue Authority 2005 ZR 109*
5. *Clementina Banda Emmanuel Njanje v Boniface Mudimba 2011 Vol 3 ZR 162*
6. *Rodney Samanyika v Enoch Kawoku Chitiya and ZCCM Investments Holdings Limited Appeal No. 194 of 2021*

**7. Gillian Mutinta Kasempa v New Future Finance and Zhong Cheng Zambia Mining Materials Limited Appeal No. 13 of 2023**

LEGISLATION REFERRED TO:

- 1. The Land Transfer Act, 1897**
- 2. The Intestate Succession Act Chapter 59 of the Laws of Zambia**
- 3. The Lands and Deeds Registry Act Chapter 185 of the Laws of Zambia**

OTHER WORKS REFERRED TO:

- 1. Black Law's Dictionary, 8<sup>th</sup> Edition, by Bryan A. Garner Thomas Reuters, 2004**

**1. INTRODUCTION**

1.1 In this action, which was commenced on 13<sup>th</sup> October, 2020, by Writ of Summons which was accompanied by a statement of claim and the other requisite documents, Chitukula Nyirenda claims:

- i. An Order for the rescission of the contract of sale.*
- ii. Damages for breach of contract.*
- iii. An Order for the return of the certificate of title for Chitukula Nyirenda's property.*
- iv. Interest on the amounts found due.*
- v. Costs.*

**2. STATEMENT OF CLAIM**

2.1 In advancing his claims, Chitukula Nyirenda in the statement of claim, stated that he is, and was at the material time, the beneficial owner of the property known as Subdivision No 7 of Subdivision 'B' of Subdivision No 1 of Subdivision 'A' of Farm No 687 Lusaka.

- 2.2 His averment was that New Future Financial Company Limited was a financial and insurance services provider by virtue of a Zambia Development Agency certificate of registration number ZDA/3262/09/2017.
- 2.3 In respect of the claims, it was stated that on 10<sup>th</sup> August, 2018, Chitukula Nyirenda and New Future Financial Company Limited entered into a contract of sale for Chitukula Nyirenda's property at the sum of US\$70, 000.00.
- 2.4 Chitukula Nyirenda contended that it was expressly agreed by the parties, that the contract was independent of any agreement or any other transaction that Chitukula Nyirenda had with New Future Financial Company Limited or any entity that was associated with New Future Financial Company Limited.
- 2.5 He stated that on 13<sup>th</sup> August, 2018, shortly after the contract of sale was signed, New Future Financial Company Limited lodged a caveat on the property as an intending purchaser.
- 2.6 It was Chitukula Nyirenda's contention that whereas, the parties agreed that New Future Financial Company Limited would pay Chitukula Nyirenda the purchase price of US\$70, 000.00 upon receipt of the certificate of title, New Future Financial Company Limited only paid Chitukula Nyirenda ZMW100, 000.00 to date.
- 2.7 Chitukula Nyirenda further contended that even though New Future Financial Company Limited had failed to give good

consideration, it was in the process of transferring title to the property in its' name.

- 2.8 He alleged that New Future Financial Company Limited had breached the express covenants which were set out in the contract of sale, thereby causing him loss and damage.

### **3. DEFENCE AND COUNTERCLAIM BY NEW FUTURE FINANCIAL COMPANY**

- 3.1 New Future Financial Company Limited in a defence and counterclaim which was filed on 25<sup>th</sup> October, 2020, agreed that Chitukula Nyirenda was the registered owner of the property in contention, at the time that it bought the same from him. The assertion was that the property was now dully registered in its' name.
- 3.2 Thus, New Future Financial Company Limited contended that Chitukula Nyirenda was no longer a bona fide or beneficial owner of the property.
- 3.3 New Future Financial Company Limited denied the assertion that it is a financial and insurance services provider, by virtue of a Zambia Development Agency certificate of registration number ZDA/3262/09/2017, contending that it is involved in the real estate business.
- 3.4 The averments relating to the parties having entered into a contract of sale on 10<sup>th</sup> August, 2018, were admitted, but New Future Financial Company Limited denied that it was an express term of the contract of sale, that the said contract was independent of any other agreement or transaction that

the parties had, or with any other entity that was associated with it.

- 3.5 It was however agreed that after the contract of sale was entered into, New Future Financial Company Limited lodged a caveat on the property as intending purchaser.
- 3.6 New Future Financial Company Limited denied that it only paid ZMW100, 000.00 out of the purchase price of US\$70, 000.00. Its' assertion was that Chitukula Nyirenda was paid the purchase price in full as follows:
  - (i) US\$31, 300.00 which was equivalent to ZMW308,305.00 at the time, through account number 9130002110699 which was provided by Chitukula Nyirenda and US\$38, 700.00 in cash.
- 3.7 Therefore, New Future Financial Company Limited's defence was that contrary to Chitukula Nyirenda's assertions, it gave good consideration.
- 3.8 It also stated that the change of ownership was sanctioned by the contract of sale which the parties entered into, and the process of change of ownership had been finalized.
- 3.9 The assertion that Chitukula Nyirenda had suffered loss and damage by New Future Financial Company Limited's breach of the express covenants in the contract was denied.
- 3.10 In counterclaiming, New Future Financial Company Limited stated that it had since changed ownership of the property from Chitukula Nyirenda's names into its' own names, premised on the contract of sale, the consent and the assignment, which documents were executed by the parties,

after Chitukula Nyirenda at his own instance, entered into the contract of sale with New Future Financial Company Limited for the sale of the property.

3.11 It was also averred that upon the contract of sale and the assignment being signed, followed by receipt of the purchase price, and the property having been transferred to New Future Financial Company Limited, Chitukula Nyirenda ought to have surrendered vacant possession of the property.

3.12 New Future Financial Company Limited contended that it was a term of the contract of sale, that if there were legal proceedings due to the vendor forcibly occupying the property, the vendor would bear the following expenses based on the total price of the contract:

1. Interest counted by days, with the interest rate at 48% per annum.
2. Fees for changing ownership of the property, including tax.
3. Fund occupancy fee at 25%.
4. Related department clearing fee of 10%.
5. Legal fees at 50%.
6. The loss cost of working time for the purchaser's staff at 3%.

3.13 New Future Financial Company Limited also stated that the parties agreed that if any party breached the contract, the breaching party would pay 15% of the total contract sum as liquidated damages to the compliant party.

3.14 The contention was that due to Chitukula Nyirenda's actions, New Future Financial Company Limited had been denied possession of the property, thereby losing income from the property in the form of mense profits or capital occupation fee, costs and profits, as at the same time, New Future Financial Company Limited had been kept out of use of its' money.

3.15 New Future Financial Company Limited therefore counterclaimed as follows:

- i. An Order for the possession of the property Subdivision No 7 of Subdivision 'B' of Subdivision No 1 of Subdivision 'A' of Farm No 687 Lusaka and directing Chitukula Nyirenda to vacate from the said property;*
- ii. Alternatively, an Order directing Chitukula Nyirenda to pay back US\$70, 000.00 and that Chitukula Nyirenda should bear all the costs for registering the property back into his names;*
- iii. Damages for breach of contract amounting to 58% of the purchase price;*
- iv. Damages for inconvenience;*
- v. Interest on the amounts found due;*
- vi. Costs against Chitukula Nyirenda;*
- vii. Any other relief that the Court may deem fit.*

#### **4. REPLY AND DEFENCE TO COUNTERCLAIM**

4.1 In the reply and defence to the counterclaim, which was filed on 2<sup>nd</sup> December 2020, Chitukula Nyirenda alleged that

change of ownership of the property was done using a forged Consent to Assign, as he only signed the Consent to Assign in 2018, which entailed that the transfer of title was done out of time.

- 4.2 He denied having received the purchase price for the property as alleged by New Future Financial Company Limited, stating that New Future Financial Company Limited erroneously transferred part of the purchase price for the property into an account that belonged to a third party.
- 4.3 His defence was that his particulars were well known to New Future Financial Company Limited, who prepared the relevant documents, and they indicated a wrong account number and diverted part of the purchase price to a third party.
- 4.4 Chitukula Nyirenda thus denied that the change of ownership was sanctioned by the contract of sale that the parties had entered into, maintaining that a forged Consent to Assign was used to assign the property, after New Future Financial Company Limited received Court process and a demand letter, rescinding the contract of sale.
- 4.5 Chitukula Nyirenda reiterated that New Future Financial Company Limited breached the contract of sale, and that there was fraud in obtaining the Consent to Assign. He further alleged that on that account, the transfer of the property, was void for fraud, and New Future Financial Company Limited was not entitled to vacant possession of the property.

4.6 The particulars of fraud were alleged as:

- i. *Uttering a false document, namely consent to assign dated 7<sup>th</sup> September, 2020, with intention to deceive the public officer namely, the Commissioner of Lands that the document was authentic and signed by Chitukula Nyirenda.*
- ii. *Causing alteration to the Lands Register, and thereby changing ownership of the property using the said false Consent to Assign purporting to have paid the full purchase price for the property, when in fact not.*

4.7 Chitukula Nyirenda denied the averments relating to the terms of the contract of sale, and stated that he had not given vacant possession of the property as he had not been paid the purchase price in full.

4.8 He therefore denied that he should bear any costs or expenses, as it was New Future Financial Company Limited that had breached the contract of sale, and his contention was that he rightly rescinded the contract of sale.

4.9 Chitukula Nyirenda further denied the assertion that in line with the contract of sale, as a breaching party, he should pay liquidated damages of 15% of the purchase price to New Future Financial Company Limited as the compliant party, again stating that it was New Future Financial Company Limited that breached the contract of sale.

## **5. REPLY TO DEFENCE AND COUNTERCLAIM**

- 5.1 In a reply to the defence to the counterclaim that was filed on 26<sup>th</sup> January, 2021, New Future Financial Company Limited denied that the contract of sale was rescinded, and stated that change of ownership of the property was done using documents that were duly executed by the parties. Therefore, Chitukula Nyirenda was put to strict proof on the allegations of forgery.
- 5.2 New Future Financial Company Limited maintained that Chitukula Nyirenda was paid the purchase price in full, and that he should therefore bear the expenses as agreed in the contract of sale.
- 5.3 It further contended that New Future Financial Company Limited did not breach the contract of sale.

## **6. INTERVENING PARTIES DEFENCE AND COUNTERCLAIM**

- 6.1 In their defence which was filed on 22<sup>nd</sup> November 2023, the intervening parties Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda denied that Chitukula Nyirenda was the beneficial owner of Subdivision No. 7 of Subdivision B of Subdivision No. 1 of Subdivision A of Farm No. 687, Makeni, Lusaka.
- 6.2 Their assertion was that the property in dispute was in fact owned by the late Laban Chibele Nyirenda who was the father to Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda and Chitukula Nyirenda, who would be put to strict proof of manner in which he acquired title to the property in dispute.

- 6.3 It was further stated that Laban Chibele Nyirenda acquired title to the property by way of Mortgage in 1971, and that he died on 25<sup>th</sup> May 2000, without leaving a will.
- 6.4 Therefore, Laban Chibele Nyirenda died intestate.
- 6.5 It was also stated that Laban Chibele Nyirenda was survived by a spouse named Iris Nyirenda, and the children who had earlier been mentioned. Thus, by virtue of the existing circumstances, Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda, Maunga Nyirenda together with Chitukula Nyirenda, are the beneficiaries of the property in dispute.
- 6.6 Further averment was made, that the value of the property exceeded the purchase price of US\$70,000.00 which was agreed between Chitukula Nyirenda and New Future Financial Company Limited.
- 6.7 It was admitted that New Future Financial Company Limited lodged a caveat over the property.
- 6.8 Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda, Maunga Nyirenda's defence was that the caveat that was lodged by New Future Financial Company Limited was erroneous, stating that Chitukula Nyirenda had no good title to pass on, as he acquired title to the property fraudulently.
- 6.9 Therefore, New Future Financial Company Limited could not have been a valid intending purchaser.

- 6.10 Admission was however made, that New Future Financial Company Limited had transferred title to the property into its' own name.
- 6.11 Nevertheless, the defence was that although New Future Financial Company Limited had transferred title to the property to itself, it did not acquire good title to the same, as Chitukula Nyirenda had no good title to pass on to it.
- 6.12 Further averment was made, that Chitukula Nyirenda had no authority to enter into a contract of sale for the property as he acquired title to the same fraudulently.
- 6.13 It was contended that any title that was passed on by Chitukula Nyirenda to New Future Financial Company Limited was void, as a person who acquired title by fraud could not pass on good title.

#### **COUNTERCLAIM**

- 6.14 In the counter claim, Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda reiterated their defence.
- 6.15 They stated that Iris Nyirenda being the spouse to Laban Chibele Nyirenda was appointed Administratrix of the estate of Laban Chibele Nyirenda on 6<sup>th</sup> February 2001, by an Order of Appointment.
- 6.16 It was their averment that until Iris Nyirenda's death on 16<sup>th</sup> February 2009, she did not transact on the property in any way, and that the same remained in the name of Laban Chibele Nyirenda.
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- 6.17 Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda stated that following her death, Chitukula Nyirenda and Kamima Nyirenda were jointly appointed as Administrators of the estate of Laban Chibele Nyirenda's spouse on 3<sup>rd</sup> March 2009, by an order of appointment, and Letters of Administration were accordingly issued.
- 6.18 It was contended that the Letters of Administration were duly registered at the Ministry of Lands and Natural Resources with respect to the property.
- 6.19 In further counterclaiming, Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda stated that sometime in 2013, they agreed with Chitukula Nyirenda to subdivide a portion of Laban Chibele Nyirenda's estate to one Maxsud Ahmed Issa, for the purpose of raising capital to build some houses on the property for the family.
- 6.20 Their averment was that as a result, the property had several houses, some of which were occupied by Dorica Nyirenda and Suzyo Nyirenda, while the rest of the houses were rented out to third parties.
- 6.21 Further, in their counterclaim, it was stated that the sale of a subdivision to Maxsud Ahmed Issa, was the only time that they agreed with Chitukula Nyirenda to sell off a portion of the property.
- 6.22 The assertion was that on 8<sup>th</sup> May 2023, Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda

and Maunga Nyirenda were served with a Notice of Vacate by New Future Financial Company Limited, who claimed that it had purchased the property from Chitukula Nyirenda by way of a loan that Chitukula Nyirenda had obtained.

6.23 It was stated that investigations were carried out after being served with the Notice to vacate, which revealed many irregularities and fraudulent conduct by Chitukula Nyirenda.

6.24 The particulars of fraud were stated as:

PARTICULARS OF FRAUD

- a. *Chitukula Nyirenda had knowledge that consent had to be obtained from Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda or in the alternative, Kamima Nyirenda before transferring title to the property into his own name;*
- b. *Chitukula Nyirenda falsely represented to the Ministry of Lands and Natural Resources that he had consent from all the beneficiaries or Kamima Nyirenda when title to the property was transferred into his own name;*
- c. *Chitukula Nyirenda under false pretenses acquired title under his own name in relation to the property;*
- d. *Chitukula Nyirenda falsely transferred title to the property into his own name without obtaining a Court order granting him authority to transfer or even sell the said property in dispute; and*
- e. *Chitukula Nyirenda under false pretenses pledged the property for the loan that he obtained from New Future*

*Financial Company Limited knowing fully well that the property belonged to all the beneficiaries of Laban Chibele Nyirenda.*

- 6.25 It was contended that Chitukula Nyirenda upon fraudulently acquiring title to the property, proceeded to pledge the property as security for a loan that he obtained from New Future Financial Company Limited, which resulted in the sale of the property to New Future Financial Company Limited, without the knowledge or consent of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda.
- 6.26 The averment was that New Future Financial Company Limited did not acquire good title to the property as Chitukula Nyirenda had no good title to pass to New Future Financial Company Limited.
- 6.27 Further, the assertion was that at the time of allegedly purchasing the property from Chitukula Nyirenda, New Future Financial Company Limited did not visit the occupants of the property, and neither did New Future Financial Company Limited question them regarding their interest in the property.
- 6.28 Consequently, the contention was that any title that was acquired by New Future Financial Company Limited from Chitukula Nyirenda was subject to the rights of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda.

- 6.29 It was also stated that by virtue of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda being beneficiaries of Laban Chibele Nyirenda's estate, there had to be consent from all beneficiaries in relation to the transfer or creation of interest in the property to Chitukula Nyirenda or New Future Financial Company Limited.
- 6.30 The assertion was that Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda had suffered loss and damage, as they had lost their rights to the property to Chitukula Nyirenda or New Future Financial Company Limited.
- 6.31 Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda claimed the following relief:
- i. *A declaration that Laban Chibele Nyirenda is the lawful owner of Subdivision No. 7 of Subdivision B of Subdivision No. 1 of Subdivision A of Farm No. 687, Makeni, Lusaka;*
  - ii. *A declaration that Chitukula Nyirenda fraudulently acquired title to Subdivision No. 7 of Subdivision B of Subdivision No. 1 of Subdivision A of Farm No. 687, Makeni, Lusaka;*
  - iii. *A declaration that Chitukula Nyirenda had no authority to pledge and transfer Subdivision No. 7 of Subdivision B of Subdivision No. 1 of*

- Subdivision A of Farm No. 687, Makeni, Lusaka to New Future Financial Company Limited;*
- iv. An order that Certificate of Title No. 218 634 relating to Subdivision No. 7 of Subdivision B of Subdivision No. 1 of Subdivision A of Farm No. 687, Makeni Lusaka which was issued to Chitukula Nyirenda be cancelled;*
  - v. A declaration that New Future Financial Company Limited had constructive notice of the interests of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda in the property relating to Subdivision No. 7 of Subdivision B of Subdivision No. 1 of Subdivision A of Farm No. 687, Makeni, Lusaka.*
  - vi. An order that the Certificate of Title No. 84568 relating to Subdivision No. 7 of Subdivision B of Subdivision No. 1 of Subdivision A of Farm No. 687, Makeni, Lusaka which was fraudulently issued to New Future Financial Company Limited be cancelled and that the Title should be restored in the name of the estate of Laban Chibele Nyirenda;*
  - vii. Legal costs; and*
  - viii. Any other relief the Court may deem fit.*

**7. NEW FUTURE FINANCIAL COMPANY LIMITED'S DEFENCE TO INTERVENING PARTIES COUNTERCLAIM**

- 7.1 In defence to the counterclaim by Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda, New Future Finance Company Limited stated that it bought the whole property, as there was no notice that was given or presented to show that only a portion of it was on sale, and not the whole property.
- 7.2 The averment was also that New Future Financial Company Limited transacted with Chitukula Nyirenda who was the registered title holder, as the sole beneficial owner, and there was no encumbrance in the form of a caveat or remark on the property, to show the purported interest on it by Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda or indeed anyone else.
- 7.3 New Future Finance Company Limited further denied having entered into a loan agreement with Chitukula Nyirenda and stated that Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda's continued reference to a purported loan which argument was advanced by Chitukula Nyirenda in his pleadings and throughout trial, only showed that it was Chitukula Nyirenda who was still advancing an agenda in an attempt to claim back the property using his siblings.
- 7.4 The particulars of fraud as alleged were denied, and New Future Financial Company Limited stated the following:
  - a) The issue relating to how Chitukula Nyirenda transferred the Certificate of Title for the property was within Dorica Nyirenda, Kamima Nyirenda, Suzyo

Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda's peculiar knowledge.

b) Since Chitukula Nyirenda was the registered title holder of the property in issue and he sold it to New Future Financial Company Limited, as such New Future Financial Company Limited did not need to enquire about any Court Order as the property was not held by Chitukula Nyirenda as Administrator, but as beneficial owner.

7.5 It was stated that Chitukula Nyirenda passed good title to New Future Financial Company Limited, who was a bona fide purchaser of the property, without any notice of any competing interests.

7.6 The contention was that at the time of purchase of the property, New Future Financial Company Limited visited the property in issue, where it found people who indicated that they were all tenants of Chitukula Nyirenda and New Future Financial Company Limited also found the following people who confirmed that the property belonged to Chitukula Nyirenda, and that they were aware that it was on sale:

- i. Esnart Nyirenda 0977801961
- ii. Kamima Nyirenda 0971232751
- iii. Maunga Nyirenda 0967484873
- iv. Kadati Nyirenda 0955842488

7.7 The averment was that it was surprising that Kamima Nyirenda and Maunga Nyirenda, had now come to Court as 2<sup>nd</sup> and 5<sup>th</sup> Intervening Parties respectively, when they are

and were aware of the sale of the property to New Future Financial Company Limited by Chitukula Nyirenda.

7.8 The contention was further that Chitukula Nyirenda passed good title to New Future Financial Company Limited who was a bona fide purchaser of the property without any notice of any competing interests.

7.9 It was stated that Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda were not entitled to the reliefs sought.

#### **8. REPLY TO DEFENDANT'S DEFENCE TO INTERVENING PARTIES COUNTERCLAIM**

8.1 In the reply to the defence to the counterclaim by New Future Financial Company Limited, it was stated that a portion of the property was indeed subdivided and sold to one Maxsud Ahmed Issa, and not to New Future Financial Company Limited.

8.2 Further averment was made, that Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda did not sanction or consent to New Future Financial Company Limited purchasing the whole or any part of the property.

8.3 The assertion was that notice of any interest in a property was not only confined to investigating the title, but that it also extended to inspecting the property and making diligent inquiries from occupiers who were found on the property.

8.4 It was reiterated that Chitukula Nyirenda was not the sole beneficial owner of the property, as he was merely a joint

Administrator, who fraudulently changed title to the property into his own name.

- 8.5 Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda stated that New Future Financial Company Limited had constructive notice of their interests in the property as New Future Financial Company Limited would have reasonably discovered these, had it carried out an inspection of the property and made diligent inquiries from Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda, who were in possession of the property at all material times.
  - 8.6 It was alleged that New Future Financial Company Limited deliberately and carelessly refrained from making thorough inquiries which a prudent purchaser ought to have made in the circumstances.
  - 8.7 Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda denied that they were advancing any agenda that Chitukula Nyirenda had, contending that they were merely seeking to protect their rights in the property, being their only inheritance as Chitukula Nyirenda at all material times, did not possess good title to the property.
  - 8.8 Their assertion, was that, as such, any purported transfer of the property was legally impermissible.
  - 8.9 It was also stated that when purchasing property, investigating title alone, did not suffice, as a prudent
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purchaser had to also carry out inspection of the land and make thorough enquiries from the occupier(s) in possession of the said property.

- 8.10 They stated that New Future Financial Company Limited at all material times, possessed constructive notice of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda's interest in the property. Therefore, it was not a bona fide purchaser of the property without any notice.
- 8.11 The assertion was that there was no plausible reason for Kamima Nyirenda and Maunga Nyirenda to refer to themselves as tenants, when they are beneficiaries of the property.
- 8.12 The reply was further that it was an implausible occurrence for Kamima Nyirenda and Maunga Nyirenda to not question and object to Chitukula Nyirenda selling of their inheritance during the purported visit by New Future Financial Company Limited.

## **9. EVIDENCE AT TRIAL**

- 9.1 At the initial trial, Chitukula Nyirenda testified and he called no witnesses, while New Future Financial Company Limited called One (1) witness. After the Judgment was set aside and the intervening parties Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda were joined to the proceedings, Dorica Nyirenda and Kamima Nyirenda testified on behalf of Dorica Nyirenda, Kamima

Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda.

**PW1 – CHITUKULA NYIRENDA**

- 9.2 Chitukula Nyirenda told the Court that he had filed a witness statement on which he relied as his testimony. The evidence as contained in that witness statement, was that Chitukula Nyirenda was the beneficial owner of the property known as Subdivision No 7 of Subdivision 'B' of Subdivision No 1 of Subdivision 'A' of Farm No 687 Lusaka.
  - 9.3 It was his evidence that around August 2018, he decided to sell the said property, and New Future Financial Company Limited visited him, and it inspected the property and expressed satisfaction over the state of the property.
  - 9.4 He stated that, that was how the parties agreed on US\$70,000.00 as the purchase price for the property, and a contract of sale for the property at that price, was entered into on 10<sup>th</sup> August, 2018.
  - 9.5 Chitukula Nyirenda testified that, according to the contract of sale, the agreement was independent of any agreement or other transaction that Chitukula Nyirenda had with New Future Financial Company Limited, or any other entity that was associated with New Future Financial Company Limited.
  - 9.6 His evidence was further that after the contract of sale was signed, New Future Financial Company Limited proceeded to lodge a caveat on the property as an intending purchaser on 13<sup>th</sup> August, 2018.
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- 9.7 Still in the witness statement, Chitukula Nyirenda stated that on 14<sup>th</sup> August, 2018, he had enquired on payment of the purchase price, and New Future Financial Company Limited had told him to provide it with his banking details to enable them transfer the money, which he did without delay.
- 9.8 His testimony was that New Future Financial Company Limited did a bank transfer on being provided with the bank details, and New Future Financial Company Limited promised to give him a copy once the Bank acknowledged receipt, which had not been done to date.
- 9.9 It was also Chitukula Nyirenda's evidence, that New Future Financial Company Limited insisted that it would only proceed to transfer the money if in addition to the other signed documents, Chitukula Nyirenda signed an acknowledgment of receipt.
- 9.10 Thus, with a view to expediting the completion of the transaction, Chitukula Nyirenda signed One (1) copy of the acknowledgment receipt which bore the correct bank details, believing that New Future Financial Company Limited would transfer the money into his account as promised.
- 9.11 However, despite the promise to transfer the money into Chitukula Nyirenda's account by 15<sup>th</sup> August, 2018, that did not materialize, and Chitukula Nyirenda made follow-ups with no success. It was also stated that Chitukula Nyirenda requested New Future Financial Company Limited to give him a copy of the Bank transfer form which was duly

acknowledged by the Bank, and the receipt so that he could follow up with the Bank which request proved futile.

9.12 His contention was that New Future Financial Company Limited only paid him ZMW100, 000.00 out of the contract price of US\$70, 000.00, and around December, 2019, Chitukula Nyirenda left the country for the United States of America where he had been residing to date.

9.13 It was his testimony, that he instructed his advocates to rescind the contract of sale, which was done by a letter dated 13<sup>th</sup> October, 2020. However, despite New Future Financial Company Limited acknowledging receipt of the letter rescinding the contract of sale, it did on 15<sup>th</sup> October, 2020, proceed to change ownership of the property from Chitukula Nyirenda's name into its' name, and that it did so without providing good consideration for sale of the property, which was unjust enrichment.

**CROSS EXAMINATION OF CHITUKULA NYIRENDA**

9.14 In cross examination, Chitukula Nyirenda testified that there was no dispute that he sold the property to New Future Financial Company Limited. When referred to pages 6 and 7 of New Future Financial Company Limited's bundle of documents, the testimony that was given by Chitukula Nyirenda, was that page 7 was a receipt that he had signed, and on which he had appended his thumbprint, acknowledging receipt of US\$38, 700.00 cash and US\$31, 300.00 which was paid into his bank account.

- 9.15 He agreed that page 6 of New Future Financial Company Limited's bundle of documents was a bank transfer to a Stanbic account with an account number that was reflected at page 7 of the said Defendant's bundle of documents.
- 9.16 On being referred to paragraph 9 of his witness statement, Chitukula Nyirenda testified that it stated that he had signed the receipt to expedite the transaction. He maintained that that was his position, even though paragraph 9 of his witness statement contradicted what was contained on the receipt.
- 9.17 Chitukula Nyirenda told the Court that he had no evidence to show that he signed the receipt before the payment was made.
- 9.18 As regards the contents of paragraph 12 of his witness statement, Chitukula Nyirenda's testimony was that it stated that he was only paid ZMW100,000.00. His position was that he had no evidence to support that assertion, and he agreed that when an adult signed a document, they understood and were responsible for what they were signing. In conclusion, Chitukula Nyirenda's evidence was that it was strange that one would dispute a document that they had signed.

**RE-EXAMINATION OF CHITUKULA NYIRENDA**

- 9.19 In re-examination, Chitukula Nyirenda clarified that he was given a document to sign, but that he was not given a signed copy afterwards. He also clarified that the document bore an account number for a third party who was sent the money, and not himself.

9.20 That marked the close of the case for Chitukula Nyirenda.

**DW1 – FENG SHENGHU**

9.21 The only witness who was called by New Future Financial Company Limited, Feng Shenghu, identified the witness statement that he had executed, and he relied on it as his evidence. He further relied on the bundle of documents that New Future Financial Company Limited had filed.

9.22 In the witness statement, Feng Shenghu testified that New Future Financial Company Limited was involved in real estate and other financial activities as part of its' business. He also stated that under the real estate business, New Future Financial Company Limited bought properties from willing sellers, as well as those who wished to sell their properties, but wanted to be accorded opportunity to buy them back on mutually agreed conditions.

9.23 In relation to this matter, Feng Shenghu's evidence was that on 10<sup>th</sup> August, 2018, Chitukula Nyirenda and New Future Financial Company Limited entered into a contract of sale for the property known as Subdivision No 7 of Subdivision 'B' of Subdivision No 1 of Subdivision 'A' of Farm No 687 Lusaka for the sum of US\$70, 000.00, which contract of sale was at pages 1-5 and 7 of New Future Financial Company Limited's bundle of documents.

9.24 He stated that according to the contract, Chitukula Nyirenda had the option to buy back the property at the same price of US\$70,000.00 by 9<sup>th</sup> December, 2018.

- 9.25 However, his testimony was that Chitukula Nyirenda failed to buy back the property within the agreed period, and neither did he pay New Future Financial Company Limited the sum of US\$70,000.00, in order to buy back the property. It was also stated that Chitukula Nyirenda was paid the money by New Future Financial Company Limited which he used as he pleased, and he did not complain about the transaction until he failed to meet the deadline to buy back the property.
- 9.26 Thus, Feng Shenghu's testimony, was that New Future Financial Company Limited was entitled to an Order for specific performance of the contract of sale relating to the remaining extent of Subdivision No 7 of Subdivision 'B' of Subdivision No 1 of Subdivision 'A' of Farm No 687 Lusaka, as well as mense profits of not less than US\$2, 000.00 per month from the date of the lapse of the buyback period, in view of the absence of full payment of US\$70, 000.00 as agreed.
- 9.27 Feng Shenghu also testified that in the alternative, New Future Financial Company Limited claimed an Order that Chitukula Nyirenda pays back the US\$70, 000.00 in full, together with monetary loss at 15% of the contract price that New Future Financial Company Limited had suffered by being kept out of the money.
- 9.28 In his witness statement that he filed on 2<sup>nd</sup> April 2024 as a result of the intervening parties having been joined to these proceedings, Feng Shenghu stated that New Future

Financial Company Limited bought the whole property as there was no notice given or presented to show that only a portion of the property was on sale and not the whole property.

9.29 Feng Shenghu also testified that New Future Financial Company Limited transacted with Chitukula Nyirenda who was the registered title holder, as the sole beneficial owner, and that there was no encumbrance in the form of a "Caveat" or "Remark" on the property at the Lands Register to show any interest on the property by Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda or anyone else.

9.30 His evidence was further that at the time of purchase of the property, New Future Financial Company Limited visited the property in issue, where it found people who indicated that they were all tenants for Chitukula Nyirenda.

9.31 It was also his testimony that New Future Financial Company Limited also found the following people who confirmed that the property belonged to Chitukula Nyirenda and that they were aware that it was on sale:

- i) Esnart Nyirenda- 0977801961
- ii) Kamima Nyirenda- 0971232751
- iii) Maunga Nyirenda- 0967484873
- iv) Kadati Nyirenda- 0955842488

9.32 Feng Shenghu stated that New Future Financial Company Limited found it very surprising that Kamima Nyirenda and Maunga Nyirenda had now come to Court as 2<sup>nd</sup> and 5<sup>th</sup>

Intervening Parties respectively, when they are and were aware of the sale of the property to New Future Financial Company Limited by Chitukula Nyirenda.

- 9.33 He told the Court that since Chitukula Nyirenda who sold the property to New Future Financial Company Limited, was the registered title holder for the property in issue, New Future Financial Company Limited did not need to enquire about any Court Order as the property was not held by Chitukula Nyirenda as Administrator, but as beneficial owner.
- 9.34 Further in his testimony, Feng Shenghu stated that a property which is held or registered in the name of an Administrator is clearly indicated on the Certificate of Title that the person is holding title in their capacity as Administrator.
- 9.35 His evidence was that an example of where a certificate of title was held or registered in the name of an Administrator on behalf of the estate, was shown at page 1 of New Future Financial Company Limited's Supplementary Bundle of Documents.
- 9.36 It was stated that according to the contract of sale, Chitukula Nyirenda had the option to buy back the property by paying the same purchase price of US\$70, 000.00, and that he was to do so before December 2018.
- 9.37 Feng Shenghu testified that Chitukula Nyirenda also executed a Deed of Assignment for transfer of ownership

which was at pages 8-11 of New Future Financial Company Limited's Bundle of Documents.

- 9.38 His evidence was that Chitukula Nyirenda did not buy back the property within the agreed period of up to 9<sup>th</sup> December 2018, and that even as of that date, Chitukula Nyirenda had not paid the sum of US\$70,000.00 to New Future Financial Company Limited in order to buy back the property.
- 9.39 Feng Shengu testified that New Future Financial Company Limited denied Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda's claims relating to a purported loan transaction, stating that it was never entered into between Chitukula Nyirenda and New Future Financial Company Limited.
- 9.40 He stated that in any case, this Honourable Court in its Judgment already found as a matter of fact that Chitukula Nyirenda did not obtain a loan, but that he sold his property to New Future Financial Company Limited.
- 9.41 It was his testimony that Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda's continued reference to a purported loan which argument was unsuccessfully advanced by Chitukula Nyirenda in his pleadings, and throughout trial only showed that it could still be the same Chitukula Nyirenda who was advancing an agenda in an attempt to grab back the property now using his siblings.
- 9.42 Feng Shenghu testified that New Future Financial Company Limited believed that Chitukula Nyirenda passed good title
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to New Future Financial Company Limited who was a bona fide purchaser of the property without any notice of competing interests.

- 9.43 His evidence was that Chitukula Nyirenda having failed to buy back the property in accordance with the contract that was entered into by the parties was not entitled to the reliefs claimed.
- 9.44 It was stated that Chitukula Nyirenda was paid the money which he used as he pleased. Further testimony was given, that Chitukula Nyirenda never complained about the transaction until after he failed to meet the deadline to buy back the property.
- 9.45 In still testifying Feng Shenghu stated that New Future Financial Company Limited was entitled to an order for specific performance of the contract of sale relating to the Remaining Extent of Subdivision No. 7 of Subdivision 'B' of Subdivision No.1 of Subdivision 'A' of Farm No. 687, Lusaka and mense profits of not less than US\$2,000.00 per month from the date of lapse of the buyback period in view of the absence of full payment of the US\$70,000.00 as agreed.

**CROSS EXAMINATION OF FENG SHENGHU BY COUNSEL FOR CHITUKULA NYIRENDA**

- 9.46 In cross examination, Feng Shenghu testified that only Chitukula Nyirenda and New Future Financial Company Limited were parties to the contract of sale, which was dated 10<sup>th</sup> August, 2018. He told the Court that Chitukula Nyirenda executed the Deed of Assignment in August 2018,

and that, arising from the contract, New Future Financial Company Limited had the duty to pay Chitukula Nyirenda the full purchase price.

- 9.47 His contention was that Chitukula Nyirenda was paid the purchase price in full, being partly in cash, and the other by bank transfer into Chitukula Nyirenda's bank account.
- 9.48 Feng Shenghu was not sure how much was paid to Chitukula Nyirenda in cash, stating that although he could not recall, it could have been ZMW380,000.00, around 10<sup>th</sup> August 2018, when the contract of sale was signed. He also could not recall the date when the bank transfer was done, but stated that it was after the contract of sale was signed.
- 9.49 His testimony was further that page 6 of New Future Financial Company Limited's bundle of documents was the bank transfer, which was dated 15<sup>th</sup> August, 2018.
- 9.50 The evidence that he gave, was that according to the document, ZMW308, 305.00 was transferred, and that according to the document, the instructions were not to pay Chitukula Nyirenda, but rather Nancy Muzyamba who was the recipient on the document.
- 9.51 Feng Shenghu agreed that Nancy Muzyamba was not a party to the contract of sale, and he denied that part of the purchase price was paid to the wrong person.
- 9.52 It was his testimony that Chitukula Nyirenda signed the receipt on 14<sup>th</sup> August, 2018, which was at page 7 of New Future Financial Company Limited's bundle of documents. Feng Shenghu told the Court that New Future Financial

Company Limited typed the document which indicated that US\$31,300.00 should be paid into Chitukula Nyirenda's personal account, and that an account number 9130002110699 was indicated on the document, which New Future Financial Company Limited took was Chitukula Nyirenda's personal bank account number.

- 9.53 Feng Shengu agreed that page 6 of New Future Financial Company Limited's bundle of documents was the transfer that was made into the account with the number 9130002110699, but stated that it had a different account name. He denied that there was a mistake with regard to the account number, but agreed that the transfer was done after the receipt was signed on 14<sup>th</sup> August, 2018.
- 9.54 Feng Shengu's further testimony was that the documents relating to the sale were all not done in 2018, testifying that the application to change ownership was done in 2019.
- 9.55 He could not recall whether since December, 2019 to the date of his testimony, New Future Financial Company Limited had ever had a meeting with Chitukula Nyirenda, stating that he was not aware that Chitukula Nyirenda left the country in December 2019, and that he had been away since then.
- 9.56 He further could not recall that New Future Financial Company Limited lodged the application for Consent to Assign the property in September 2020. When referred to the application for Consent to Assign the property, which was at page 12 of New Future Financial Company Limited's bundle

of documents, Feng Shenghu testified that it was dated 7<sup>th</sup> September, 2020.

- 9.57 His evidence when referred to the application for Consent to Assign the property which was at page 1 of Chitukula Nyirenda's bundle of documents, was that it was dated 10<sup>th</sup> August, 2018.
- 9.58 Feng Shenghu testified that Chitukula Nyirenda signed the Consent to Assign which was at page 12 of New Future Financial Company Limited's bundle of documents, and he explained that New Future Financial Company Limited expected Chitukula Nyirenda to pay back the US\$70, 000.00 which was paid partly in cash and by bank transfer.
- 9.59 He agreed that New Future Financial Company Limited had changed ownership of the property from Chitukula Nyirenda's name into its' name, and that New Future Financial Company Limited had not tried to get back the money which was paid to Nancy Muzyamba.
- 9.60 It was also his testimony in cross examination, that New Future Financial Company Limited gave Chitukula Nyirenda the documents which were signed in 2018.

**CROSS EXAMINATION OF FENG SHENGHU BY COUNSEL FOR DORICA NYIRENDA, KAMIMA NYIRENDA, SUZYO NYIRENDA, MARY CLAIRE NYIRENDA AND MAUNGA NYIRENDA**

- 9.61 When cross examined on the witness statement that he filed on 2<sup>nd</sup> April 2024, and referred to page 29 of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire
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Nyirenda and Maunga Nyirenda's bundle of documents, Feng Shenghu stated that it was a printout from the Lands Register.

- 9.62 He stated that at Entry No. 14, the title holder was Nyirenda Laban Chibele, who owned the property in 1971.
- 9.63 When referred to pages 24 to 26 of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda's bundle of documents, Feng Shenghu's evidence was that they were birth certificates for Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda, but that page 25 was not clear.
- 9.64 It was nevertheless his evidence that pages 25 and 26 showed that the father listed on the documents was Laban Nyirenda Chibele.
- 9.65 Feng Shenghu told the Court that the Record of Birth which was at page 24 of the said bundle of documents was handwritten, and he could not identify it.
- 9.66 When referred to page 27 of the said bundle of documents, Feng Shenghu stated that it was an Order of Appointment as Administrator, and that Iris Nyirenda was appointed as Administrator on 6<sup>th</sup> February 2001.
- 9.67 It was also his testimony that at page 28, was an Order of Appointment as Administrator for Chitukula Nyirenda and Kamima Nyirenda which was dated 3<sup>rd</sup> March 2009, and that the value of the property was US\$70,000.00.
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- 9.68 Feng Shenghu stated that he had evidence to show that Chitukula Nyirenda had the authority to sign on behalf of Kamima Nyirenda, as he signed as the legal owner.
- 9.69 The testimony that he also gave, when he was referred to paragraph 1 of the witness statement, was that he inspected and verified the property before executing the contract of sale.
- 9.70 Feng Shenghu's evidence as regards the pictures which were at pages 36 to 45 of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda's bundle of documents, was that the said pictures were not clear, and he could not confirm if they were on the property.
- 9.71 He told the Court that he went to the property after the Judgment, and that there was a house with people living in it, clarifying the he did not visit the property before the Judgment.
- 9.72 However, Feng Shenghu testified that the Company inspected the property before the sale, and that he had no evidence to show so before Court. He added that in 2018, the Company was aware that someone was living at the property and there was a report.
- 9.73 The testimony that Feng Shenghu gave when he was referred to paragraph 5 of his witness statement, was that some of the tenants were listed, and he could not recall that they provided tenancy agreements.
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- 9.74 Feng Shengu's evidence as regards paragraph 10 of Dorica Nyirenda's witness statement, was that he did not know her prior to the Judgment.
- 9.75 It was his testimony when he was referred to the letter dated 8<sup>th</sup> May, 2020, and which was addressed to whom it may concern, which was at page 35 of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda's bundle of documents, that it was a notice to vacate the property.
- 9.76 Feng Shenghu testified that he could confirm that Dorica Nyirenda was staying on the property, but that she was not listed as one of the people who was stated as being tenant for Chitukula Nyirenda.
- 9.77 Admission was made, that Feng Shengu had no proof that he contacted the persons that were listed in paragraph 5 of his witness statement.
- 9.78 When referred to Entry No. 21 of the Lands Register which was at page 31 of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda's bundle of documents, the testimony that Feng Shenghu gave, was that it was the registration of an Order of Appointment as Administrators for Chitukula Nyirenda and Kamima Nyirenda.
- 9.79 On other documents that he was referred to, being the contract of sale between Chitukula Nyirenda and New Future Financial Company Limited, which was at page 1 of New Future Financial Company Limited's bundle of

documents, he stated that the said contract of sale was dated 10<sup>th</sup> August 2018.

- 9.80 His evidence was that the Order of Appointment as Administrators which was at entry no. 21 was earlier as it was registered on 10<sup>th</sup> May, 2013.
- 9.81 Still on entries on the Lands Register, specifically entry no. 23, Feng Shenghu testified that it showed Chitukula Nyirenda as the legal owner of the property. He added that before Chitukula Nyirenda became the legal owner of the property, he was the Administrator.
- 9.82 Feng Shenghu on being referred to paragraph 3 of his witness statement, testified that there was no notice to show that a portion of the property was sold.
- 9.83 As regards page 32 of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda's bundle of documents, being entry no. 22 on the Lands Register, his evidence was that it showed that the Assignment was registered for sale to Maxsud Ahmed Issa on 10<sup>th</sup> May 2013.
- 9.84 In continued cross examination, Feng Shenghu's evidence was that the Company conducted proper inspection and investigations, and there was property that remained after a portion was sold to Maxsud Ahmed Essa.
- 9.85 Further on the Lands Register which was at pages 29 to 34 of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda's bundle of documents, he testified that there was no Court order there,
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to show transfer of the property to Chitukula Nyirenda and authority to sell it.

- 9.86 His evidence was that entry no. 23 was not preceded by a Deed of Assignment to Chitukula Nyirenda but to Maxsud Ahmed Issa.
- 9.87 Feng Shenghu also testified that there was no registration of a Deed of Assent, on the Lands Register which they had produced in their bundle of documents. However, he stated that it was not necessary to ask Chitukula Nyirenda how he acquired title to the property.
- 9.88 Further in cross examination, Feng Shenghu told the Court that the property was valued before it was purchased, although there was no proof before Court, adding that they knew the value.

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

- 9.89 In re-examination, Feng Shenghu clarified that the receipt was dated 14<sup>th</sup> August, 2018, and that the transfer was done on 15<sup>th</sup> August, 2018. He stated that before Chitukula Nyirenda signed the receipt on 14<sup>th</sup> August, 2018, New Future Financial Company Limited sent another letter to the Bank transferring the money into Chitukula Nyirenda's account.
- 9.90 However, the Bank had called, stating that the name on the account was different, and that was how, it had sent another transfer with Nancy Muzyamba's name after Chitukula Nyirenda confirmed.
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9.91 It was also clarified that Chitukula Nyirenda was the legal owner of the property, and therefore, it was not necessary to seek authority from anyone. He further testified that there was an injunction before the final Judgment.

**INTERVENING WITNESS 1 – DORICA NYIRENDA**

9.92 In her witness statement, Dorica Nyirenda stated that she had been, and was still residing at the property in dispute. Her evidence was that she was one of the children for Laban Chibele Nyirenda, who initially owned the property having acquired it sometime in 1971 through a Mortgage.

9.93 Dorica Nyirenda referred to the documents which were at pages 1 to 22 of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda bundle of documents in that regard.

9.94 She stated that during his lifetime, Laban Chibele Nyirenda did not at any time dispose of his interest in the property. Dorica Nyirenda testified that Laban Chibele Nyirenda died intestate on 25<sup>th</sup> May 2000, and that he was survived by his wife, Iris Nyirenda, and six children, being Chitukula Nyirenda, Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda.

9.95 Her evidence was that a copy of the burial permit was at page 23 of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda's bundle of documents.

9.96 In her continued testimony, Dorica Nyirenda testified that Iris Nyirenda became the sole Administrator of the property

on 6<sup>th</sup> February 2001, with reference being made to the Letters of Administration which were at page 27 of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda's bundle of documents.

9.97 Her evidence was that after the death of Iris Nyirenda, the family appointed Chitukula Nyirenda and Kamima Nyirenda as Administrators of the estate on 3<sup>rd</sup> March 2009. Page 28 of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda's bundle of documents was identified as being the letters of Administration.

9.98 It was stated that Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda are the children of Laban Chibele Nyirenda, and consequently all beneficiaries of Laban Chibele Nyirenda's estate, which encompassed the property in dispute.

9.99 Dorica Nyirenda in that respect, identified the birth certificates, which were at pages 24 to 26 of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda bundles of documents.

9.100 She testified that Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda had at all material times, been in occupation of the property in dispute prior to, and after the death of Laban Chibele Nyirenda, as the same is a family home.

9.101 In still testifying, Dorica Nyirenda stated that as a matter of fact, among them as intervening parties, some of them had

moved out from the family property to other places after attaining the age of majority, leaving only Suzyo Nyirenda and herself, who still resided at the property.

9.102 Reference was made to the photographs that evidenced occupation of the property by Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda which were at pages 36 to 45 of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda's bundle of documents.

9.103 In still testifying, Dorica Nyirenda testified that the property comprised other properties which had been rented out and were currently occupied by tenants.

9.104 She told the Court that she is currently married, and has two children who lived with her on the property in dispute. Accordingly, Dorica Nyirenda stated that she had been in occupation of the property in dispute since she was young.

9.105 Her evidence was further that at all material times, New Future Financial Company Limited never visited the property in dispute.

9.106 However, on 8<sup>th</sup> May 2023, to their surprise and astonishment, they were served with a Notice to Vacate the property in dispute from New Future Financial Company Limited.

9.107 Dorica Nyirenda testified that it was only at that point, that they learnt that the property in dispute was the subject matter of Court proceedings between Chitukula Nyirenda and New Future Financial Company Limited.

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- 9.108 The Notice to Vacate was testified as being at page 35 of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda's bundle of Documents.
- 9.109 Dorica Nyirenda also testified that New Future Financial Company Limited also informed herself, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda that Chitukula Nyirenda had pledged their inheritance, being the property in dispute, as security for a loan in the sum of US\$70,000.00.
- 9.110 She added that New Future Financial Company Limited informed herself, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda that Chitukula Nyirenda had defaulted in repaying the loan, which culminated into legal proceedings, in which Judgment was rendered in favour of New Future Financial Company Limited to take possession of the property in dispute.
- 9.111 It was also Dorica Nyirenda's evidence that in light of that information, herself, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda proceeded to conduct searches at the Ministry of Lands to ascertain the status of the property in dispute.
- 9.112 She stated that following their search, they discovered that Chitukula Nyirenda, without the consent and knowledge of herself, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda (who equally had an interest
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in the property in dispute), had fraudulently transferred title to the property in dispute into his own name.

9.113 Her reference in that regard, was made to a copy of the Printout from the Ministry of Lands, which evidenced the said change of the title holder, which was at pages 29 to 34 of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda's bundle of documents.

9.114 Further testimony was given that Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda did not sanction the transfer of the title to the property in dispute into Chitukula Nyirenda's name at any time, nor did they sanction the placing of the property in dispute as security for any loan.

9.115 It was also stated that none of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda obtained any benefit from the said loan.

9.116 In addition, Dorica Nyirenda stated that the value of the purported loan, was not equivalent to the value of the property in dispute, as the value of the property in dispute exceeded the alleged US\$70,000.00 which was obtained by Chitukula Nyirenda.

9.117 She told the Court that it was also important to note that at no point did New Future Financial Company Limited ever visit the property in dispute nor did New Future Financial Company Limited ever approach them to inquire as to their

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interest in the property in dispute during the purported loan period.

9.118 Further testimony was given, by Dorica Nyirenda that had New Future Financial Company Limited carried out an inspection of the property in dispute before it entered into the purported loan agreement with Chitukula Nyirenda, it would have found Suzyo Nyirenda and herself, who were and had been occupiers of the property in dispute at all material times.

9.119 She also testified that an inquiry from herself and Suzyo Nyirenda upon such a visit, would have enlightened New Future Financial Company Limited of the fact that the property in dispute was inheritance for Chitukula Nyirenda, Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda.

9.120 Consequently, New Future Financial Company Limited would have deduced that the title which only bore the name of Chitukula Nyirenda was illegal and fraudulent.

9.121 It was Dorica Nyirenda's evidence that, had New Future Financial Company Limited exercised due diligence by visiting the property in dispute, and inquiring from them as occupants of the property in dispute as to their interest, then New Future Financial Company Limited would have discovered the irregularity, and it would not have furnished the loan to Chitukula Nyirenda.

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**CROSS EXAMINATION OF DORICA NYIRENDA BY  
COUNSEL FOR NEW FUTURE FINANCIAL COMPANY  
LIMITED**

- 9.122 In cross examination, Dorica Nyirenda testified that before the transaction between Chitukula Nyirenda and New Future Financial Company Limited, Chitukula Nyirenda sold part of the property to Maxsud Ahmed Essa.
- 9.123 Her evidence was that Chitukula Nyirenda had authority to sell the property to Maxsud Ahmed Essa as the family agreed. However, Dorica Nyirenda could not state if the legal work was completed, as she was not part of it, apart from signing the authorization of the sale.
- 9.124 She added that her elder brother, Kamima Nyirenda would be aware, as he handled the sale.
- 9.125 Still in cross examination, Dorica Nyirenda testified that the family retained the remaining extent after selling a portion of the property to Maxsud Ahmed Nyirenda.
- 9.126 When referred to paragraph 14 of her witness statement, Dorica Nyirenda stated that she had no evidence to show that Chitukula Nyirenda got a loan from New Future Financial Company Limited, but her position was that he got a loan of US\$70,000.00.
- 9.127 She was also referred to paragraph 16 of her witness statement, and she told the Court that when she learnt of the fraud, they engaged Counsel, and they were working on challenging ownership into Chitukula Nyirenda's name, but that this had not yet been done.
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9.128 Dorica Nyirenda's evidence was that the property was valued, but she could not give the estimated value as land appreciated every year.

9.129 On being referred to Feng Shenghu's amended witness statement, it was her testimony that she knew the people that were listed in the paragraph, stating that Esnart Nyirenda was Chitukula Nyirenda's wife, while Kamima Nyirenda, Maunga Nyirenda and Kadati Nyirenda were her elder brothers.

9.130 She told the Court that Chitukula Nyirenda was in the USA, and that they were not aware of the sale, and that the people who were listed were not resident at the property.

**RE-EXAMINATION OF DORICA NYIRENDA**

9.131 In re-examination, Dorica Nyirenda clarified that she heard that Chitukula Nyirenda got a loan, but that she was not part of the transaction.

9.132 It was also her evidence that they had not challenged Chitukula Nyirenda changing title of the property into his name, but that they were working on it.

**INTERVENING PARTY 2 - KAMIMA NYIRENDA**

9.133 In his witness statement, Kamima Nyirenda testified that he was a joint Administrator with Chitukula Nyirenda of the property, and that he is one of the children for Laban Chibele Nyirenda.

9.134 This witness reiterated the evidence as contained in Dorica Nyirenda's witness statement, save to add that following her

appointment as Administrator, Iris Nyirenda did not transact in relation to the property in dispute in anyway.

9.135 As such, the property in dispute remained in the names of Laban Chibele Nyirenda until Iris Nyirenda's death, on 16<sup>th</sup> February 2009.

9.136 Kamima Nyirenda's evidence was that upon the death of Iris Nyirenda, Chitukula Nyirenda and himself were jointly appointed as Administrators of the Estate of Laban Chibele Nyirenda, through the Letters of Administration which were dated 3<sup>rd</sup> March 2009.

9.137 He stated that accordingly, Chitukula Nyirenda was at no material time a sole beneficial owner of the property in dispute.

9.138 It was testified that the Letters of Administration were at page 28 of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda's bundle of documents.

9.139 Further testimony was given by Kamima Nyirenda that following the said appointment, Chitukula Nyirenda and himself, on 10<sup>th</sup> May 2013, proceeded to register their interest as Administrators of the estate of Laban Chibele Nyirenda, at the Ministry of Lands in respect to the property in dispute, as evidenced by a copy of the printout from the Ministry of Lands, which was at pages 29 to 34 of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda's bundle of Documents.

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- 9.140 He stated that sometime in 2013, Chitukula Nyirenda together with Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda, agreed to subdivide a portion of the estate to Maxsud Ahmed Issa.
- 9.141 Kamima Nyirenda further testified that this was for the purpose of raising capital to build some houses on the property in dispute for the family, as a source of income as some of his brothers and sisters needed the income.
- 9.142 It was stated that the above agreement resulted in several houses being built, and being placed on rent. Thus, in light of this, the property in dispute had several houses thereon, in addition to the ones that Dorica Nyirenda and Suzyo Nyirenda occupied.
- 9.143 It was also Kamima Nyirenda's evidence that Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda were informed by the Ministry of Lands that there was no record of how the property in dispute was transferred into the sole name of Chitukula Nyirenda, thereby leading Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda to conclude that fraud was involved.
- 9.144 His testimony was that he conducted a search on the physical file in respect of the property in dispute, and there was no documentation to show how he was removed as co-Administrator, and his brother replaced as the sole Administrator.
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- 9.145 Kamima Nyirenda further told the Court that at no time did Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and the Maunga Nyirenda have a family meeting, at which they consented to transfer title of the property in dispute to Chitukula Nyirenda, and or to allow Chitukula Nyirenda to use the property in dispute as security for a loan.
- 9.146 He added that he did not, as joint Administrator of the late Iris Nyirenda, give any consent to Chitukula Nyirenda to transfer title to the property in dispute into his own name.
- 9.147 It was also Kamima Nyirenda's evidence that he never at any time, gave consent to Chitukula Nyirenda to encumber the property in dispute by way of a loan, or approve the purported sale of the said property to New Future Financial Company Limited.
- 9.148 In light of this, Kamima Nyirenda testified that Chitukula Nyirenda's actions of transferring title for the property in dispute into his own name, and using it as security for a loan was tantamount to fraud.
- 9.149 He testified that it was also worth noting that the averments that had been made by New Future Financial Company Limited that it called him, and during that conversation, he had stated that Chitukula Nyirenda owned the property in dispute was categorically false.
- 9.150 He testified that there was no plausible reason for him to state that their only inheritance, being the property in dispute, belonged to Chitukula Nyirenda as sole beneficial
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owner, and allow him to obtain a loan, from which the rest of them, being himself, Dorica Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda did not benefit.

9.151 In light of the foregoing, Kamima Nyirenda's testimony was that the correct set of facts of the case herein, were that Chitukula Nyirenda fraudulently transferred the property in dispute into his own name without the consent and knowledge of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda.

**CROSS EXAMINATION OF KAMIMA NYIRENDA BY  
COUNSEL FOR NEW FUTURE FINANCIAL COMPANY  
LIMITED**

9.152 In cross examination, Kamima Nyirenda stated that he was a Co Administrator with Chitukula Nyirenda, and that they sold part of the property to Maxsud Ahmed Issa. He however could not confirm if he signed the necessary documents for the sale.

9.153 It was further his testimony that he did not participate in the signing because he was not available.

9.154 Kamima Nyirenda told the Court that in his absence, Chitukula Nyirenda, signed all the documents on his behalf. He added that they had no issues with Chitukula Nyirenda signing documents for the sale to Maxsud Ahmed Issa.

9.155 Still in cross examination, Kamima Nyirenda testified that he had no documents to show that he revoked the powers that he gave Chitukula Nyirenda to sign documents on his behalf, and that he was not aware that a third party dealing with

Chitukula Nyirenda would not know that the authority had been revoked.

9.156 His evidence was that after the sale of the property to Maxsud Ahmed Essa, the remaining extent of the property remained in Chitukula Nyirenda's name. He added that the property was part of his late father's estate, and Chitukula Nyirenda was a beneficiary.

9.157 Kamima Nyirenda agreed that the property was worth more than US\$70,000.00, but that he was not a professional valuator.

9.158 He told the Court that in 1971, the property was bought at ZMW11,000.00, but that it had now appreciated in value.

9.159 Kamima Nyirenda could not recall the portion of the land, which was sold to Maxsud Ahmed Issa and the cost.

9.160 As to where the property in dispute is located, Kamima Nyirenda testified that it is in Makeni close to the Mosque, and that it was approximately 3 acres in size.

9.161 It was testified that Chitukula Nyirenda had a share in the property by virtue of his birthright.

#### **RE-EXAMINATION OF KAMIMA NYIRENDA**

9.162 There was no re-examination.

9.163 That marked the close of the case for Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda.

#### **10. DECISION OF THIS COURT**

10.1 I have considered the evidence and submissions.

**FACTS NOT IN DISPUTE**

- 10.2 It is common cause that on 10<sup>th</sup> August 2018, Chitukula Nyirenda and New Future Financial Company Limited entered into a contract of sale, in which it was agreed that Chitukula Nyirenda would sell the property known as the Remaining Extent of Subdivision No 7 of Subdivision 'B' of Subdivision No 1 of Subdivision 'A' of Farm No 687 Lusaka to New Future Financial Company Limited, at a consideration of US\$70,000.00.
- 10.3 The facts which are further not in dispute, are that on 13<sup>th</sup> August 2018, New Future Financial Company Limited lodged a caveat on the property as the intending purchaser.
- 10.4 It is also common cause that New Future Financial Company Limited changed ownership of the property from Chitukula Nyirenda's name to its' name on 15<sup>th</sup> October, 2020.

**ISSUES IN DISPUTE**

- 10.5 It is in issue whether Chitukula Nyirenda had authority to enter into a contract of sale with New Future Financial Company Limited for the sale of the property or whether he acted fraudulently in doing so.
- 10.6 What is also in dispute, is whether New Future Financial Company Limited is a bona fide purchaser for value without notice of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda's interest in the property.
- 10.7 It is further in issue, whether New Future Financial Company is entitled to an Order for the possession of the

property Subdivision No 7 of Subdivision 'B' of Subdivision No 1 of Subdivision 'A' of Farm No 687.

- 10.8 Further in contention, is whether in the alternative, New Future Financial Company Limited is entitled to the payment of US\$70, 000.00 from Chitukula Nyirenda and the costs of registering the property back into Chitukula Nyirenda's names, damages for breach of contract at 58% of purchase price of the property, interest and costs.
  - 10.9 The issues that are also in dispute, are whether the intervening parties are entitled to a declaration that the property, Subdivision No 7 of Subdivision 'B' of Subdivision No 1 of Subdivision 'A' of Farm No 687 lawfully belongs to the deceased Laban Chibele Nyirenda, and that Chitukula Nyirenda fraudulently acquired ownership of the said property, and that he had no lawful authority to transfer and/or pledge the said property to New Future Financial Company Limited.
  - 10.10 It is also in contention, whether the intervening parties are entitled to an order that certificates of title numbers 218634 and 84568 relating to the property Subdivision No 7 of Subdivision 'B' of Subdivision No 1 of Subdivision 'A' of Farm No 687 which were issued to Chitukula Nyirenda and New Future Financial Company Limited respectively should be cancelled.
  - 10.11 The facts which are further in dispute are whether New Future Financial Company Limited had constructive notice of the intervening parties' interest in the property
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Subdivision No 7 of Subdivision 'B' of Subdivision No 1 of Subdivision 'A' of Farm No 687.

**ANALYSIS**

- 10.12 Chitukula Nyirenda claims, among other reliefs, rescission of the contract of sale that he executed with New Future Financial Company Limited, damages for breach of contract and an order for the return of the certificate of title.
- 10.13 In the statement of claim, Chitukula Nyirenda alleged that he was the beneficial owner of the property, and he entered into a contract of sale for the property with New Future Financial Company Limited at a consideration of US\$70,000.00.
- 10.14 He stated that New Future Financial Company Limited only paid ZMW100,000.00 out of the US\$70,000.00, but it was in the process of transferring title for the property into its' name.
- 10.15 In his testimony, Chitukula Nyirenda stated that New Future Financial Company Limited visited and inspected the property, after he decided to sell it.
- 10.16 Chitukula Nyirenda's evidence was that New Future Financial Company Limited insisted that it would only proceed to transfer the money if in addition to the other signed documents, Chitukula Nyirenda signed an acknowledgment of receipt, which he did, believing that New Future Financial Company Limited would transfer the money into his account.
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- 10.17 His testimony was that he requested New Future Financial Company Limited for a copy of the bank transfer form and a receipt so that he could follow up with the Bank, but New Future Financial Company Limited did not provide them. He claimed that New Future Financial Company Limited only paid him ZMW100,000.00 out of the agreed contract price of US\$70,000.00.
- 10.18 Thus, he instructed his advocates to rescind the contract of sale, which was done by a letter dated 13<sup>th</sup> October, 2020.
- 10.19 On the other hand, New Future Financial Company Limited, in its' defence, admitted that Chitukula Nyirenda was the beneficial owner of the property, and that they entered into a contract of sale with him.
- 10.20 It stated that it paid the consideration amount of US\$70,000.00 to Chitukula Nyirenda in full, and that the change of title was finalized.
- 10.21 New Future Financial Company Limited claims, among other reliefs, an order for vacant possession of the property and in the alternative an order directing Chitukula Nyirenda to pay back the US\$70,000.00 and damages for breach of contract.
- 10.22 In his testimony, Feng Shenghu stated that the contract of sale gave Chitukula Nyirenda an option to buy back the property at the same amount of US\$70,000.00. However, he failed to do so and therefore, New Future Financial Company Limited is entitled to specific performance, as well as mense profits.

- 10.23 In responding to Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda, the intervening parties' claims, New Future Financial Company Limited stated that it bought the whole property, and it had no notice that only a portion of it was on sale.
- 10.24 Feng Shenghu testified stated that there was no encumbrance in the form of a "Caveat" or "Remark" on the property on the Lands Register, to show any interest in the property by Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda or anyone else.
- 10.25 It was his evidence that when New Future Financial Company Limited visited the property, it found people who were tenants of Chitukula Nyirenda and others who confirmed that he owned the property, such as Kamima Nyirenda and Maunga Nyirenda.
- 10.26 Feng Shenghu testified that New Future Financial Company Limited did not need to enquire about any Court Order as the property was not held by Chitukula Nyirenda as Administrator, but as beneficial owner.
- 10.27 In relation to the allegation that Chitukula Nyirenda obtained a loan from New Future Financial Limited by Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda, Feng Shenghu stated that Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda's repeated reference
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alleged loan, was an argument that Chitukula Nyirenda had unsuccessfully raised in his pleadings.

- 10.28 He added that throughout the trial, suggestion had been made that it was, in fact, the same Chitukula Nyirenda who was pursuing an agenda to reclaim the property through his siblings.
- 10.29 Feng Shenghu stated that Chitukula Nyirenda passed good title, and New Future Financial Company Limited was a bona fide purchaser for value.
- 10.30 In their defence and counterclaim, Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda alleged that Chitukula Nyirenda was not the beneficial owner of the property.
- 10.31 They stated that the property belonged to their father, Laban Chibele Nyirenda who died intestate on 25<sup>th</sup> May 2000. Dorica Nyirenda testified that Laban Chibele Nyirenda did not dispose of his right in the property at the time of his death.
- 10.32 She testified that Kamima Nyirenda and Chitukula Nyirenda were appointed as Administrators of his estate, on 3<sup>rd</sup> March 2009, after the initial Administrator, their mother, Iris Nyirenda, died.
- 10.33 She told the Court that on 8<sup>th</sup> May 2023, they were unexpectedly served with a Notice to Vacate the property, and that it was only then, that they discovered that the property was involved in Court proceedings between

Chitukula Nyirenda and New Future Financial Company Limited.

- 10.34 Dorica Nyirenda's evidence was also that New Future Financial Company Limited informed herself, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda, that Chitukula Nyirenda had used the property in dispute as security for a loan in the amount of US\$70,000.00.
- 10.35 She further testified that herself, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda conducted a search at the Ministry of Lands, and they discovered that Chitukula Nyirenda had fraudulently transferred the property in dispute into his own name without their consent or knowledge.
- 10.36 It was further Dorica Nyirenda's evidence that herself, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda neither approved the transfer of the property by Chitukula Nyirenda nor use of it as security for a loan, and that they did not benefit from the loan in any way.
- 10.37 She contended that New Future Financial Company Limited never visited the property or inquired about their interest in it during the alleged loan period.
- 10.38 In its' submissions, New Future Financial Company Limited argued that the Lands Register showed that the Administrators, Chitukula Nyirenda and Kamima Nyirenda, sold part of the property to Maxsud Ahmed Issa, while the
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remaining portion was registered solely in Chitukula Nyirenda's name. It contended that if the property was held by the Administrators, both names would have appeared on the title and a Deed of Assent would have been used, clearly indicating Chitukula Nyirenda's ownership status to third parties.

10.39 It was also submitted that during cross-examination, Kamima Nyirenda testified that they sold part of the property to Maxsud Ahmed Issa, and that he allowed Chitukula Nyirenda to sign all the documents on his behalf since he was unavailable.

10.40 The submission was that Kamima Nyirenda admitted that he had no objection to that arrangement, and that he had no documents to show that he ever revoked Chitukula Nyirenda's authority, acknowledging that a third party would not have known if such authority had been withdrawn.

10.41 It was further stated that failure or neglect by Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda to register a caveat or remark coupled with the fact that the property was registered in Chitukula Nyirenda's name, New Future Financial Company Limited, is and was a bona fide purchaser without any notice of any competing interests.

10.42 **Sections 33 and 59 of the Lands and Deeds Registry Act Chapter 185 of the Laws of Zambia** were relied on.

10.43 Also submitted, was that New Future Financial Company Limited's supplementary bundle of documents, included a

certificate of title, which illustrated the typical appearance of one that was held by an Administrator.

10.44 Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda on the other hand submitted that Chitukula Nyirenda, having jointly obtained Letters of Administration from the Local Court had no authority to validly transfer the property into his own name and thereafter sell it to New Future Financial Company Limited.

10.45 They relied on **Section 43(2) of the Intestate Succession Act Chapter 59 of the Laws of Zambia** which states as follows:

***“(2) A local court shall have and may exercise jurisdiction in matters relating to succession if the value of the estate does not exceed fifty thousand kwacha.”***

10.46 Reliance was further placed on the case of ***Gillian Mutinta Kasempa v New Future Finance and Zhong Cheng Zambia Mining Materials Limited*** <sup>(7)</sup> where the above provision was interpreted by the Supreme Court, where it held that:

***“The authorities cited above, show that since the Local Court had no jurisdiction to grant the Letters of Administration, what followed, was a nullity and of no legal effect. In other words, the appellant could enter into a contract with the 1st respondent for a loan but could not vest the***

***property in herself, pledge the property as collateral, or even sell it.”***

10.47 It was submitted that it is trite that jurisdiction is everything and without it, a Court has no power to make one more step.

10.48 Further submission was made, that the case ***Gillian Mutinta Kasempa v New Future Finance and Zhong Cheng Zambia Mining Materials Limited*** <sup>(7)</sup> held as follows:

***“The conveyancing undertaken in relation to Stand No. 462 Chilanga cannot be sustained due to lack of jurisdiction. It follows that, the appellant had no authority to transfer the property into her name or pledge it as collateral for a loan. The consequences of this are that, in relation to the property, whatever actions followed the grant of the letters of administration, leading up to the assignment of the property to the 2nd respondent is a nullity.***

...

***In any event, if the 2nd respondent had carried out an official search of the Lands and Deeds Register, it would have discovered that, there was a grant of letters of administration which did not comply with section 43 of the Intestate Succession Act, Cap. 59 of the Laws of Zambia.”***

10.49 It was submitted that, notwithstanding that the value of the property was not ascertained at trial, an estimate of the value

could be determined from the Tax Clearance Certificate which was at page 17 of New Future Financial Company Limited's bundle of documents, which set the same at ZMW1,409,940.00.

10.50 The submission was that this value, was above the threshold for the Local Court.

10.51 In further submission, it was stated that Chitukula Nyirenda had no authority to vest the property, pledge it as collateral or sell it to New Future Financial Company Limited, as the Letters of Administration in themselves were a nullity and affected any subsequent actions thereafter.

10.52 They also submitted that Chitukula Nyirenda fraudulently transferred the property to himself, as he had no order of the Court, as he was an Administrator, and he had no authority to sell the property.

10.53 Reliance was placed on **Section 19(2) of the Intestate Succession Act**, which states that:

***“(2) Where an administrator considers that a sale of any of the property forming part of the estate of a deceased person is necessary or desirable in order to carry out his duties, the administrator may, with the authority of the Court, sell the property in such manner as appears to him likely to secure receipt of the best price available for the property.”***

10.54 In referring to the requirement to obtain a Court order before sale of property which forms part of an intestate's estate,

Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda also relied on the cases of ***Borniface Kafula and Others v Billings Choonga Mudenda*** <sup>(3)</sup> and ***Rodney Samanyika v Enock Kawoku Chitiya and ZCCM Investments Holdings Limited*** <sup>(6)</sup>.

#### **DECISION**

- 10.55 A perusal of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda's bundle of documents, confirms the allegation that Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda are the beneficiaries of the estate of the late Laban Chibele Nyirenda.
- 10.56 The birth record and birth certificates are at pages 24 to 26 of their bundle of documents, which birth record and birth certificates name Laban Chibele Nyirenda as the father to Kamima Nyirenda, Suzgo Nyirenda, and Dorica Nyirenda, while Iris Nyirenda is named as their mother.
- 10.57 The Order of Appointment as Administrator from the Local Court which is at page 27 of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda's bundle of documents, reveals that Iris Nyirenda was appointed as Administratrix of the estate of the late Laban Chibele Nyirenda after his death on 25<sup>th</sup> May 2001.
- 10.58 The evidence further shows that Iris Nyirenda died on 16<sup>th</sup> February 2009, and the Local Court appointed as Administrators of her estate, Chitukula Nyirenda and

Kamima Nyirenda, on 3<sup>rd</sup> March 2009, as shown on the Order of Appointment, which is at page 28 of the same bundle of documents.

- 10.59 In relation to the property in dispute, the Lands Register which is at pages 29 to 33 of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda's bundle of documents at entry no.14, shows that Laban Chibele Nyirenda obtained a certificate of title for the property on 5<sup>th</sup> March 1971.
- 10.60 Then entry no. 21 on the said Lands Register reflects that Chitukula Nyirenda and Kamima Nyirenda were appointed as Administrators of his estate by the Local Court on 17<sup>th</sup> April, 2013 and they registered that appointment on 10<sup>th</sup> May, 2013.
- 10.61 Further note will be made, that entry no. 22 shows that Chitukula Nyirenda and Kamima Nyirenda in their capacity as Administrators of the estate of Laban Chibele Nyirenda, sold subdivision C of the property, at a consideration of ZMW210,000.00 to Maxsud Ahmed Issa.
- 10.62 Then entry no. 23 reflects that the certificate of title for the property was held in the name of Chitukula Nyirenda on 10<sup>th</sup> May, 2013.
- 10.63 The Lands Register further at entry no. 24, states that New Future Financial Company Limited placed a caveat on the property as intending purchaser as per contract of sale on 13<sup>th</sup> August, 2018.
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- 10.64 Thereafter, entry no. 26 is the registration of an Assignment of the property at a consideration of US\$70,000.00 to New Future Financial Company Limited by Chitukula Nyirenda on 15<sup>th</sup> October, 2020.
- 10.65 At entry no. 27 of the Lands Register, New Future Financial Company Limited was issued with a certificate of title for the property on the same 15<sup>th</sup> October, 2020.
- 10.66 Chitukula Nyirenda testified that he was the beneficial owner of the property, an assertion, that New Future Financial Company Limited agreed to.
- 10.67 It was also agreed by these two parties, that they entered into a contract of sale for the property at consideration of US\$70,000.00. The contract of sale for the transaction is at pages 1 to 5 of New Future Financial Company Limited's bundle of documents.
- 10.68 New Future Financial Company Limited registered its' interest in the property at the Ministry of Lands as already seen at entry no. 24 of the Lands Register.
- 10.69 Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda have however denied the assertion that Chitukula Nyirenda was the beneficial owner of the property.
- 10.70 Dorica Nyirenda testified that herself, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda, including Chitukula Nyirenda, were Laban Chibele Nyirenda's children, and thus beneficiaries of his estate, which includes the property in dispute.

- 10.71 She stated that Laban Chibele Nyirenda he did not dispose of the property prior to his death.
- 10.72 It was also Dorica Nyirenda's evidence that New Future Financial Company Limited informed herself, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda that Chitukula Nyirenda had pledged their inherited property as security for a loan in the sum of US\$70,000.00, and that he defaulted on repayment, and thereafter, Judgment was granted, which allowed New Future Financial Company Limited to take possession of the property.
- 10.73 Dorica Nyirenda's evidence was further that upon conducting a search at the Ministry of Lands, herself, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda discovered that Chitukula Nyirenda had, without their consent or knowledge, fraudulently transferred the property into his own name.
- 10.74 The Lands Register, which is on record, shows that Chitukula Nyirenda and Kamima Nyirenda were appointed by the Local Court as Administrators of the estate of Laban Chibele Nyirenda. It will be noted at entry at no. 22, that Chitukula Nyirenda and Kamima Nyirenda sold subdivision C to Maxsud Ahmed Issa, a transaction that has not been disputed.
- 10.75 The testimony that is also on record reveals that this transaction was approved by Dorica Nyirenda, Kamima

Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda.

- 10.76 The Lands Register at entry no. 23, shows that after that sale, the property was held by Chitukula Nyirenda as beneficial owner, who later sold the property to New Future Financial Company Limited.
- 10.77 New Future Financial Company Limited submitted that if the property was held by the two Administrators, both their names would have appeared on the Certificate title, and a Deed of Assent would have been executed to clearly show Chitukula Nyirenda's ownership to third parties.
- 10.78 It was further stated that since Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda failed to register a caveat or remark on the property at the Ministry of Lands, and the property was in Chitukula Nyirenda's name, New Future Financial Company Limited was a bona fide purchaser for value without notice of any competing interests.
- 10.79 On the other hand, Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda submitted that Chitukula Nyirenda, having jointly obtained Letters of Administration from the Local Court, had no authority to validly transfer the property into his own name, and thereafter sell it to New Future Financial Company Limited.
- 10.80 As rightly submitted by Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga
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Nyirenda, **Section 43(2) of the Intestate Succession Act** provides the threshold that the Local Court has in terms of jurisdiction in matters of succession for estates, which is for those that do not exceed ZMW50.00.

- 10.81 The submission was that the Tax Clearance Certificate which is at page 17 of New Future Financial Company Limited's bundle of documents, indicates an estimated value of the property at ZMW1,409,940.00. That amount exceeds the limit of jurisdiction for the Local Court.
- 10.82 A reading of the letter from the Zambia Revenue Authority which is at page 17 of New Future Financial Company Limited's bundle of documents, shows that property transfer tax of ZMW 70,497.00 was paid on the property which was valued at ZMW1,409,940.00.
- 10.83 This shows that Laban Chibele Nyirenda's estate was above the threshold that is provided in **Section 43 (2) of the Intestate Succession Act** for the Local Court to grant letters of Administration. Therefore, the Local Court lacked jurisdiction to grant letters of Administration to Chitukula Nyirenda and Kamima Nyirenda.
- 10.84 Chitukula Nyirenda and Kamima Nyirenda should accordingly have obtained the Letters of Administration from the High Court, in order for them to have had authority to deal with the property.
- 10.85 In determining the effect of obtaining letters of Administration from the Local Court, where the value of the estate exceeds the threshold for which the Local Court can

grant, in line with **Section 43(2) of the Intestate Succession Act**, the Supreme Court in the case of **Gillian Mutinta Kasempa v New Future Finance and Zhong Cheng Zambia Mining Materials Limited** <sup>(7)</sup> had this to say:

***“The authorities cited above, show that since the Local Court had no jurisdiction to grant the Letters of Administration, what followed, was a nullity and of no legal effect.”***

10.86 It is worth noting that the Lands Register does not show how the property was assigned to Chitukula Nyirenda as beneficial owner, when he initially held the same as joint Administrator, with Kamima Nyirenda by virtue of his designation as beneficiary, along with Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda of the estate of Laban Chibele Nyirenda.

10.87 Dorica Nyirenda testified that Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda and herself conducted a search at the Ministry of Lands, which revealed that Chitukula Nyirenda fraudulently transferred the property into his own name, without their consent or knowledge.

10.88 She also stated that they neither approved the transfer nor the use of the property as security for the loan and they did not benefit from the loan in any way.

10.89 New Future Financial Company Limited submitted that Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda did not register a caveat or remark on the Lands Register against the property.

10.90 Therefore, as the property was registered in Chitukula Nyirenda's name, New Future Financial Company Limited qualified as a bona fide purchaser without notice of any competing interest.

10.91 The law requires a party that alleges fraud to particularise that fraud in their pleadings. **Order 12 Rule (1)(a) of the Rules of the Supreme Court of England 1965 (1999 edition) White Book** provides that:

***“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, wilful default or undue influence on which the party pleading relies; ...”***

10.92 It is also trite that a party alleging fraud has to clearly and distinctly lead evidence at trial, to prove the allegations of fraud on a standard that is higher than a balance of probabilities, as was stated in the case of **Sablehand Zambia Limited v Zambia Revenue Authority** <sup>(4)</sup>.

10.93 It was held as follows in that case:

***“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 allegation 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”.***

- 10.94 Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda submitted that they had pleaded fraud as could be seen from their defence and counterclaim, where the particulars of fraud were specifically laid out.
- 10.95 They stated that the property was originally owned by Laban Chibele Nyirenda whose beneficiaries were Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda, Maunga Nyirenda and Chitukula Nyirenda as evidenced by the birth record and the birth certificates which were at pages 24 to 26 of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda’s bundle of documents.
- 10.96 It was also submitted that Iris Nyirenda was appointed as Administratrix for the estate of Laban Chibele Nyirenda, and after her death, Chitukula Nyirenda and Kamima Nyirenda were appointed as joint Administrators as evidenced on the

letters of Appointment which was at page 28 of Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda's bundle of documents, which was also reflected on the print out from the Ministry of Lands, which was at pages 29 to 34 of the same bundle of documents.

10.97 Thus, this evidenced their interest in the property, and Chitukula Nyirenda's claim that he was a beneficial owner of the property was not true.

10.98 It was also submitted that this Honourable Court should note that the procedure for change of title from a deceased person to an Administrator, is by way of Deed of Assent, and that the effect of such deed, is to vest the property in the name of an Administrator, who then holds the property in trust on behalf of the beneficiaries.

10.99 The submission was that in this case, it was not in dispute that Chitukula Nyirenda transferred title to his own name without any formal documentation, as confirmed by Feng Shenghu, who testified that there was neither a Deed of Assent nor an Assignment, which was registered at the Ministry of Lands to confirm the change into Chitukula Nyirenda's name.

10.100 Therefore, Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda concluded that there was fraud or impropriety in the manner that the title was transferred from Laban Chibele Nyirenda to Chitukula Nyirenda.

- 10.101 The record also shows that Kamima Nyirenda testified that Dorica Nyirenda, himself, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda never held a family meeting at which they gave consent to the transfer of the property to Chitukula Nyirenda or for him to use it as security for a loan.
- 10.102 It was further Kamima Nyirenda's evidence that as a joint Administrator, he did not authorize Chitukula Nyirenda to transfer the title into his own name, encumber the property with a loan, or sell it to New Future Financial Company Limited.
- 10.103 He also stated that Chitukula Nyirenda's act of transferring the property into his own name, and using it as security for a loan amounted to fraud.
- 10.104 Kamima Nyirenda denied New Future Financial Company Limited's claim that he confirmed Chitukula Nyirenda's ownership of the property, asserting that he would have had no reason to say that the property belonged solely to Chitukula Nyirenda, or to allow him to secure a loan that did not benefit Dorica Nyirenda, himself, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda.
- 10.105 What the above establishes, is that Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda allege fraud on the part of Chitukula Nyirenda in obtaining title for the property in his name. They also particularized the fraud in their pleadings. Then at trial, they led evidence in support of the allegations of fraud as pleaded.
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10.106 It is a well-established principle that a party that alleges, bears the burden of proving the allegations. In this case, Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda asserted that they did not consent to Chitukula Nyirenda transferring the property into his own name.

10.107 Chitukula Nyirenda neither disputed this claim nor presented any evidence demonstrating that such consent was obtained. This, combined with the absence of any entry on the Lands Register to show how Chitukula Nyirenda transitioned from being a joint Administrator of the property to beneficial owner, is evidence of irregularity or foul play in the manner that title to the property was changed from Laban Chibele Nyirenda to Chitukula Nyirenda.

10.108 There is no evidence to show how Chitukula Nyirenda changed the property into his name without registering a Deed of Assent as provided in **Section 64 of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia**, which states that:

***“Notwithstanding anything contained in Parts III to VII, a charge on land or on any estate or interest in land may be contained in an assent under section 3 of the Land Transfer Act, 1897, of the United Kingdom.”***

10.109 **Section 3 of the Land Transfer Act, 1897 of the UK** is as follows in provision:

*“3.— (1.) At any time after the death if the owner of any land, his personal representatives may assent to any devise contained in his will, or may convey the land to any person entitled thereto as heir, devisee, or ‘otherwise, and may make the assent or conveyance, either subject to a charge for the payment of any money which the personal representatives are liable to pay, or without any such charge; and on such assent or conveyance, subject to a charge for all moneys (if any) which the personal representatives are liable to pay, all liabilities of the personal representatives in respect of the land shall cease, except as to any acts done or contracts entered into by them before such assent or conveyance.*

*(2.) At any time after the expiration of one year from the death of the owner of any land, if his personal representatives have failed on the request of the person entitled to the land to convey the land to that person, the court may, if it thinks fit, on the application of that person, and after notice to the personal representatives, order that the conveyance be made, in the case of registered land, that the person so entitled be registered as proprietor of the land, either solely or jointly with the personal representatives.*

***(3.) Where the personal representatives of a deceased person are registered as proprietors of land on his death, a fee shall not be chargeable on any transfer of the land by them unless the transfer is for valuable consideration.***

***(4.) The production of an assent in the prescribed form by the personal representatives of a deceased proprietor of registered land shall authorise the registrar to register the person named in the Assent as proprietor of the land.”***

10.110 There being no Deed of Assent that Chitukula Nyirenda registered to evidence transfer of the property from Laban Chibele Nyirenda's names into his names, the transfer of the property into Chitukula Nyirenda's names was illegal and fraudulent.

10.111 New Future Financial Company Limited nevertheless claims to be a bona fide purchaser for value without notice of any interest in the property.

10.112 Feng Shenghu testified that New Future Financial Company Limited dealt with Chitukula Nyirenda as the registered title holder of the property, which had no caveat or remark indicating any other interests.

10.113 His testimony was also that upon visiting the property, New Future Financial Company Limited met individuals who identified themselves as Chitukula Nyirenda's tenants and confirmed that the property belonged to him, and that it was up for sale, stating that those people included Esmart

Nyirenda, Kamima Nyirenda, Maunga Nyirenda, and Kadati Nyirenda.

10.114 New Future Financial Company Limited expressed surprise that Kamima Nyirenda and Maunga Nyirenda, who had acknowledged the sale, later appeared in Court as the 2<sup>nd</sup> and 5<sup>th</sup> Intervening Parties. He also testified that because Chitukula Nyirenda was the registered title holder, New Future Financial Company Limited had no obligation to inquire about any Court Order, as the property was held by Chitukula Nyirenda as a beneficial owner, rather than as an Administrator.

10.115 In support of its' submission, New Future Financial Company Limited relied on **Sections 33 and 59 of the Lands and Deeds Registry Act** which provide as follows:

***“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.”*

...

*59. Nothing in Parts III to VII shall be so interpreted as to render subject to action for recovery of damages, or for possession, or to deprivation of any land in respect to which a Certificate of Title has been issued, any purchaser or mortgagee bona fide for valuable consideration of such land on the ground that his vendor or mortgagor may have become a Registered Proprietor through fraud, or error, or under any*

***void or voidable instrument, or may have derived from or through a Registered Proprietor through fraud or error, or under any void or voidable instrument, and this whether such fraud or error consists in wrong description of the boundaries or of the parcels of any land, or otherwise howsoever.”***

10.116 On the other hand, Dorica Nyirenda testified that New Future Financial Company Limited never visited the property, and on 8<sup>th</sup> May 2023, they were unexpectedly served with a Notice to Vacate from New Future Financial Company Limited.

10.117 Her testimony was that it was then, that they discovered that the property was the subject of Court proceedings between Chitukula Nyirenda and New Future Financial Company Limited.

10.118 Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda in their submissions, stated that as New Future Financial Company Limited did not provide evidence that it had visited the property prior to the purchase, and it did not present any witness to confirm such a visit, there was no basis for this Honourable Court to assume that New Future Financial Company Limited visited the property.

10.119 It was submitted that prior to, and during the purported sale of the property, New Future Financial Company Limited was fully aware, and it had constructive notice of the legal

interest in the property, as the Lands Register printout showed the names of Laban Chibele Nyirenda, and thereafter the name of Chitukula Nyirenda following the fraudulent change of title into his own name.

10.120 It was stated that New Future Financial Company Limited had constructive notice of the interests that Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda had in the property, and it was obliged to inquire from Chitukula Nyirenda as to how title was converted into his own name when he was an Administrator.

10.121 Reliance was placed on the case of ***Edith Nawakwi v Lusaka City Council and another*** <sup>(1)</sup>.

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

***“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.”***

10.123 In the case of ***Kayoba and another v Ngulube and another*** <sup>(2)</sup>, 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.”*

10.124 Further, in the case of **Clementina Banda Emmanuel Njanje v Boniface Mudimba** <sup>(5)</sup>, the Court stated the requirements that have to be fulfilled for the doctrine of bona fide purchaser for value to succeed as a defence, as follows:

*“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.”***

10.125 In this matter, Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda have stated that New Future Financial Company Limited never visited the property.

10.126 Feng Shenghu testified that he did not visit the property prior to the Judgment, but that New Future Financial Company Limited visited and inspected the property before the said Judgment.

10.127 However, it will be noted that New Future Financial Company Limited did not provide any evidence to show which of its' representatives visited the property, and found persons including Kamima Nyirenda and Maunga Nyirenda, and who were informed that Chitukula Nyirenda owned the property, and he was selling it.

10.128 Further, as earlier noted, the Lands Register indicates that Chitukula Nyirenda and Kamima Nyirenda initially held the property jointly as Administrators of Laban Chibele Nyirenda's estate, pursuant to letters of appointment from the Local Court.

10.129 An official search at the Ministry of Lands would have revealed this information to New Future Financial Company Limited, as it was indicated at entry no 21 of the Lands Register that Chitukula Nyirenda and Kamima Nyirenda obtained letters of Administration from the Local Court.

10.130 This would in turn have put New Future Financial Company Limited on notice that the letters of Administration that Chitukula Nyirenda and Kamima Nyirenda had obtained from the Local Court were invalid, going by the value of the property that it had purchased.

10.131 In addition, the absence of any documentation to show how the property was transferred to Chitukula Nyirenda from Laban Chibele Nyirenda by way of a Deed of Assent, ought to have prompted New Future Financial Company Limited to make further inquiries to ascertain the true status of the property.

10.132 New Future Financial Company Limited cannot, therefore, properly assert the defence that it was a bona fide purchaser for value without notice, having failed to exercise the requisite due diligence to establish Chitukula Nyirenda's ownership of the property.

10.133 Further, New Future Financial Company Limited is deemed to have had constructive notice, as a search at the Ministry of Lands would have disclosed the historical ownership and status of the property.

**CLAIM BY CHITUKULA NYIRENDA FOR RESCISSION OF THE CONTRACT OF SALE AND FOR DAMAGES FOR BREACH OF CONTRACT, AND RETURN OF THE CERTIFICATE OF TITLE**

10.134 With regard to the transaction between Chitukula Nyirenda and New Future Financial Company Limited, Chitukula Nyirenda and New Future Financial Company Limited stated

that it was a contract of sale, while Dorica Nyirenda testified that New Future Financial Company Limited informed herself, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda that Chitukula Nyirenda had used their inherited property as security for a loan in the sum of US\$ 70,000.00.

10.135 What is not in dispute is that New Future Financial Company Limited made a payment to Chitukula Nyirenda of some sums of money pursuant to the contract of sale that was executed.

10.136 In accordance with the contract of sale, which is at pages 1 to 5 of New Future Financial Company Limited's bundle of documents, Chitukula Nyirenda and New Future Financial Company Limited agreed that the consideration for the property was US\$70,000.00.

10.137 Special Conditions 6, 7 and 8 of the contract of sale, provided as follows:

***“6. That the vendor asks the purchaser not to transfer ownership of the certificate of title within Four (4) months after the purchase price was paid, in case the vendor had the amount of US\$70,000.00 to buy back the property before 9<sup>th</sup> December, 2018. Within this Four (4) months, if the national exchange rate falls down, the vendor shall bear the difference amount between the falling exchange rate and the beginning exchange rate to the Purchaser only. Besides the vendor will***

*buy back the property at a total amount of US\$70,000.00 within the period stipulated in the contract, the purchaser will return the original Certificate of Title to the vendor, then the vendor will no longer bear any other expenses and interests.*

*7. If the vendor does not buy back the property before 9<sup>th</sup> December, 2018 or only pays part of the contract amount within the stipulated period, the Purchaser has the right to return the vendor's payment to the vendor when the stipulated expiry date arrives. The ownership of the property belongs to the Purchaser, and the Purchaser will dispose of the property freely, transfer ownership of the certificate of title to NEW FUTURE FINANCIAL COMPANY LIMITED.*

*The Vendor agrees to provide all relevant procedures to help the Purchaser in transferring the ownership of the property to the Purchaser. The Vendor shall hand over possession of the said property to the Purchaser and shall ensure that all the occupants and the movable articles on the property should be moved out by the Vendor himself. If the Vendor fails to move out the occupants with the articles or fails to hand over the property to the Purchaser in the contractual*

***time, it shall be disposed of according to Clause 8 in this contract as the breaching term.***

***If legal proceedings are incurred due to the Vendor forcibly occupying the property, the Vendor shall bear the following related expenses based on the total price of the contract:***

***(i)The interest counted by days with the interest rate of 48% annually.***

***(ii)The fees for changing ownership, tax included.***

***(iii)The fund occupancy fee of 25%.***

***(iv)The related department clearing fee of 10%.***

***(v)The legal fee of 5%.***

***(vi)The loss cost of working time for the purchaser's staff of 3%.***

***8. The parties herein specifically agree that: if any party breaches the contract, the breaching party shall pay 15% of the total contract amount as liquidated damages to the compliant party.”***

10.138 Chitukula Nyirenda testified that the parties agreed on a purchase price of US\$70,000.00 for the property, and that they entered into a contract of sale on 10<sup>th</sup> August 2018. Chitukula Nyirenda testified that this agreement was independent of any other dealings between him and New Future Financial Company Limited or related entities.

- 10.139 Thus, following the signing of the contract of sale, New Future Financial Company Limited lodged a caveat as an intending purchaser on 13<sup>th</sup> August 2018.
- 10.140 Then on 14<sup>th</sup> August 2018, New Future Financial Company Limited asked for Chitukula Nyirenda's bank details to transfer the purchase price, which Chitukula Nyirenda provided. His evidence was that New Future Financial Company Limited allegedly confirmed making a bank transfer, and that it promised to give proof of payment once acknowledged by the bank, but no such proof was provided.
- 10.141 Chitukula Nyirenda also testified that New Future Financial Company Limited further required him to sign an acknowledgment of receipt before transferring the funds.
- 10.142 His evidence was that in an effort to expedite the process, he signed one copy with the correct bank details, believing that payment would follow. However, by 15<sup>th</sup> August 2018 the promised transfer had not occurred, and despite several follow-ups, Chitukula Nyirenda only received ZMW100,000.00 out of the agreed US\$70,000 purchase price.
- 10.143 Feng Shenghu's evidence was that under the contract of sale, Chitukula Nyirenda had the right to repurchase the property for US\$70,000.00 by 9<sup>th</sup> December 2018, but he failed to do so, and he did not pay the agreed amount. It was his testimony that Chitukula Nyirenda had already received and used the money without objection, until he failed to meet the buyback deadline.

- 10.144 Consequently, New Future Financial Company Limited is entitled to an order for specific performance of the contract of sale and mense profits of at least US\$2,000.00 per month from the expiry of the buyback period, or alternatively, repayment of the US\$70,000.00 plus 15% of the contract price as compensation for monetary loss.
- 10.145 From the above, what can be seen is that Chitukula Nyirenda alleged that he was not paid the full purchase price of US\$70,000.00. Therefore, he seeks rescission of the sale, claiming that he only received ZMW100,000.00.
- 10.146 What is however, noteworthy, is that Chitukula Nyirenda, other than just alleging, he did not provide evidence any evidence to show that when he was not paid as agreed he had followed up with New Future Financial Company Limited, which failed to pay him.
- 10.147 New Future Financial Company Limited produced a receipt which is at page 7 of its' bundle of documents, which was signed by Chitukula Nyirenda on 14<sup>th</sup> August 2018, acknowledging full payment of US\$70,000.00. The documents states that out of that amount, US\$38,700.00 was paid in cash while US\$31,300.00 was paid by bank transfer to his Stanbic account.
- 10.148 Chitukula Nyirenda claimed that he signed the receipt before he received the money at New Future Financial Company Limited's request, to expediate the transaction. However, he never received proof of the transfer. He further alleged that transfer of the property into New Future

Financial Company Limited's name was effected using a forged Consent to Assign, making it fraudulent.

10.149 In response, New Future Financial Company Limited explained that the initial transfer to Chitukula Nyirenda's account was rejected by the bank, because the account was not in his name. It stated that Chitukula Nyirenda later confirmed that the correct name for the account was Nancy Muzyamba, and that on correction being made, the transfer was then made to that account on 15<sup>th</sup> August 2018.

10.150 Chitukula Nyirenda denied having receiving the amount that was sent to Nancy Muzyamba, but he did not deny receiving the US\$38,700.00 in cash, thereby contradicting his own claim of having received only ZMW100,000.00.

10.151 New Future Financial Company Limited's contention was that the sum of US\$31,300.00 was deposited into an account that was provided by Chitukula Nyirenda, which belonged to a person named Nancy Muzyamba.

10.152 When New Future Financial Company Limited advanced this defence, the burden shifted to Chitukula Nyirenda to rebut it by producing evidence that he had not, in fact, provided that account number, and thereby establishing a possible mistake in the payment.

10.153 However, Chitukula Nyirenda failed to present any such evidence, and he did not even specify which account number he had given to New Future Financial Company Limited for the transfer.

- 10.154 At page 7 of New Future Financial Company Limited's bundle of documents, is the receipt that Chitukula Nyirenda signed on 14<sup>th</sup> August, 2018 to acknowledge receipt of US\$70, 000.00, which was paid in the form of cash, in the amount of US\$38, 700.00 and by transfer of US\$31, 300.00 into his personal account at Stanbic Bank under the account number 9130002110699.
- 10.155 New Future Financial Company Limited contended through the evidence that Feng Shenghu gave in re-examination, that when Chitukula Nyirenda signed the receipt on 14<sup>th</sup> August, 2018, it had issued a transfer instruction to pay into the account number 9130002110699 in Chitukula Nyirenda's name, but the Bank had rejected the transfer, on the basis that the account was not in Chitukula Nyirenda's name.
- 10.156 Thus, when Chitukula Nyorenda was contacted the next day, he had indicated that the account name was in Nancy Muzyamba's name, and that was how on the said 15<sup>th</sup> August, 2018, New Future Financial Company Limited made the transfer into Nancy Muzyamba's name.
- 10.157 Chitukula Nyirenda in cross examination, agreed to having signed the receipt which was at page 7 of New Future Financial Company Limited's bundle of documents, but stated that he did so in order to expedite the sale.
- 10.158 In the absence of any contrary proof, it is reasonable to conclude that Chitukula Nyirenda was fully paid as he confirmed that the account to be paid was in the names of Nancy Muzyamba.

- 10.159 Further note will be made that in his defence to the counterclaim, Chitukula Nyirenda stated that New Future Financial Company Limited fraudulently transferred ownership of the property into its' name, as it used a forged Consent to Assign after the contract was rescinded, and therefore, the transfer of the property was void.
- 10.160 In support of that defence, Chitukula Nyirenda's testimony was that he left the country in December, 2019 for the United States of America where he had been living since then, and he instructed his advocates, Milimo Chooka & Associates, to rescind the contract of sale, which was done by a letter dated 13<sup>th</sup> October, 2020.
- 10.161 However, New Future Financial Company Limited proceeded to change ownership of the property into its' name on 15<sup>th</sup> October, 2020. When Feng Shenghu testified, and he was in cross examination referred to the application for Consent to Assign, which is at page 12 of New Future Financial Company Limited's bundle of documents, he agreed that it was dated 7<sup>th</sup> September, 2020, while the same document which is at page 1 of Chitukula Nyirenda's bundle of documents, was dated 10<sup>th</sup> August, 2018.
- 10.162 Indeed, it can be seen that the dates on the Two (2) documents differ, as the one which is at page 1 of Chitukula Nyirenda's bundle of documents is dated 10<sup>th</sup> August, 2018 when the contract of sale was signed.
- 10.163 However, this document, the one which is at page 12 of New Future Financial Company Limited's bundle of documents

has a date stamp for the Consent Legal Officer at the Ministry of Lands, for 8<sup>th</sup> September, 2020, entailing that it was received at the Ministry of Lands by that office on that date. That document indicates that it is a renewal of the application for consent to assign.

10.164 At page 13 of the said New Future Financial Company Limited's bundle of documents is the Consent to Assign, which was granted on 9<sup>th</sup> September, 2020, giving a period of Twelve (12) months of validity.

10.165 It is trite that once Consent to Assign is granted, an Assignment is lodged, and Chitukula Nyirenda did not show that he did not execute the Assignment to transfer ownership of the property into New Future Financial Company Limited's name, which document is at pages 8-11 of its' bundle of documents.

10.166 That document, at page 9, shows that it was received by the Registrar of Lands on 13<sup>th</sup> October, 2020, and the transaction was registered on 15<sup>th</sup> October, 2020.

10.167 The documents that were filed, show that the Consent to Assign was dated 7<sup>th</sup> September, 2020, and the Assignment was lodged on 13<sup>th</sup> October, 2020 within the prescribed time, which was not irregular.

10.168 It is trite that allegations of fraud must be clearly and distinctly pleaded, and evidence must be led at trial to prove the fraud as alleged on a standard that is higher than a balance of probabilities.

- 10.169 Chitukula Nyirenda, in this matter, other than just alleging that the Consent to Assign was fraudulently executed, as he had left the country for the United States of America where he lives, and it was executed on 7<sup>th</sup> September, 2020, has not provided any proof to show that he did not sign the document before he left the country, as he did the Assignment.
- 10.170 The letter which was written by Chitukula Nyirenda's lawyers rescinding the contract of sale which is dated 9<sup>th</sup> October, 2020 gave the reason for rescission of the contract, as failure to receive the purchase price in full. However, I have found that Chitukula Nyirenda has failed to demonstrate that he is not the person that gave the account number to New Future Financial Company Limited which is held at Stanbic Bank, in which the sum of K308, 305.00 was deposited as the balance for the purchase price for the property on 15<sup>th</sup> August, 2018.
- 10.171 This is more so as Chitukula Nyirenda stated that he only left the country for the United States of America in December, 2019, entailing that he had enough time before he left the country to pursue the failure to pay the balance of the purchase price, if the account in which it was paid was not confirmed by him.
- 10.172 Fraud is required to be proved on a higher standard than a mere balance of probabilities, which standard Chitukula Nyirenda has not met. That being the case, the allegations of

fraud on the part of New Future Financial Company Limited fail, and they are dismissed.

10.173 Chitukula Nyirenda was required to execute a Deed of Assent under which he could have owned the property, and as a result of which he could have lawfully transacted with New Future Financial Company Limited, as Administrator of the estate of the late Laban Chibele Nyirenda, under which the property fell to be administered.

10.174 Further, he required to obtain consent of all the beneficiaries of the estate to sell the property, and an Order of the Court before he could sell the property. In the absence of those requirements being met, his actions were void.

10.175 Thus, Chitukula Nyirenda's claims as pleaded in the statement of claim fail, and they are dismissed.

**COUNTERCLAIM BY NEW FUTURE FINANCIAL COMPANY LIMITED FOR POSSESSION OF THE PROPERTY AND IN THE ALTERNATIVE AN ORDER DIRECTING CHITUKULA NYIRENDA TO PAY BACK THE SUM OF US\$70, 000.00, DAMAGES FOR BREACH OF CONTRACT AND INCONVENIENCE AND INTEREST AS AGREED**

10.176 Having found that Chitukula Nyirenda fraudulently transferred title of the property into his own name, the agreement that he made with New Future Financial Company Limited for sale of the property, was void as he could not transfer good title to the property to New Future Financial Company Limited.

10.177 Further, New Future Financial Company Limited had constructive notice of Chitukula Nyirenda's lack of good title to the property, and it was not a bona fide purchaser for value. Accordingly, New Future Financial Company Limited is not entitled to vacant possession of the property and consequently, damages for breach of contract as claimed and inconvenience.

10.178 New Future Financial Company Limited is however entitled to the US\$70,000.00 that it paid to Chitukula Nyirenda for the property. I enter Judgment in its' favour against Chitukula Nyirenda with interest thereon at the rate at which the dollar can be borrowed from the date of issue of the Writ of Summons until payment.

**COUNTERCLAIM BY DORICA NYIRENDA, KAMIMA NYIRENDA, SUZYO NYIRENDA, MARY CLAIRE NYIRENDA AND MAUNGA NYIRENDA FOR A DECLARATION THAT CHITUKULA NYIRENDA HAD NO AUTHORITY TO PLEDGE AND TRANSFER THE PROPERTY TO NEW FUTURE FINANCIAL COMPANY LIMITED AND FOR AN ORDER TO CANCEL THE CERTIFICATES OF TITLE THAT WERE ISSUED TO CHITUKULA NYIRENDA AND NEW FUTURE FINANCIAL COMPANY LIMITED**

10.179 Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda Mary Claire Nyirenda and Maunga Nyirenda having proved that Chitukula Nyirenda acted fraudulently by transferring the property into his own name, and transacting with New Future Financial Company Limited, they succeed on their

claims that Chitukula Nyirenda had no authority to transfer the property into New Future Financial Company Limited's name.

10.180 This is because Chitukula Nyirenda by his pleadings, alleged that he entered into a contract of sale with New Future Financial Company Limited for the property. He did not allege that he pledged it as security for a loan. It is trite that a party is bound by their pleadings.

10.181 Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda Mary Claire Nyirenda and Maunga Nyirenda further succeed on their claims that the certificates of title No 218634 and 84568 which were issued to Chitukula Nyirenda and New Future Financial Company Limited in respect of the property Subdivision No 7 of Subdivision B of Subdivision No 1 of Subdivision A of Farm 687 Makeni Lusaka should be cancelled.

10.182 Thus, the Registrar of Lands and Deeds is by this Judgment, directed to cancel the said certificates of title. After the said certificates of title are cancelled by the Registrar of Lands and Deeds, the property shall devolve back to the estate of Laban Chibele Nyirenda.

## **11. CONCLUSION**

11.1 New Future Financial Company Limited and Dorica Nyirenda, Kamima Nyirenda, Suzyo Nyirenda, Mary Claire Nyirenda and Maunga Nyirenda having succeeded on their counterclaims, they are awarded costs against Chitukula Nyirenda which shall be taxed in default of agreement.

11.2 Leave to appeal is granted.

**DATED AT LUSAKA THE 29<sup>th</sup> DAY OF OCTOBER, 2025**

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

