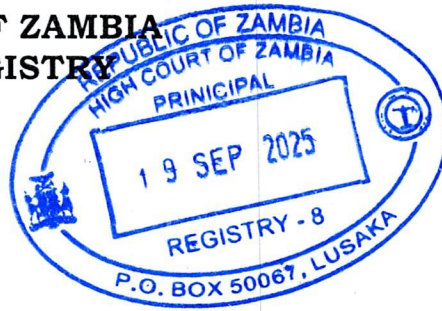


**IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)**



2021/HP/0266

BETWEEN:

BENNY JULAYI

PAUL MUSANJE

AMOS MALAMBO

AND

THE ATTORNEY GENERAL

CHRISPIN SHAMBWEKA

OSBORN MUNYAMA

1ST PLAINTIFF

2ND PLAINTIFF

3RD PLAINTIFF

1ST DEFENDANT

2ND DEFENDANT

3RD DEFENDANT

**BEFORE THE HONOURABLE JUSTICE S. V. SILOKA IN OPEN
COURT ON THE 19TH DAY OF SEPTEMBER, 2025.**

*For the 1st - 3rd Plaintiffs: Mr. M. Mweene – Messrs. Mweene Legal
Practitioners*

For the 1st Defendant: Mr. C. Watopa – Attorney General’s Chambers

For the 2nd & 3rd Defendants: Mr. N. K. Dindi – Messrs. Dindi & Co.

JUDGMENT

CASES REFERRED TO:

- 1. Attorney General & Others Vs. Masauso Phiri (Appeal No. 161 of 2014);*
- 2. Savenda Management Services Vs Stanbic Bank Zambia Limited (Selected Judgement No. 10 of 2018);*

3. *Mwale Vs Mtonga and Another* (SCZ Judgment No. 25 of 2015);
4. *Mazoka and Others Vs. Mwanawasa and Others* (2005) Z. R. 138;
5. *Attorney General Vs Clarke* (2008) Vol. 1 Z. R. 138;
6. *Mafulande Stoneworks and Commissioner of Lands and 2 Others* (Appeal No. 147 of 2017);
7. *Cecilia Mwengwe Vs Muyabango and Jeff Muyabango* (2014/HP/0868) unreported;
8. *Khalid Mohamed Vs The Attorney General* (SCZ Judgment No. 26 of 1982);
9. *Bird Vs Jones* (1845) 7 Q. B. 742;
10. *Monarch (Z) Limited* (1983) Z. R. 33 H.C;
11. *Kawimbe Vs Attorney General* (1974) Z. R. 244;
12. *Attorney General Vs Sam Amos Mumba* (1984) Z. R. 14.
13. *Attorney General Vs Felix Chris Kaleya* (1982) Z. R. 1;
14. *Paul Roland Harrison Vs Attorney General* (1993) S. J. 58; and
15. *Gertrude Munyonsi and Attorney General Vs Catherine Ngoloboka* (1999) Z. R. 117.

LEGISLATION & OTHER MATERIALS REFERRED TO:

1. Section 12 of the State Proceedings Act, Chapter 71 of the Laws of Zambia;
2. Section 13 of the High Court Act, Chapter 27 of the Laws of Zambia;

3. *The Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia;*
4. *Section 11 (1) and (2) of the Chiefs Act Chapter 287 of the Laws of Zambia;*
5. *Black's Law Dictionary by Henry Campbell Black, M. A. Revised Fourth Edition (1968) at page 890;*
2. *Clerk and Lindsell on Torts, at page 998; and*
3. *Winfred and Jolowicz by W. E. Peel and J. Goudkemp, 19th Edition at page 427.*

1.0 INTRODUCTION

1.1 This Matter was commenced by way of Writ of Summons dated the 10th of March, 2021, accompanied by a Statement of Claim of even dates seeking the following reliefs:

- i. Damages for ridicule, embarrassment, mental anguish, inconvenience, scorn, apprehension and stress;*
- ii. Consequential damages;*
- iii. An Injunction restraining the 2nd and 3rd Defendants from interfering with the land of the late Hachikoto Ntombabanyama;*
- iv. Interest;*
- v. Any other relief the Court may deem fit; and*
- vi. Costs*

2.0 THE PLEADINGS

2.1 In the Statement of Claim, the 1st, 2nd and 3rd Plaintiffs averred that at all material times they were Committee Members bestowed with authority to assist Senior Headman Benson Hantete of Kaumbwe Village in Mbabala, Choma District of the Southern Province of the Republic of Zambia.

2.2 The Plaintiffs averred that the 1st Defendant is being sued in his capacity as Attorney General pursuant to **Section 12** of the **State Proceedings Act Chapter 71** of the **Laws of Zambia**.

- 2.3 It was also averred by the Plaintiff that the 2nd and 3rd Defendants are and were at all material times domiciled in the Royal Establishment of Chief Mapanza in Choma District of the Republic of Zambia.
- 2.4 The Plaintiffs also stated that in July, 2020 Senior Headman Kabumbwe (Benson Hantete) was requested by the children of the late Philimon Hachikoto Ntombabanyama to reconfirm the boundary of the land encompassing the portion of land that was given to the late Philimon Hachikoto Ntombabanyama after retiring from duty at the end of the Second World War in 1946.
- 2.5 Further, the Plaintiffs averred that in or around September, 2020, Senior Headman Hantete delegated the Plaintiffs to proceed with the re-confirmation of the boundary.
- 2.6 It was also stated by the Plaintiffs that before the re-confirmation started, the Village Committee invited representatives from Kabumbwe Village.
- 2.7 The Plaintiffs also stated that after completing the re-confirmation of the boundary of the late Philimon Hachikoto's land, a confrontation arose between the Village Committee and the 2nd and 3rd Defendants who were the representatives of Chief Mapanza.
- 2.8 Following the confrontation, the Plaintiffs stated that the 2nd and 3rd Defendants asked them to avail themselves to Chief

Mapanza but that they were taken to Mbabala Police Station where they were remanded in custody.

2.9 The Plaintiffs also averred that they were remanded at Mbabala Police Station based on the Warrant signed by Crispin Shambweka and that the Police without any reasonable grounds detained them from 15:00 hours to 19:00 hours.

2.10 The Plaintiffs also averred that they were later released from custody after members of the Public convinced the Police that the detention of the Plaintiffs was illegal and without a justifiable cause.

2.11 The Defendants entered appearance and filed their defence on 24th of April, 2021.

2.12 The Defendants in their defence averred that on 15th October, 2020, at around 15:56 hours the 3rd Defendant brought the 1st, 2nd and 3rd Plaintiffs as suspects with a letter from Ministry of Chiefs and Traditional Affairs Mapanza Royal Establishment to arrest the three Plaintiffs on allegation of leading in demarcating the Chieftom land.

2.13 It was also averred by the Defendants that after the report, the Plaintiffs herein were detained after being duly searched.

2.14 Further it was averred by the Defendants that the Plaintiffs were later released around 16:59 hours after being interviewed.

- 2.15 The 3rd Defendant in his defence averred that the Plaintiffs herein were apprehended and taken to the Police for trespass where they were remanded in custody.
- 2.16 It was averred by the Defendants that the Plaintiffs herein were illegally demarcating land without the blessings of the Chief.
- 2.17 It was further averred by the Defendants that the acts complained of by the Plaintiffs were done by the 3rd Defendants pursuant to **Section 11 (1)** of the **Chiefs Act, Chapter 287** of the **Laws of Zambia**.

3.0 EVIDENCE FOR THE PLAINTIFFS

- 3.1 The Plaintiff in support of this case called three witnesses.
- 3.2 The first Plaintiff witness was Benny Julayi aged 76 years of Kaumbwe village, herein after called **PW1**.
- 3.3 It was **PW1**'s evidence that Senior Headman Kaumbwe (Benson Hantete) in Chief Mapanza area was requested by the children of the late Philimon Hachikoto Ntombabanyama to reconfirm the boundary of the land encompassing the delineated portion of the land which was given to the late Philimon Hachikoto Ntombabanyama from Kabumbwe Village after his retirement at the end of the second world war in 1946.
- 3.4 It was **PW1**'s evidence that pursuant to that request, Senior Headman Kabumbwe delegated the re-confirmation process to

- the Village Committee which comprised of the 2nd and 3rd Plaintiffs among others.
- 3.5 Further, **PW1** in his evidence stated that as the Verification process was in motion, the team was confronted by a group of people headed by the 3rd Defendant who requested them to stop the process and avail themselves to Senior Chief Mapanza.
- 3.6 It was **PW1**'s further evidence that following the request, the Plaintiffs accompanied the 3rd Defendant but that instead of taking them to the Palace, the Plaintiffs were taken to Mbabala Police Station where they were remanded in custody from 15:00 hours to 19:00 hours when they were released.
- 3.7 In cross-examination, **PW1** told the Court that his Claim was that he wanted to know why he was remanded at the Police Station.
- 3.8 Further in cross-examination, **PW1** told the Court that Mr. Ntombabanyama was given land as a pension in Kaumbwe and it was the same land his children wanted to be re-confirmed.
- 3.9 When further cross-examined, **PW1** told the Court that he headed the re-confirmation exercise because he was the Deputy Village Headman.
- 3.10 In further cross-examination, **PW1** told the Court that the re-confirmation was done on the 15th of September, 2020, using paint and brushes.

- 3.11 Further in cross-examination **PW1** admitted in cross-examination that there were no Surveyors that accompanied the group as they were carrying out the re-confirmation.
- 3.12 In further cross-examination, **PW1** admitted that Chief Mapanza was not informed as regards the verification process.
- 3.13 It was also **PW1**'s further testimony that while remanded in Custody he was ridiculed and suffered embarrassment and Mental Anguish.
- 3.14 The Second Plaintiff Witness was Amos Malambo aged 74 years, hereinafter called **PW2**. The evidence of **PW2** is similar to **PW1** hence it will not be repeated here.
- 3.15 In cross-examination, **PW2** told the Court that on 15th of September, 2020, he was one of the people who went to verify the extent of the land for the late Ntombabanyama and was later on remanded in custody at the Police Station from 15:00 hours to 19:00 hours.
- 3.16 The Third Plaintiff Witness was Delilah Ntombabanyama Hachikoto aged 66 years herein after called **PW3**.
- 3.17 The gist of **PW3**'s evidence was to confirm that she is the daughter of the late Ntombabanyama. Further that she is one of those who requested for the re-confirmation of their late father's boundary.

3.18 In further evidence, **PW3** confirmed to the Court that the re-Confirmation went very well but that she was later informed that the Plaintiffs herein were remanded in custody at Mbabala Police Station on the directive of his Royal Highness Chief Mapanza.

3.19 That was the close of the case for the Plaintiff.

4.0 EVIDENCE FOR THE DEFENCE

4.1 The Defence in support of the case called three witnesses. The 1st Defence Witness was Crispin Mudenda Mukumwa herein after called **DW1**.

4.2 In his Evidence in Chief, **DW1** informed the Court that on or about the 14th of October, 2021 he was invited by the Village Committee to be part of the team re-confirming the boundary of the land encompassing the delineated portion of the land which was allegedly given to the late Philimon Hachikoto Ntombabanyama.

4.3 Following the Invitation, **DW1** told the Court that on the 15th of October, 2020, together with his Secretary he went to join the Team that was carrying out the boundary re-confirmation.

4.4 It was **DW1**'s further testimony that when the group led by **PW1** (Ben Julayi) started re-confirming the boundary, he felt uncomfortable to continue because no permission was sought for Chief Mapanza.

- 4.5 It was **DW2**'s further evidence that as the re-confirmation progressed, he together with his secretary decided to withdraw from the exercise after which a Report was made to Chief Mapanza highlighting the illegal activity being undertaken by the group led by **PW1**. The Report was made through the Chief's retainer (Kapaso).
- 4.6 In cross-examination, **DW1** told the Court that Mr. Philimon Ntombabanyama was given land in Kaumbwe and that the extent of the land was well known.
- 4.7 In further cross-examination, **DW1** informed the Court that on the 15th of October, 2020, he was part of the team that went to re-confirm the land for Mr. Ntombabanyama.
- 4.8 When further cross-examined, **DW1** further told the Court that the Headman for Kaumbwe wrote him a letter informing him about the re-confirmation process.
- 4.9 **DW1** also in cross-examination told the Court that the Chief acted on what was communicated to him and that he was not present when the Kapaso reported to the Chief.
- 4.10 In re-examination, **DW1** told the Court that he received a letter inviting him to witness the re-confirmation of the boundary but that the Chief took over after the report was made.
- 4.11 The Second Defence Witness was Crispin Shabweka aged 51 years hereinafter called **DW2**.

- 4.12 In his Evidence in Chief, **DW2** told the Court that on the 15th of October, 2020, he received a report from Senior Headman Mandala indicating that the now Plaintiffs were illegally demarcating land.
- 4.18 Upon receiving the Report, **DW2** informed the Court that he proceeded to the area where he found the now Plaintiffs illegally demarcating land, after which a Report was made to Chief Mapanza.
- 4.19 **DW2** further informed the Court that Chief Mpanza directed him to have the Plaintiffs detained at Mbabala Police Station for trespass.
- 4.20 Following the above directive, **DW2** informed the Court that he then went ahead to prepare a Warrant to be handed over to the Police. Using the said Warrant, the Plaintiffs were then detained at Mbabala Police Station.
- 4.21 In cross-examination **DW2** told the Court that upon receipt of the report, he went to verify the illegal demarcation of the land which was effected by painting trees and rocks.
- 4.22 In further cross-examination, **DW2** told the Court that after confirming what the Plaintiff were doing, he reported the matter to Chief Mapanza.
- 4.23 DW2 in further cross-examination, told the Court that as Village Headman he has to be informed of all the land allocation.

- 4.24 In further cross-examination, **DW2** admitted that the Plaintiffs were remanded in custody at the Police Station for safe custody but that he is not aware if they were charged by the Police for any offence.
- 4.25 The Third Defence Witness was Osborne Munyama aged 34 years, Chief retainer for Chief Mapanza.
- 4.26 It was **DW3**'s evidence in Chief that on the 15th of October, 2020, he received a call from **DW2** instructing him to find the Plaintiffs who were engaged in illegal activities of demarcating land in the chiefdom.
- 4.27 It was **DW3**'s further evidence that upon receipt of the said instruction, he went to the location where he found the Plaintiffs demarcating land.
- 4.28 It was **DW2**'s further testimony that upon finding the Plaintiffs, he asked them to accompany him to the Police Station where they were remanded in custody based on the Warrant issued by the 2nd Defendant as instructed by the Chief.
- 4.29 In cross-examination, **DW1** informed the Court that he issued a Warrant based on what was conveyed to him by **DW2**, who is the Secretary to the Chief.
- 4.30 Under cross-examination, **DW3** told the Court that he did not know that Mr. Ntombabanyama had land in the village.

- 4.31 Still under cross-examination, **DW3** told the Court that it was him who came with the mob and that the mob remained with the Headman.
- 4.32 In further cross-examination, **DW3** told the Court that he did not bring any photos or anyone who was affected by the demarcation.
- 4.33 When cross-examined about the Warrant, **DW3** told the Court that the Warrant to detain the Plaintiffs was issued on the 15th of October, 2024 and was directed to the Police but that he did not have the same in his possession.
- 4.34 **DW3** when further cross-examined told the Court that when he met the Plaintiffs, he did not ask them why they were demarcating the land and further that the Plaintiffs never told him that they were in danger.
- 4.35 **DW3** also explained in cross-examination that it was the Chief who instructed him to capture the Plaintiffs but that he did not have any proof to confirm the said instruction.
- 4.36 In further cross-examination, **DW3** told the Court that it was him who took the Plaintiffs to the Police but that he was not present when they were released.
- 4.37 Further in cross-examination, **DW3** admitted that the Chief's instruction was based on what he had communicated to him.

DW3 further admitted that the Police detained the Plaintiffs based on the information given to them.

4.38 The 1st Defendant did not call any witnesses.

5.0 SUBMISSIONS

(i) Submission by the Plaintiff

- 5.1 It was Counsel's submission that the Plaintiffs herein were falsely imprisoned in that they were unlawfully deprived of their freedom of movement when they were detained at Mbabala Police Station without any justifiable cause.
- 5.2 In support of the above contention, Counsel referred the Court to **Black's Law Dictionary by Henry Campbell Black, M.A Revised fourth Edition (1968) at page 890, Clerk and Lindsell of Torts**, and the case of **Attorney General & Others Vs Masauso Phiri**⁽¹⁾ for the proposition that false imprisonment consists of unlawfully or recklessly restraining another person's freedom of movement from a particular place. The restraint must be total for a time however short.
- 5.3 It was Counsel's further submission that it is not in dispute that the 1st, 2nd and 3rd Plaintiffs herein were unlawfully detained at Mbabala Police Station.
- 5.4 According to Counsel, the detention was unlawful because there was no illegal demarcation and trespass in that the said land belonged to Mr. Ntombabanyama who lived in Kaumbwe Village.

5.5 In support of the above contention, Counsel referred the Court to the learned authors **Winfred and Jolowicz by W. E. Peel and Goudkamp, 19th Edition at page 427**, where they defined trespass to land as;

“Trespass to land is the name given to the form of trespass which is constituted by unjustifiable interference with the Possession of land.”

5.6 In the light of that guidance, Counsel submitted that the Plaintiffs were at no point trespassing, as they had the express authority of both Senior Headman Hantete and the children as beneficial owners of the land of the late Philimon Hachikoto.

5.7 It was also Counsel’s submission that there cannot be trespass because the Plaintiffs were merely re-confirming the boundary of the land encompassing the portion of land that was given to the late Philimon Hachikoto Ntombabanyama, as confirmed by the 2nd and 3rd Defendants.

5.8 Further, it was argued by Counsel that the issue of illegal demarcation does not arise herein because the Defendants did not adduce any evidence. According to Counsel, the absence of such relevant evidence, only confirms that the Defendants have failed to demonstrate that the demarcations were illegal.

5.9 Counsel further submitted that the contention that the 2nd Defendant was authorized to issue a Warrant by the 3rd

Defendant lacks merit because the same is not supported by any evidence.

- 5.10 It was Counsel's further submission that the issue of the Plaintiff's security does also not arise because the Defendants did not adduce any evidence to confirm that the lives of the Plaintiffs was in danger since no policeman was called to testify.
- 5.11 According to Counsel, it is trite law that in cases of False Imprisonment, the onus of justifying imprisonment is on the Defendants as established in the case of **Attorney General & Others Vs Masauso Phiri**. The Plaintiff is only required to prove the imprisonment.
- 5.12 It was Counsel's submissions that this Court is at large to grant any reliefs to the Plaintiff's coming out of the Pleadings and evidence, whether the same was specifically asked for or not.
- 5.13 In support of the above proposition, Counsel referred the Court to **Section 13** of the **High Court Act Chapter 27** of the **Laws of Zambia** and the case of **Savenda Management Services Vs Stanbic Bank Zambia Limited**⁽²⁾, for the proposition that a Judge by virtue of Section 13 is at liberty to grant any relief and remedies coming out of pleadings and evidence whether they are specifically asked for or not.
- 5.14 It was Counsel's Submission that arising from the Pleadings and evidence presented, this Court has the power to grant the

Plaintiffs the damages as pleaded for, more so that the same arose from the said False Imprisonment.

(ii) SUBMISSIONS BY THE 2ND AND 3RD DEFENDANTS

5.15 In his submissions Counsel for the Defendant submitted that the claim for False Imprisonment should not be granted because it was not pleaded.

5.16 In support of this proposition, Counsel referred the Court to the Learned Author **Honorable Dr. Mr. Justice Patrick Matibini's** book **Zambian Civil Procedure Commentary and Cases**, at **page 565**, the case of ***Mwale Vs Mtonga and Another***⁽³⁾, the case of ***Mazoka and Others Vs Mwanawasa and Others***⁽⁴⁾ and ***Attorney General Vs Clarke***⁽⁵⁾ all guiding that the long-standing principle that a party cannot rely on unpleaded matters, except where evidence on unpleaded matters has been adduced in evidence without objection from the opposing party.

5.17 It was Counsel's submission that as the Record will show and by the admission of the Plaintiffs themselves in the final submission, the Plaintiffs did not specifically plead for False Imprisonment which in its nature is a Tort and neither did the Plaintiffs produce any Medical Reports in their evidence to clearly demonstrate that their claim for the relief of:

1. Damages for ridicule embarrassment, mental anguish, inconvenience, scorn, apprehension and stress were well founded.

5.18 It was Counsel's submission that the Plaintiffs cannot submit on False Imprisonment because doing so will defeat the purpose and function of pleadings and will prejudice the 2nd and 3rd Defendants because they were not accorded an opportunity to defend themselves on the issue of False Imprisonment being advanced by the Plaintiffs. Counsel referred the Court to the case of ***Mazoka And Others Vs Mwanawasa and Others***⁽⁴⁾ in which the Supreme Court held that once pleadings have been closed the parties thereto are bound by the pleadings and the Court has to take them as such.

5.19 It was further submitted by Counsel that the Defendants acted within the law when they had the Plaintiffs taken to the Police because it was the role of the Chief to keep peace in his Kingdom.

5.20 Counsel relied on **Section 11 (1) and (2)** of the **Chiefs Act Chapter 287** of the **Laws of Zambia** which provides as follows:

(i) Every chief is hereby required to preserve the public peace in his area and to take reasonable measure to quell any riot affray or similar disorder which may occur in the area;

- (ii) *Whenever a riot, affray or similar disorder occurs in the area of the Chief a Kapaso thereto directed by the Chief may when in uniform or wearing his badge of office;*
- (a) *require any male person in the vicinity to assist him in quelling the riot, affray or disorder;*
- (b) *Arrest without warrant, any person upon reasonable suspicion of having committed an offence in connection with the riot, affray or disorder and detain any person so arrested until he can be delivered into the custody of a police officer or brought before a Court of competent Jurisdiction to be dealt with according to Law.*

5.21 It was Counsel's submission that the Plaintiff and the children of Ntombabanyama trespassed on the land because they did not produce any Title to the land they were claiming to be theirs. Counsel referred to **Section 33 of The Lands and Deeds Registry Act Chapter 185** of the **Laws of Zambia** which provides that:

"A Certificate of Title is conclusive evidence of ownership of land by a holder of the Certificate."

5.22 Counsel also referred the Court to the case of *Mafulande Stoneworks and Commissioner of Lands and 2 Others*⁽⁶⁾

where it was held that, it is trite law that a Certificate of Title is conclusive evidence of ownership of land.

- 5.23 It was Counsel's submission that taking into account that the land in question is customary land it was wrong and illegal for the Plaintiffs to proceed with the reconfirming and demarcation of the boundaries of the land without involving Chief Mapanza who is the overseer and custodian of all customary land within the chiefdom.
- 5.24 Counsel further submitted that the argument that the Plaintiffs were not trespassing cannot stand because the Plaintiffs did not follow the Customary Procedures pre-existing in Chief Mapanza's chiefdom with regards land issues.
- 5.25 Counsel further contended that since the Plaintiffs did admit that they were painting the trees and stones in the process of reconfirming the boundaries of land belonging to the late Philimon Hachikoto Ntombabanyama, based on that admission of fact by the Plaintiff there was no need to produce evidence of the paintings as they admitted to the facts. Counsel relied on the case of **Cecilia Mwenqwe Vs Muyambango and Jeff Muyambango**⁽⁷⁾ the Court held as follows:

“It is clear that where an admission of fact is made by a party to a matter or Cause, the other party to the cause, that is for the Plaintiff or Defendant, may

apply to the Court for such Judgment, based on the admission as may be entitled to without waiting for the Court to determine any other question between the parties. This is because when a fact is admitted, it ceases to be an issue and neither party to the matter or cause is required or permitted to advance evidence about the fact at trial.”

5.26 In conclusion Counsel submitted that as held in *Khalid Mohamed Vs The Attorney General*⁽⁸⁾ that:

“A Plaintiff must prove its case and if he fails to do so the mere failure of the opponents’ Defence does not entitle him to judgment.”

5.27 Following the above guidance, Counsel submitted that the Plaintiffs have failed to prove their case on a balance of probabilities in that they did not produce Medical Reports to support reliefs they are claiming, they did not obtain Chief Mapanza’s consent to proceed to demarcate or reconfirm any boundary of land in Chief Mapanza Chiefdom and that they did not plead for False Imprisonment in their pleadings.

(iii) Submissions by the 1st Defendants

5.28 The 1st Defendant did not file any submissions.

6.0 FINDING OF FACTS

- i. That the Plaintiffs and Defendants were subjects of Chief Mapanza.*
- ii. That Mr. Ntobabanyama was given a piece of land after the Second World War.*
- iii. That his Children wanted re-confirmation of the said boundary.*
- iv. That the re-confirmation was done but the 2nd and 3rd Defendants were unhappy hence a report made to Chief Mapanza.*
- v. The Plaintiffs were consequently apprehended and taken to Mbabala Police Station where they were remanded in custody by the Police.*

7.0 ISSUES FRAMED FOR DETERMINATION

- (i) Whether in re-confirming the boundary the Plaintiffs trespassed.*
- (ii) Whether False Imprisonment was pleaded.*
- (iii) Whether the Plaintiffs were Falsely Imprisoned.*
- (iv) Whether the Plaintiffs are entitled to damages for False Imprisonment.*

8.0 CONSIDERATION AND DECISION OF THE COURT

8.1 From the onset, I must state that I am grateful to the industrious manner in which this case was ably argued by both Counsel.

(1) Whether in re-confirming, the boundary, the Plaintiffs trespassed.

8.2 Counsel for the Plaintiff contended that his clients did not trespass on the land in question because the Plaintiffs were merely re-confirming the land that belongs to the late Ntombabanyama.

8.3 On the other hand, Counsel for the Defendants argued that the Plaintiffs trespassed on the land because they were re-confirming land which was not theirs as they did not have Certificate of Title to the said land.

8.4 I have considered the argument of both Parties.

8.5 From the evidence on record, it is common cause that the late Ntombabanyama was given land after fighting in the 2nd World War and lived on that piece of land until his death.

8.6 That having been demonstrated, it is my considered view that the children of the late Ntombabanyama with the help of the Plaintiffs had the right to confirm their boundary even without the knowledge of the Senior Chief as they have an interest in

the said land (see *Village Headman Mupwaya and Another Vs Mbaimbi [SCZ Appeal No. 41 of 1999]*).

8.7 Since the land has been for Ntombabanyama and the acts carried out were merely re-confirming the extent of the land which was already allocated to the late Ntombabanyama, the Senior Chief had no role to play in this matter and allegations of trespass are without merit.

8.8 I must state further that arguments regarding Certificate of Title does not in any way arise in this case because this was customary land.

(ii) Whether False Imprisonment was pleaded.

8.9 It was Counsel's submission that though the Plaintiffs did not specifically plead for False Imprisonment, however, the evidence on record through pleadings and witness testimonies all show and demonstrate that the damages being claimed for by the Plaintiffs arise from the said False Imprisonment.

8.10 On the other hand, Counsel for the Defendant argued that the question of False Imprisonment should not be considered by this Court because it was not pleaded.

8.11 I have considered the arguments of both Parties.

8.12 In resolving this issue, guidance will be sought from the learned Author Honourable Dr. Mr. Justice Patrick Matibini in his book

Zambian Civil Procedure Commentary and Cases at page 565 where he states that:

“The primary object of a pleading is to enable each litigating party to come to trial fully prepared to meet the case of the other party. Each pleading must therefore contain a clear and accurate statement of material facts on which the pleader relies for the claim, defence and reply, and each statement must consist of sufficient particularity to allow the opposing party to understand the alleged facts to be able to reply.”

8.13 In the case of Mwale Vs Mtonga and Another⁽³⁾, it was held that:

“Pleadings are intended to prevent either party from springing up a surprise at trial or allowing an issue to creep out of the woodwork. They serve the additional useful purpose isolating the issue of law and fact that will fall to be determined by the trial Court.”

8.14 Furthermore, in the case of Mazoka and Other Vs Mwanawasa and Others⁽⁴⁾, it was held *inter alia* that:

“The function of pleadings is very well known, it is to give fair notice of the case which has to be met and

to define the issues on which the Court will have to adjudicate in order to determine this matter in dispute between the parties. Once the pleadings have been closed the parties thereto are bound by the pleadings and the Court has to take them as such.”

8.15 As a general rule, parties are bound by their pleadings.

However, every general rule has an exception.

8.16 The Court can grant a remedy not pleaded as long as the evidence on record speaks to such a remedy or claim.

8.17 This was the guidance of the Supreme Court in the case of **Savenda Management Services Vs Stanbic Bank Zambia Limited**⁽²⁾ where the Court stated:

“Limited to that of the Court investigating if alternative remedies and reliefs are available from the pleadings and evidence deployed before it as opposed to suggesting, from a vacuum, fresh remedies or reliefs. The actions by the Learned High Court Judge effectively amounted to his stepping into the arena of the dispute to the disadvantage of the Respondent, which we find to be a misdirection on his part deserving of Intervention by the Court of Appeal. Ours is an adversarial Court system which shackles the Judge to the pleadings and evidence presented

before him. He is at large and by virtue of Section 13 to grant any relief and remedies coming out of such pleadings and evidence whether they are specifically asked for, but he is not permitted to introduce a remedy or relief from facts and circumstances of his own creation and outside the pleadings and evidence.”

8.18 Therefore as guided by the **Savenda** case Supra, this Court can consider the question of False Imprisonment even though not pleaded as long there is evidence of False Imprisonment.

(iii) Whether the Plaintiffs were False Imprisoned?

8.19 Counsel for the Plaintiffs submitted that the Plaintiffs herein were False Imprisoned at Mbabala Police Station.

8.20 On the other hand, Counsel for the Defendant argued that the Plaintiffs were taken to Mbabala Police Station because they committed an offence and further that the Plaintiffs herein were taken to the Police Station pursuant to **Section 11 (1) and (2)** of the **Chiefs Act Chapter 287** of the **Laws of Zambia**.

8.21 I have considered the arguments of both parties.

8.22 In **Bird Vs Jones**⁽⁹⁾, Patterson defined False Imprisonment as follows:

“False Imprisonment is a restraint on the liberty of the person without lawful cause, either by

confinement in prison, stocks house etc, even by forcibly detaining the party in the streets against his will.”

8.23 In **Attorney General and Others Vs Masauso**⁽¹⁾, it was held that:

“False Imprisonment consists of unlawfully and either intentionally or recklessly restraining another person’s freedom of movement from a particular place. The restraint must be total for a time, however short. There is no False Imprisonment if a person’s arrest is Justifiable or if there is reasonable and probable cause for restraint. This statement was affirmed in the case of Attorney General Vs Kakoma (1975) Z.R. 273.”

8.24 As clearly guided by the afore cited authorities, false Imprisonment will be sustained if it is established that an individual freedom was restrained without reasonable and probable cause (see **Bird** Supra).

8.25 In *casu*, I find that the Plaintiffs were Falsely Imprisoned by the Defendants because their detention was without merit. The Plaintiffs explained to the Defendants what they were doing yet the Defendants still took them to the Police Station where they were detained for no apparent reasons. I am aware that

Section 11 (1) and (2) of the **Chiefs Act** gives powers to the Chief to keep peace but those powers should not be abused. This case is a typical example of misuse of such powers.

8.26 Therefore, having gotten an explanation as to what the Plaintiffs were doing it was unreasonable for the Defendants to take the Plaintiffs to Mbabala Police Station to have them detained.

8.27 In the persuasive case of **Monarch (Z) Limited**⁽¹⁰⁾, it was held that False Imprisonment only arises where there is evidence that the arrest which led to the detention was unlawful, since there was no reasonable and probable cause.

8.28 In light of the above guidance, I have found that the Plaintiffs herein have established that they were False Imprisoned. I find that there was a case of False Imprisonment by the 2nd and 3rd Defendants because there was Mala fide on the part of the 2nd and 3rd Defendants.

8.29 On the part of the Police (1st Defendant) I find that there was also False Imprisonment because the detention was not done for purposes of Police Investigations. As demonstrated by the evidence on Record, the Police detained the Plaintiffs based on the Warrant prepared by **DW3** without satisfying themselves whether there was an offence committed or not. This was wrong.

(iv) Whether the Plaintiffs are entitled to damages.

8.30 Having found that the Plaintiffs herein were falsely imprisoned by the Defendants, it follows that the Plaintiffs herein are entitled to damages. The question to be resolved is the quantum.

8.31 In dealing with the quantum, guidance will be sought from the guidance of the Supreme Court in **Attorney General Vs Sam Amos Mumba**⁽¹²⁾ where the Supreme Court held that:

“The award of general damages in cases of false Imprisonment must where these factors are present, always take into account circumstances of the arrest and detention, the affront to the person’s dignity and the damage to his reputation.”

8.32 Further in **Attorney General Vs Felix Chris Kaleya**⁽¹³⁾ the Supreme Court held that,

(ii) *in assessing damages for wrongful detention, the factors to be considered include duration, sanctity of personal liberty, preference or absence of the suffering or anxiety or indignity, manner and circumstances of detention, and the reasonableness of the explanation.*

8.33 Further in **Paul Roland Harrison Vs Attorney General**⁽¹⁴⁾, the Supreme Court held, *inter alia* that,

- (i) *Where the tortious circumstances are more serious, then the awards must reflect this, as well as the impact of inflation in order to arrive at a fair and reasonable amount.*

8.34 The Supreme Court further stated:

“We have already indicated that damages for False Imprisonment are not calculated on daily basis, but obviously Imprisonment for 21 days is much more serious than for one day and this must be reflected in the award.”

8.35 Flowing from the above guidance, it is important to mention that in arriving at the quantum, the Court has mirrored the facts of this case against the guidance laid down in the cases referred to above.

8.36 In *casu*, I note that the Plaintiffs were detained for less than a day, there were no torturous circumstances and there was no damage to the Plaintiff’s reputation.

8.37 Having taken into consideration the above factors and inflation (as guided in **Gertrude Munyosi and Attorney General Vs Catherine Ngoboloka**⁽¹⁵⁾) I award the Plaintiffs the sum of K5,000.00 each as compensatory damages.

8.38 However, as regards damages for mental anguish and stress, I decline to grant the same for lack of evidence (see **Khalid Mohammed Vs Attorney General**⁽⁸⁾).

9.0 CONCLUSION

- 9.1 In conclusion, I find that the Plaintiffs herein were falsely imprisoned by the Defendants.
- 9.2 The Plaintiffs are therefore awarded K5,000.00 each as damages.
- 9.3 The claim for damages for mental anguish and stress fails for lack of evidence.
- 9.4 Leave to Appeal is hereby granted.

**DELIVERED AT LUSAKA IN OPEN COURT ON THE 19TH
DAY OF SEPTEMBER, 2025**

S. V. SILOKA
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**S. V. SILOKA
HIGH COURT JUDGE**

