

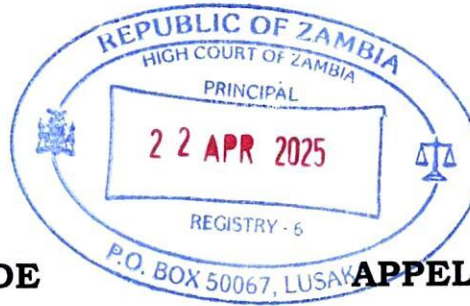
**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**

2022/HP/A012

(Civil Jurisdiction)

BETWEEN:

MAKASA MULUNDU NKONDE



APPELLANT

AND

**KENNEDY MPHANDE
ATTORNEY GENERAL
THE COMMISSIONER OF LANDS**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT**

**CORAM: HONOURABLE LADY JUSTICE G. MILIMO-SALASINI
THIS 22ND DAY OF APRIL 2025 IN CHAMBERS**

**For the Appellant : Messrs. Barnaby, Chitundu
& Khunga Advocates**

For the 1st Respondent : Messrs. Moshia & Company

For the 2nd Respondent : No Appearance

For the 3rd Respondent : No Appearance

JUDGMENT

Cases referred to:

1. Donovan VS Gweloys Limited (1990) 1 WLR 472
2. BP Zambia PLC v Zambia Competition Commission (SCZ Judgment No. 21 of 2011),
3. NFC Africa Mining PLC v Techro Zambia Limited (SCZ Judgment No. 22 of 2009),
4. Matilda Mutale v Emmanuel Munaile (SCZ Judgment No. 14 of 2007),
5. Development Bank of Zambia & Another v Sunvest Limited & Another (SCZ Judgment 3 of 1997),
6. Leopold Walford (Z) Ltd v Unifreight (1985) ZR 203,
7. Bp Zambia Plc v Interland Motors Limited (2010) ZR 37
8. Chick Masters Limited and Another v Investrust Bank Plc Appeal No. 74 of 2024,
9. Twampane v Msorti (SCZ 20 of 2011) [2011] ZMSC 20 (8 November 2011),

Legislation referred to:

1. Rules of the Supreme Court of England 1999 Edition (White Book).
2. The Lands Act Chapter 184 of the Laws of Zambia
3. The Lands Tribunal Act No. 39 of 2010

1. INTRODUCTION

This is an appeal against part of the ruling of the Lands Tribunal delivered on November 30, 2021. The appeal was filed by Makasa Mulundu Nkonde (hereinafter referred to as the Appellant) through a Notice of Appeal dated March 28, 2022, challenging the Lands Tribunal's ruling under cause LAT/9/2017.

2. BACKGROUND

This dispute arises from the erroneous allocation of property F/1751/28 to Kennedy Mpande (1st Respondent) by the Commissioner of Lands. The property had been repossessed from the Appellant in error, as developments had been made within the prescribed period. Upon realizing the mistake, the Commissioner of Lands reversed the allocation and notified the 1st Respondent in a letter dated September 24, 2015.

The letter, reproduced below, outlines the reason for the revocation and the proposed compensation:

*"24th September, 2015
F/1752/28
Mr. Kennedy Mphande
P.O Box 830107
MUMBWA*

Dear Sir,

R.E: REVOCATION OF LEASE RELATING TO SUBDIVISION 28 OF FARM No. 1751

Reference is made to the above subject.

The brief background of the matter at hand is that we repossessed F/1751/28 from the previous title holder in error owing to the fact that we did not take into account the existing developments on the property at the time.

In light of the above, I wish to advise that I have proceeded to revoke your lease forthwith. My revocation of your lease inevitably cancels your certificate of title for F/1751/28. My office will proceed to give you an alternative property as compensation for your loss.

*Yours faithfully,
Mabuchi Chilembo.
ACTING COMMISSIONER OF LANDS."*

3. JUDICIAL REVIEW PROCEEDINGS IN THE HIGH COURT

Following the Commissioner's decision, the 1st Respondent commenced judicial review proceedings on October 2, 2015, under cause 2015/HP/1704 by Notice of Motion for Judicial Review pursuant to Order 53 of the Rules of the Supreme Court of England, 1965, 1999 edition (White Book).

The 1st Respondent also filed a Notice containing a statement in support of the Application for leave to apply for Judicial Review pursuant to Order 53 rule 3 of the Rules of the Supreme Court (1999) Edition against the decision of the Commissioner of Lands.

The 1st Respondent sought the following reliefs:

(a) An order of certiorari to remove into the High Court and quash the decision of the Commissioner of Lands to revoke the offer of Subdivision No 28 of Farm No 1751 to the Applicant and the subsequent decision to cancel certificate of title No 12033.

(b) A declaration that the said Applicant is the rightful owner of property known as F/1751/28.

(c) If leave is granted, an order that leave should operate as a stay of the decision of the Commissioner of Lands to revoke the offer of Subdivision No 28 of Farm No 1751 to the Applicant and the subsequent decision to cancel the certificate of title No. 12033.

(d) If leave is granted, a direction that the hearing of the application for judicial review be expedited.

(e) An order for costs.

In the judicial review proceedings, the 1st Respondent alleged that the Commissioner's decision was illegal, contravening section 34 of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia, and Section 4 of the Lands Tribunal Act No 39 of 2010. The 1st Respondent also claimed that the Commissioner of Lands had failed to take into account the massive developments already done on the land, making the decision to revoke the lease and offer alternative land unreasonable and impracticable

The 1st Respondent was granted leave to apply for judicial review on October 5, 2015, along with a stay of the Commissioner's decision. However, the 1st Respondent failed to prosecute the matter, and the court eventually dismissed the action for lack of merit on September 20, 2016.

The court's dismissal was based on the 1st Respondent's failure to file necessary documents within the required timeframe and the lack of an arguable case. The stay of the Commissioner's decision was discharged, and costs were awarded to the 2nd Respondent.

4. MATTER IN THE LANDS TRIBUNAL

The 1st Respondent, dissatisfied with the High Court's dismissal, filed a Notice of Claim with the Lands Tribunal on March 3, 2017, under cause LAT/9/2017. The Appellant (Makasa Mulundu Nkonde) raised four preliminary issues:

1. *Whether this matter should not be dismissed for being statute barred having been instituted outside the statutory period within which an appeal/ application against the decision of the Commissioner of Lands is to be made.*
2. *Whether the Applicant's Notice of Claim dated 3rd March 2017 is not defective in form, in that it is not signed by the applicant contrary to the Rules of Court.*
3. *In the alternative, whether this action is not an abuse of Court process by virtue of the Applicant having instituted a similar matter in the High Court under Cause No. 2015/HP/1704 against the same parties and property as herein which claim was dismissed with costs to the respondent, and which the Applicant is yet to settle in full yet has instituted this cause despite instituting this cause.*
4. *Whether this action should not be dismissed and/ or stayed with costs for being an abuse of Court process*

In a ruling dated 30th November 2012, the Tribunal responded to the first preliminary issues (PI) and held the following views:

- i. **First Preliminary Issue (Statute Barred):** The Tribunal found that the irregularity by the applicant was not fatal and that they had jurisdiction over the proceedings.

- ii. Second Preliminary Issue (Defective Notice of Claim): The Tribunal held that the breach of a regulatory rule was curable and not fatal.
- iii. Third Preliminary Issue (Abuse of Court Process): The Tribunal determined that commencing the matter before it was not an abuse of court process since the previous High Court matter did not result in a judgment.
- iv. Fourth Preliminary Issue (Stay of Proceedings): The Tribunal ordered that the proceedings be stayed until the Applicant settles the costs awarded in favor of the 2nd Respondent under High Court Cause No. 2015/HP/1704 in full.

5. **THE APPEAL**

The appellant has lodged this appeal against the Lands Tribunal's decision, advancing four grounds of appeal:

1. *The Learned Chairperson of the Lands Tribunal erred in both law and fact when she allowed the Respondent to file an amended Notice of Appeal by amending the signature of the Respondent or his Advocates to the Notice of Appeal without the Respondent having first obtained leave to file the Notice of Appeal out of time as the respondent's Notice of Appeal was filed in the Lands Tribunal on 3rd March 2017, a period of more than seventeen months from 24th September 2015 when the Respondent received the decision revoking the offer and canceling of the certificate of title.*

2. *The Learned Chairperson of the Lands Tribunal erred in both Law and fact when she held that commencing the matter before the Lands Tribunal cannot be deemed to be an abuse of the Court process even when there was a similar matter before the High Court under cause number 2015/HP/1704 as the previous matter before the High Court had not resulted in a judgment and this matter being the sole active cause yet to be determined by the Lands Tribunal.*
3. *The Learned Chairperson of the Lands Tribunal erred in both Law and fact when she held at page R14 that “ in the premises we order that these proceedings be stayed until the Appellant settles the costs ordered in favor of the 3rd Respondent under the High Court Cause No. 2015/HP/1704” without addressing whether the Respondent should not continue dealing with the subject property in the manner likely to cause the Appellant to suffer injustice.*
4. *Any other ground as shall be raised after further perusal of the supporting documents.*

5. THE APPELLANT'S CONTENTIONS

The appellants argued that the 1st respondent's complaint, as contained in the Notice of Appeal, was statute-barred against the appellant, thereby depriving the Honorable Tribunal of jurisdiction to entertain the purported Notice of Appeal. Reference was made to Rule 3(2) of the **Lands (The Lands Tribunal) Rules, Statutory Instrument 90 of 1996**, which stipulates:

“A Notice of Appeal shall not be valid unless it is lodged with the Secretariat within thirty days from the date on which the directive or decision was served upon the Appellant or within such other time as may be prescribed by the enactment conferring the right of appeal”

It was contended that this provision is couched in mandatory terms, clearly outlining the timeframe within which the 1st respondent should have lodged his appeal against the Commissioner of Lands' decision to cancel his certificate of title.

Counsel cited the case of **Donovan VS Gweloy's Ltd (1990) 1 WLR 472** where it was stated that:

“... The primary purpose of the limitation period was to protect a Defendant from injustice of having to face a stale claim which he never expected to deal with”

It was argued that the 1st respondent's claims should not be entertained, as they are statute-barred and would be extremely prejudicial and unjust to the appellant.

The court was also referred to the cases of **BP Zambia PLC v Zambia Competition Commission (SCZ Judgment No. 21 of 2011)** and **NFC Africa Mining PLC v Techro Zambia Limited**

(SCZ Judgment No. 22 of 2009), which emphasized the importance of adhering to statutory time limits and the mandatory nature of rules governing court procedures.

Furthermore, the case of **Matilda Mutale v Emmanuel Munaile (SCZ Judgment No. 14 of 2007)** was cited, where the court held that the absence of a petitioner's signature on the originating process is fatal and cannot be entertained.

Regarding grounds two and three, it was submitted that the appellant is the rightful owner of the subject property, having been wrongly repossessed by the 3rd respondent and subsequently restored to the appellant. The 1st respondent's actions in the High Court and the Lands Tribunal were argued to be an abuse of the court process, and the court is urged to hold the appeal before the Lands Tribunal as a nullity.

The court was directed to the case of **Development Bank of Zambia & Another v Sun vest Limited & Another (SCZ Judgment 3 of 1997)**, which held that actions tainted by abuse of process compromise the integrity of court procedures.

6. THE 1st RESPONDENT'S CONTENTIONS

The 1st respondent filed heads of argument on 15th June 2022. In response to ground one, it was argued that the matter is not statute-barred, as Section 4(3) of the Limitation Act of 1939, as amended by the Law Reform (Limitation of Actions) Act Chapter 72 of the Laws of Zambia, provides 12 years to bring an action relating to land recovery. Additionally, the respondent claimed to have obtained leave to file the Notice of Appeal out of time.

The 1st respondent cited the case of **Leopold Walford (Z) Ltd v Unifreight (1985) ZR 203**, which held that a breach of a regulatory rule can be curable and not fatal, depending on the nature of the breach and the stage reached in the proceedings. The respondent argued that the omission of a signature on the Notice of Appeal was a procedural defect that could be cured by amendment.

Regarding grounds two and three, the 1st respondent argued that commencing the matter before the Lands Tribunal did not constitute an abuse of court process, as the High Court matter was dismissed for failure to file documents within the stipulated time and was not fully determined. The 1st

respondent also submitted that non-settling of costs did not render the action before the Tribunal a nullity.

The respondent relied on the cases of **Bp Zambia Plc v Interland Motors Limited (2010) ZR 37** and **Chick Masters Limited and Another v Investrust Bank Plc Appeal No. 74 of 2024**, which defined abuse of court process and highlighted the importance of determining whether a claim is vexatious, scurrilous, or obviously ill-founded.

7. COUNSELS SUBMISSIONS AT THE HEARING OR THE APPEAL

At the hearing of the appeal on 8th April 2023, Mr. Mulenga, on behalf of the appellant, submitted that the appellant would rely on the grounds of appeal and heads of argument filed in this court on 8th June 2022. Counsel argued that the Notice of Appeal filed before the Lands Tribunal was irregular and that there was another matter before the High Court (2015/HP/1704) related to the same parties and property.

In response, Mr. Moshosho, Counsel for the 1st respondent, relied on the heads of argument filed on 15th June 2022. Counsel submitted that the aspect of leave was determined on page 4 of the record of appeal, which explains how leave was obtained

on page 42 of the record. Counsel argued that the matter in 2015/HP/1704 was not determined, so there was no res judicator.

Regarding grounds 2, 4, and 5, Counsel submitted that these were curable defects and required the court to take judicial notice that the 1st respondent's Certificate of Title still subsists. Counsel urged the court to uphold the decision of the Tribunal, as the abuse of court process raised by the appellant is unfounded and without merit. Counsel further submitted that the Tribunal was on firm ground when it stayed the proceedings until costs were paid.

In reply, Mr. Mulenga submitted the leave to appeal out of time-related to a matter under Cause LAT/8/2016 and not LAT/9/2017. Counsel argued that if there were any typographical errors, the Tribunal would have corrected.

8. CONSIDERATION OF THE APPEAL, DECISION AND VERDICT

I have carefully considered the arguments and submissions presented by both parties in the context of the Lands Tribunal's Ruling and the grounds of appeal. My

consideration begins with the first ground of appeal, which invites me to determine whether the 1st respondent's Notice of Appeal was statute-barred.

The appellant contends that the 1st respondent's Notice of Appeal was filed outside the 30-day time limit specified in Rule 3(2) of the Lands Tribunal Rules. The 1st respondent's Notice of Appeal was filed on March 3, 2017, more than 17 months after the decision was made on September 24, 2015. The 1st respondent's claim of obtaining leave to file out of time is not supported by the record.

Citing **Twampane v Msorti (SCZ 20 of 2011)**, I emphasize the importance of adhering to the Rules of Court to ensure orderly and expeditious proceedings. Given the significant delay and lack of justification, I find that the 1st respondent's appeal was indeed statute-barred.

The appeal succeeds on Ground 1. The 1st respondent's Notice of Appeal was filed out of time without leave, and the Lands Tribunal erred in allowing the amended Notice of Appeal.

Given the decision on Ground 1, I find it unnecessary to address Grounds 2, 3, and 4. The appeal is upheld, and the decision of the Lands Tribunal is set aside due to the 1st respondent's Notice of Appeal being statute-barred and filed without leave, to file out of time.

Each party shall bear its costs.

DELIVERED this^{22nd} day of April 2025 at Lusaka.

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JUSTICE G. MILIMO- SALASINI
G M SALASINI
HIGH COURT JUDGE
COURT 25067, LUSAKA