

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

**2022/HP/0388**

*(Civil Jurisdiction)*

**BETWEEN:**

**JANE KABELENGA**

**AND**

**JASON MBEWE**

**MATILDA TEMBO**



**PLAINTIFF**

**1<sup>ST</sup> DEFENDANT**

**2<sup>ND</sup> DEFENDANT**

***BEFORE THE HONOURABLE LADY JUSTICE P. K. YANGAILO, IN  
OPEN COURT, ON 23<sup>RD</sup> MAY AND 11<sup>TH</sup> NOVEMBER, 2024.***

*For the Plaintiff: Mr. M. Ntanda – Reagan Blankfein Gates Legal  
Practitioners.*

*For the 1<sup>st</sup> Defendant: No Appearance.*

*For the 2<sup>nd</sup> Defendant: Mr. M. Kachinga – Dzekedzeke and Company.*

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## **JUDGMENT**

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**CASES REFERRED TO:**

1. *Chilufya v Chrispin Hahuwa Kangunda – SCZ No. 29 of 1999;*
2. *Magic Carpet Travel and Tours v Zambia National Commercial Bank Limited (1999) Z.R. 61;*
3. *The Rating Valuation Consortium and D. W. Zyambo and Associates (Suing as a firm) v The Lusaka City Council and Zambia National Tender Board – SCZ Selected Judgment No. 13 of 2004;*
4. *Zambia Railways Limited v Pauline S Mundia, Brian Sialumba (2008) Vol. 1 Z.R. 287 (SC);*

5. *Anti-Corruption Commission v Barnet Development Corporation Limited (2008) Vol. 1 Z.R. 69;*
6. *Gondwe v Ngwira – SCZ Appeal No. 37 of 2015;*
7. *Lonrho Cotton Limited v Mukuba textiles Limited (2002) Z.R. 43;*
8. *Lubungu v Kapango and Others – SCZ Judgment No. 16 of 2016; and*
9. *J.Z. Care Hire v Malvin Chala and Another – SCZ Judgment No. 26 of 2002.*

**LEGISLATION REFERRED TO:**

1. *The Lands and Deeds Registry Act, Chapter 185, Volume 12 of the Laws of Zambia*

**OTHER WORKS REFERRED TO:**

1. *John McGhee, Edmund Henry Turner Snell, Snell’s Equity, 34<sup>th</sup> Edition, Sweet & Maxwell; and*
2. *Hodge M. Malek, Phipson on Evidence, 17<sup>th</sup> Edition, (Thomson Reuters (Legal) Limited 2010).*

**1. INTRODUCTION**

1.1 The Record herein was re-allocated to this Court on 24<sup>th</sup> January, 2024, following the departure of Justice T. I. Katanekwa. A perusal of the Record revealed that Justice Katanekwa had scheduled the matter for trial. Accordingly, I called the Parties for a Status Conference on 18<sup>th</sup> March, 2024, where it was ascertained that the Parties were ready to proceed to trial. Trial commenced on 23<sup>rd</sup> May, 2024, at 09:30 hours.

1.2 The Plaintiff, Jane Kabelenga, claims that she is the legal owner of Plot No. F/32a/E/2/1867, Chongwe, Lusaka (“Subject Property”). She has alleged that the Defendants, Jason Mbewe and Matilda Tembo, have encroached on the Subject Property and that all efforts to remove them from the Subject Property have been futile.

- 1.3 On the other hand, the 2<sup>nd</sup> Defendant alleges that the 1<sup>st</sup> Defendant is the one that was offered the Subject Property by the Ministry of Lands and legally sold the Subject Property to her. She has thus counter claimed that the Subject Property was lawfully offered to the 1<sup>st</sup> Defendant.
- 1.4 Accordingly, this Judgment is in respect of the Plaintiff's claims against the Defendants and the counter claim by the 2<sup>nd</sup> Defendant.

## **2. BACKGROUND**

- 2.1 The genesis of this matter, as ascertained from the pleadings, is that the Plaintiff was offered the Subject Property by Ministry of Lands, where she started developing structures. Subsequently, she went to the village to visit her sick mother. When she returned from the village, she found that the Defendants had demolished her structures on the Subject Property.
- 2.2 The 2<sup>nd</sup> Defendant claims that she legally bought the Subject Property from the 1<sup>st</sup> Defendant, who was lawfully offered the Subject Property by the Ministry of Lands.
- 2.3 It is against this background that the Plaintiff launched this suit against the Defendants.

## **3. PLEADINGS**

- 3.1 On 15<sup>th</sup> May, 2022, the Plaintiff issued a Writ of Summons claiming the following reliefs: -

- (i) *A declaration that the Plaintiff is the legal and bona fide owner of Plot No. namely F32a/F/2/1867, Chongwe Area in the District of Lusaka and in the City and Province of Lusaka in the Republic of Zambia.*
- (ii) *A declaration that the Defendants have encroached on the Plaintiff's Plot No. F32a/F/2/1867, Chongwe Area in the District of Lusaka and in the City and Province of Lusaka in the Republic of Zambia.*
- (iii) *An Order that the Plaintiff be granted vacant possession of Plot No. F32a/F/2/1867, Chongwe Area in the District of Lusaka and in the City and Province of Lusaka in the Republic of Zambia.*
- (iv) *Damages for encroachment of Plot No. F32a/F/2/1867, Chongwe Area in the District of Lusaka and in the City and Province of Lusaka in the Republic of Zambia.*
- (v) *Damages for inconvenience.*
- (vi) *Interest.*
- (vii) *Any other relief the Court may deem fit.*

3.2 The Writ of Summons was accompanied by Statement of Claim, in which the Plaintiff avers, *inter alia*, that on 12<sup>th</sup> September, 2011, she was offered the Subject Property by the Ministry of Lands, where she started developing.

- 3.3 It was further averred that when the Plaintiff returned from the village where she had gone to see her sick mother, she found that the Defendants had demolished the structure that she had erected, without her knowledge or consent, and erected a new building. The Plaintiff reported the matter to Chelston Police Station and the two Defendants were put in custody for criminal trespass.
- 3.4 The Plaintiff also reported the matter to Ministry of Lands, by way of writing a complaint letter addressed to the Commissioner of Lands. The Ministry of Lands made its finding that the Plaintiff is the legal owner of the Subject Property.
- 3.5 It was further stated that the Taskforce, through its Secretary on Land Allocations, on 12<sup>th</sup> August, 2015, informed the Defendants and Chelston Police Station of its findings stating that the Plaintiff is the legal owner of the Subject Property. Accordingly, the Police Officer who was dealing with the issue instructed the Defendants not to go back to the Subject Property.
- 3.6 The Plaintiff asserted that in disregard of the findings by Ministry of Lands and Police instructions, the Defendants continued to build on the Subject Property and started threatening to kill the Plaintiff and her family.
- 3.7 The Plaintiff was finally issued with a Certificate of Title by Ministry of Lands on 21<sup>st</sup> December, 2017, numbered

39757. She tried to engage the Defendants several times to try and settle the matter amicably but all her efforts have proved futile.

- 3.8 The 2<sup>nd</sup> Defendant filed her Defence and Counter Claim on 4<sup>th</sup> April, 2022, in which she averred, *inter alia*, that the Plaintiff put up a structure at the Subject Property that she had purchased from the 1<sup>st</sup> Defendant. She admitted that the Plaintiff reported her and the 1<sup>st</sup> Defendant to the Police, where the 1<sup>st</sup> Defendant produced an Offer Letter for the Subject Property.
- 3.9 The 2<sup>nd</sup> Defendant denied that the Plaintiff was threatened. She averred that the Plaintiff fraudulently obtained a second Offer Letter and subsequently a Certificate of Title, on the basis that the 1<sup>st</sup> Defendant's Offer Letter, was obtained earlier than the Plaintiff's Offer Letter, and remained effective since it had not been cancelled by the Ministry of Lands.
- 3.10 The 2<sup>nd</sup> Defendant stated that the Plaintiff is not entitled to any reliefs sought and denied each and every allegation contained in the Statement of Claim.
- 3.11 By her Counter-Claim, the 2<sup>nd</sup> Defendant averred that she bought the Subject Property from the 1<sup>st</sup> Defendant who had valid documents. She further averred that the Certificate of Title issued to the Plaintiff by the Ministry of Lands relating to the Subject Property was fraudulently

and irregularly obtained as the Plaintiff had two Offer Letters and did not disclose the existence of the first Offer Letter for the 1<sup>st</sup> Defendant relating to the Subject Property.

3.12 The 2<sup>nd</sup> Defendant set out the particulars of fraud as follows: -

- (i) *The Plaintiff obtained two Offer Letters relating to property number F/32a/E/2/1867 in unknown circumstances.*
- (ii) *The 1<sup>st</sup> Defendant was the first to be offered property number F/32a/E/2/1867 and the offer letter remained valid even at the time the Plaintiff was given other offer letters in unclear circumstances.*
- (iii) *The Plaintiff obtained a Certificate of Title without disclosing to the Ministry of Lands that the 1<sup>st</sup> Defendant was earlier on issued with an offer letter relating to property number F/32a/E/2/1867.*

3.13 The 2<sup>nd</sup> Defendant, therefore, Counter Claims as follows: -

- (i) *An Order that property number F/32a/E/2/1867 was lawfully offered to the 1<sup>st</sup> Defendant after the 1<sup>st</sup> Defendant's payment of all fees relating to the offer.*
- (ii) *A declaration that the 1<sup>st</sup> Defendant properly sold the said property to the 2<sup>nd</sup> Defendant.*

(iii) *A declaration that the action by the Plaintiff to obtain two offer letters and a Certificate of Title was fraudulently done.*

(iv) *A declaration that the structure that has been erected was legally done.*

3.14 By Reply and Defence to Counter Claim, the Plaintiff asserts that the Offer Letter obtained by the 1<sup>st</sup> Defendant was cancelled by a letter issued by the Taskforce/Commissioner of Lands upon their investigations and notice to this effect given thereof. She further averred that the Ministry of Lands then issued a Certified Certificate of Title upon its findings that the Plaintiff was and is the legal owner of the piece of land in question.

3.15 The Plaintiff asserted that she is entitled to all the reliefs stated in the Statement of Claim as the Defendants have encroached on the Plaintiff's Subject Property by developing on it even after being notified that their Letter of Offer had been cancelled.

3.16 By her Defence to the Counter-Claim, the Plaintiff averred that the 2<sup>nd</sup> Defendant was not the legal owner of the Subject Property as a Certificate of Title was issued to the Plaintiff.

3.17 The Plaintiff denied that the Certificate of Title issued to her relating to the Subject Property was fraudulently

issued to her by the Ministry of Lands as the procedure to acquire land was followed and that the fake Offer Letter obtained by the 1<sup>st</sup> Defendant was cancelled.

3.18 The Plaintiff affirmed that the 2<sup>nd</sup> Defendant is not entitled to any reliefs sought, as the 1<sup>st</sup> Defendant was in fact and at law not the legal owner of the Subject Property.

3.19 The 1<sup>st</sup> Defendant did not contest this suit as he neither entered Appearance nor filed his Defence herein.

#### **4. EVIDENCE AT TRIAL**

4.1 At trial, **PW1** was **Jane Kabelenga**, the Plaintiff herein. By her Witness Statement filed on 6<sup>th</sup> May, 2024, which was admitted into evidence, PW1 testified, *inter alia*, that on 12<sup>th</sup> September, 2011, she was offered the Subject Property by the Ministry of Lands. A copy of the Offer Letter was produced at pages 2 to 3 of her Bundle of Documents.

4.2 PW1 stated that she started developing the Subject Property. Thereafter, she travelled to the village to visit her sick mother. On her return to Lusaka, she discovered that the Defendants had demolished the structure that she had erected without her knowledge and/or consent and erected a new building.

4.3 She reported the matter to Chelston Police Station. The Defendants were arrested and put in custody for Criminal

Trespass. She also decided to report the matter to the Ministry of Lands, by way of writing a complaint letter, which was addressed to the Commissioner of Lands. A copy of the said complaint letter appears at page 4 of her Bundle of Documents.

- 4.4 PW1 avowed that the Ministry of Lands made its findings that she is the legal owner of the Subject Property. Further, the Task Force through its Secretary on Land Allocation, on 12<sup>th</sup> August, 2015, wrote a letter copied to the Defendants and Chelston Police Station, in which it made its findings that she is the legal owner of the Subject Property. A copy of the said letter was produced at page 5 of her Bundle of Documents.
- 4.5 Following the Ministry of Lands' findings, the Police Officer who was dealing with the issue instructed the 2<sup>nd</sup> Defendant not go back to the Subject Property since the Ministry of Lands had stated that the Plaintiff is the Legal Owner. Disregarding the findings of the Ministry of Lands and Police's instructions, the 2<sup>nd</sup> Defendant continued to build on the Subject Property and started threatening PW1's life and those of her family members.
- 4.6 It was affirmed that after the Ministry of Lands' findings, PW1 was further advised to re-apply for the Subject Property, which she did, and was issued another Offer Letter. Copies of the Invitation to Treat, GRZ receipt and

Offer Letter were produced on pages 6, 7 and 8 of her Bundle of Documents.

- 4.7 PW1 testified that she was issued with the Certificate of Title by the Ministry of Lands on 21<sup>st</sup> December, 2017, numbered 397757. She tried to engage the Defendants several times to try and settle the matter amicably but all her efforts have proven futile. A copy of the Certificate of Title was produced at pages 12 to 19 of the Plaintiff's Bundle of Documents.
- 4.8 PW1 stated that she has always been paying Ground Rent for the Subject Property. A copy of the Statement from the Ministry of Lands and Service Charges were produced at pages 9 and 10 of her Bundle of Documents.
- 4.9 When PW1 was cross examined, she testified, *inter alia*, that the 1<sup>st</sup> Defendant is alive and that she had served him with the Court process. She stated that pages 4 to 5 of the 2<sup>nd</sup> Defendant's Bundle of Documents contain a Contract of Sale between the 2<sup>nd</sup> Defendant and the 1<sup>st</sup> Defendant herein.
- 4.10 PW1 stated that the Ministry of Lands offered her the Subject Property. She referred the Court to page 2 of the Plaintiff's Bundle of Documents and testified that the document is a copy of the first Offer Letter that she received dated 12<sup>th</sup> September, 2011, which was generated at 11:19 hours.

- 4.11 PW1 avowed that she had a receipt that showed that she had accepted the Offer but conceded that it was not before Court. She further conceded that the 1<sup>st</sup> Defendant paid and accepted the Offer. She also conceded that the 1<sup>st</sup> Defendant was also paying Ground Rent for the Subject Property and stated that they were both paying Ground Rent for the Subject Property.
- 4.12 PW1 testified that she had a letter from the Ministry of Lands cancelling her first Offer and that it was produced at page 5 of the Plaintiff's Bundle of Documents. When shown page 5 of the Plaintiff's Bundle of Documents, she conceded that there was nothing on the document to show that the Offer Letter was cancelled.
- 4.13 When PW1 was referred to page 1 of the 2<sup>nd</sup> Defendant's Bundle of Documents, she stated that the document is a copy of the Offer Letter given to the 1<sup>st</sup> Defendant and that it was generated at 08:00 hours. She further stated that her Offer was generated at 11:19 hours.
- 4.14 PW1 insisted that 1<sup>st</sup> Defendant's Offer Letter is not the one that was generated first, despite the Offer Letters being generated on the same date. However, she conceded that if the said Offer Letters were generated on the same day, then the one generated at 08:15 hours was the first one to be generated.

- 4.15 PW1 referred to the document on page 8 of the Plaintiff's Bundle of Documents and stated that it is the second Offer Letter that was generated for her on 23<sup>rd</sup> March, 2017. She further stated that the Certificate of Title that she holds was issued as a result of the said Offer Letter at page 8.
- 4.16 PW1 testified that the letter at page 4 of the Plaintiff's Bundle of Documents is her letter of complaint that she wrote to the Commissioner of Lands. She stated that she did not receive a letter of acknowledgement from the Commissioner of Lands, but that the Ministry of Lands responded to her complaint verbally.
- 4.17 It was her further testimony that the document on page 9 of the Plaintiff's Bundle of Documents is a Statement for Ground Rent in her name. She stated that page 10 of the 2<sup>nd</sup> Defendant's Bundle of Documents is a payment receipt for Ground Rent in the 1<sup>st</sup> Defendant's name, dated 16<sup>th</sup> February, 2017. She conceded that during this period, she did not have the Certificate of Title to the Subject Property, but stated that it was being processed.
- 4.18 PW1 avowed that she is aware that conclusive ownership of land is by Title Deed. She conceded that she had the Defendants locked up when she had no Title Deed, but stated that it was in the process of being issued. She further conceded that the findings from the Ministry of Lands are not before Court but stated that she had a Witness from the Task Force.

- 4.19 In re-examination, PW1 stated that she had served the Court process on the 1<sup>st</sup> Defendant, but he refused to accept the documents stating that he had been removed from the proceedings and had no case with her.
- 4.20 **PW2** was **Felix Haliyonda**, who is the Principal Registrar at the Lands and Deeds Registry, at Ministry of Lands and Natural Resources. He testified, *inter alia*, that his duties included registration of documents, issuance of Certificates of Title to land and maintenance of the Land Register. He stated that his office received a *Subpoena* relating to the Subject Property and he was informed that it was him that had signed the Certificate of Title subject of these proceedings.
- 4.21 PW2 avowed that he proceeded to access the Lands Register relating to the Subject Property, which Lands Register is showing that the Subject Property is owned by the Plaintiff, whose Title was issued on 21<sup>st</sup> December, 2017. PW2 referred to pages 12 to 14 of the Plaintiff's Bundle of Documents, consisting of a copy of the original Title Deed that had been shown to the Court.
- 4.22 In cross-examination, PW2 testified that he is a Principal Registrar at the Lands and Deeds Registry Department and that he was appointed Principal Registrar on 21<sup>st</sup> March, 2022. He stated that the processing of the Certificate of Title commenced before he became Principal Registrar.

- 4.23 He asserted that it was possible for the Ministry of Lands to issue two Offer Letters and that when this happens, the Ministry of Lands takes corrective measures. PW2 conceded that he had not brought anything before this Court to show that the Ministry of Lands took corrective measures in this case.
- 4.24 When referred to the 2<sup>nd</sup> Defendant's Bundle of Documents, at pages 8, 9 and 10, PW2 testified that the documents consist of a Ground Bill relating to the Subject Property, which was issued to the 1<sup>st</sup> Defendant. He further testified that the other two documents at pages 9 and 10 are Ground Rent receipts where payment was made by the 1<sup>st</sup> Defendant. He conceded that these documents confirm that the Ministry of Lands was receiving money from the 1<sup>st</sup> Defendant.
- 4.25 In re-examination, PW2 testified, *inter alia*, that he is not competent to give evidence in relation to Ground Rent payments as that falls under the Lands Department, which is headed by the Commissioner of Lands.
- 4.26 **PW3** was **Chisungu Kasali**, who is employed by the Ministry of Lands and Natural Resources, at the Lands Department. He testified, *inter alia*, that he is a Ground Rent Collector, under Estates and Valuation. He stated that he manages the National Property Register in relation to Ground Rent, Property Inspections for Client Status, Revenue Collection and any other duties assigned to him.

- 4.27 PW3 testified that the Subject Property is located in Obama area of Chongwe District. He stated that he had conducted an inspection of the Subject Property in the presence of the Plaintiff herein. He further stated that he visited the Subject Property with the Plaintiff and the findings revealed that the Plaintiff's foundation had been demolished by unknown persons at the time of inspection. An interview with the neighbours revealed that there was a new developer that used to go on the Subject Property, whose name was unknown.
- 4.28 PW3 stated that his Records on the system revealed that the Subject Property was on Offer to 1<sup>st</sup> Defendant at the time of inspection. However, there was also another Offer Letter in the name of the Plaintiff. He stated that a report of his findings was submitted to Estates and Valuations.
- 4.29 PW3 affirmed that at the time of his inspection, there was a Task Force on Land, which was also looking at the properties in Obama. He stated that he referred to the list that came out of the Obama Economic Social Survey, which indicated the names of individuals that were on the ground and the Plaintiff was one of those individuals.
- 4.30 PW3 testified that he was not aware of the 1<sup>st</sup> Defendant being on the said list and added that the Offer Letters are computer generated.

- 4.31 In cross examination, PW3 testified, *inter alia*, that his duties include property inspection and that there was an Offer to the 1<sup>st</sup> Defendant on the documents that he received.
- 4.32 PW3 conceded that the Report that he had submitted was not before Court and therefore, there was no way for the Court to be aware of what was in the Report. PW3 stated that the list that he had referred to was prepared by the team that conducted the Social Economic Survey of Obama area, which was not in his custody.
- 4.33 PW3 avowed that he could not confirm if the Offer to the 1<sup>st</sup> Defendant was generated earlier than the Plaintiff's Offer, nor could he confirm that the Ministry of Lands gets into situations where two persons are offered the same land.
- 4.34 PW3 affirmed that when he inspected the Subject Property, he did not check at the Ministry of Lands to determine whether the unknown developer had an Offer to the Subject Property. He stated that the system at Ministry of Lands indicated that there was an Offer to the 1<sup>st</sup> Defendant. He also stated that there were no records of the 1<sup>st</sup> Defendant on the physical file, and he did not engage him.
- 4.35 There was no re-examination conducted this marked the close of the Plaintiff's case.

- 4.36 **DW1** was **Matilda Tembo**, the 2<sup>nd</sup> Defendant herein, who resides at Obama 1867, Lusaka (the Subject Property). By her Witness Statement, which was admitted into evidence, the 2<sup>nd</sup> Defendant testified, *inter alia*, that by a written contract dated 26<sup>th</sup> June, 2013, the Subject Property was sold to her by the 1<sup>st</sup> Defendant. A copy of the Contract of Sale was produced at pages 4 to 5 of the 2<sup>nd</sup> Defendant's Bundle of Documents.
- 4.37 She asserted that the 1<sup>st</sup> Defendant also provided her with the Offer Letter from Ministry of Lands for the Subject Property, together with a receipt of ZMW3,117.22, paid towards the fees set out in the Offer Letter. A copy of the said receipt was produced at page 3 of the 2<sup>nd</sup> Defendant's Bundle of Documents.
- 4.38 DW1 stated that she took possession of the Subject Property and started clearing it in readiness for construction of a house. She further stated that she was approached by the Plaintiff, who alleged that DW1 was trespassing on the Subject Property. The Plaintiff reported DW1 to Chelston Police for criminal trespass on the Subject Property.
- 4.39 It was her testimony that the 1<sup>st</sup> Defendant was also summoned to appear before Chelston Police. While at the Chelston Police Station, the 1<sup>st</sup> Defendant challenged the Plaintiff to produce her Offer Letter from the Ministry of Lands after the 1<sup>st</sup> Defendant produced the Offer Letter

issued to him by the Ministry of Lands, which was generated on 12<sup>th</sup> September, 2011, at 08:40 hours. A copy of the said Offer Letter was produced at page 1 of the 2<sup>nd</sup> Defendant's Bundle of Documents.

4.40 According to DW1's testimony, the Plaintiff failed to produce the Offer Letter and instead, the Police forcefully took away the 1<sup>st</sup> Defendant's Offer Letter from him and both the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were detained in Police cells. After being released from Police Custody, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were shown an Offer Letter, dated 12<sup>th</sup> September, 2012, generated at 11:19 hours by the Plaintiff. A copy of the said Offer Letter was produced at pages 13 and 14 of the 2<sup>nd</sup> Defendant's Bundle of Documents.

4.41 DW1 stated that the 1<sup>st</sup> Defendant raised doubts on the authenticity of the Offer Letter produced by the Plaintiff and DW1 challenged the same in her Defence under Cause Number 2019/HP/1612, which matter was later dismissed for Want of Prosecution.

4.42 It was DW1's testimony that upon purchasing the Subject Property, she continued paying Land Rates to the Ministry of Lands based on the Subject Property. As proof of this assertion, DW1 referred to copies of documents produced on pages 6, 8, 9 and 10 of the 2<sup>nd</sup> Defendant's Bundle of Documents.

- 4.43 DW1 avowed that she then asked the 1<sup>st</sup> Defendant to commence the process of obtaining the Certificate of Title and the 1<sup>st</sup> Defendant lodged Survey Diagrams with the Ministry of Lands. DW1 referred the Court to page 7 of the 2<sup>nd</sup> Defendant's Bundle of Documents.
- 4.44 It was DW1's testimony that sometime in the year 2017, and while in the process of obtaining title to the Subject Property, the file at the Ministry of Lands inexplicably went missing and she later learnt that a Certificate of Title had been issued to the Plaintiff. DW1 stated that she had an issue regarding how the title was issued by the Commissioner of Lands to the Plaintiff when the 1<sup>st</sup> Defendant was the first person in time to be offered the Subject Property, which he accepted and paid for.
- 4.45 DW1 testified that she is the *bona fide* purchaser for value of the Subject Property as she did not know that the Plaintiff had an interest in the Subject Property, if at all and she has now built a house on the Subject Property, which she is currently staying in. DW1 referred the Court to pages 11 and 12 of the 2<sup>nd</sup> Defendant's Bundle of Documents, depicting the house that she has built on the Subject Property.
- 4.46 DW1 further asserted that she bought the Subject Property from the 1<sup>st</sup> Defendant, free from any encumbrances.

- 4.47 In cross examination, when DW1 was referred to page 4 of the 2<sup>nd</sup> Defendant's Bundle of Documents, containing a Contract of Sale, that she executed with the 1<sup>st</sup> Defendant, DW1 stated that she had gone to the Ministry of Lands to verify who owns the Subject Property as can be seen from a printout that she obtained, at page 6 of the 2<sup>nd</sup> Defendant's Bundle of Documents. When shown page 6 of the 2<sup>nd</sup> Defendant's Bundle of Documents, DW1 conceded that the printout was not before Court and that she never checked for any encumbrances on the Subject Property.
- 4.48 When DW1 was referred to page 1 of the 2<sup>nd</sup> Defendant's Bundle of Documents, she stated that it contained an Offer Letter issued to the 1<sup>st</sup> Defendant, indicating that the payments were to be made within 30 days. She further stated that the Offer Letter is dated 12<sup>th</sup> September, 2011.
- 4.49 DW1 was referred to page 3 of the 2<sup>nd</sup> Defendant's Bundle of Documents and she stated that the document is the receipt dated 1<sup>st</sup> October, 2013, in respect of the fees indicated in the Offer Letter. She conceded that the fees were paid after the Offer had expired and when the Offer Letter was no longer valid.
- 4.50 DW1 was referred to pages 1 and 2 of the 2<sup>nd</sup> Defendant's Bundle of Documents. She testified that the top right corner of page 1 shows that the Offer Letter to the 1<sup>st</sup> Defendant was generated on 12<sup>th</sup> September, 2011 at 8:4

AM, while the bottom of the said Offer Letter on page 2 shows that it was generated on 12<sup>th</sup> September, 2011, at 8:04 AM. She conceded that 8:4 AM and 8:04 AM are not the same. She also conceded that it is possible that the documents were tempered with since the times shown are not the same.

4.51 DW1 testified that the Offer Letter on page 2 of the Plaintiff's Bundle of Documents is the Offer Letter issued to the Plaintiff and that the top right corner and bottom of the Offer Letter indicates 12<sup>th</sup> September, 2011, 11:19 am. She conceded that there were no inconsistencies in the said Offer Letter.

4.52 When DW1 was referred to paragraph 3 of her Contract of Sale shown at page 5 of the 2<sup>nd</sup> Defendant's Bundle of Documents, DW1 conceded that the accompanying particulars of the property subject of that Contract of Sale were not stated, but denied that the Contract of Sale related to another property.

4.53 When DW1 was referred to paragraph 14 of her Witness Statement, which states that she had asked the 1<sup>st</sup> Defendant to commence the process of obtaining the Certificate of Title, DW1 stated that the 1<sup>st</sup> Defendant proceeded to lodge a Survey Diagram, which is shown at page 7 of the 2<sup>nd</sup> Defendant's Bundle of Documents and shows that the 1<sup>st</sup> Defendant lodged the said Survey Diagram. When shown page 7 of the 2<sup>nd</sup> Defendant's

Bundle of Documents, DW1 conceded that the said document does not have the name of the 1<sup>st</sup> Defendant. DW1 insisted that there was a Survey Diagram in her Bundle of Documents, but when she perused the said Bundle of Documents, she conceded that there is no Survey Diagram on the Record and that there is no receipt from the Surveyor.

4.54 DW1 testified that after she and the 1<sup>st</sup> Defendant were locked up in cells, because there was no written confirmation from the 1<sup>st</sup> Defendant that he is the owner of the Subject Property. She agreed that the 1<sup>st</sup> Defendant was not before Court.

4.55 There was no re-examination conducted and that marked the close of the 2<sup>nd</sup> Defendant's case.

## **5.0 WRITTEN SUBMISSIONS**

5.1 The Parties herein were given a time frame within which to file herein their written Submissions. At the time of writing this Judgment, only the 2<sup>nd</sup> Defendant had filed her Submissions herein.

5.2 The 2<sup>nd</sup> Defendant filed her Submissions on 18<sup>th</sup> June, 2024, in which Counsel for the 2<sup>nd</sup> Defendant referred to the doctrine of *First in Time is the First in Right* and cited from the learned authors of **Snell's Equity**<sup>1</sup> as follows: -

***“At law, as in equity, the basic rule is that the Estate and interests primarily rank in order in which they are***

*created. In equity, the result is expressed more directly in terms of temporal priority. Qui prior expressed more directly in terms of temporal priority. Qui prior est tempore potior est jure: he who is earlier in time is stronger in law... where there were two competing equitable interests, the general rule of equity is that the person whose equity attached to the property first will be entitled to priority over the other. Where equities are equal, and neither claimant has legal Estate, the first in time prevails, since: every conveyance of an equitable interest is an innocent conveyance, that is to say, the grant of a person entitled merely in equity possess only that which he is justly entitled to and no more.”*

- 5.3 Based on the foregoing, it was submitted that in the exhibited Letter of Offer for the 1<sup>st</sup> Defendant, the 1<sup>st</sup> Defendant’s Offer Letter was first in time as compared to that of the Plaintiff.
- 5.4 Counsel submitted that the Certificate of Title is conclusive evidence as to ownership in the absence of fraud or misrepresentation. It was stated that although **Section 33** of **The Lands and Deeds Registry Act**<sup>1</sup>, states that a Certificate of Title shall be conclusive evidence as to land ownership, the same can be challenged on account of fraud or misrepresentation.
- 5.5 It was asserted that the Plaintiff has in her possession two (2) Offer Letters, issued at different times, without any evidence that the first Offer Letter was withdrawn from her

by Ministry of Lands. It was, therefore, contended that there is an element of fraud in the manner the Plaintiff was issued with a Certificate of Title while holding on to two Offer Letters. Reliance was placed on the case of **Chilufya v Chrispin Haluwa Kangunda**<sup>1</sup>, in which the Supreme Court held that fraud can vitiate the Certificate of Title once issued and where fraud has been pleaded and proved.

5.6 On the aspect of innocent purchaser for value, Counsel submitted that the 2<sup>nd</sup> Defendant herein is a *bona fide* purchaser for value without notice. It was contended that she was not privy to whatever transpired between the 1<sup>st</sup> Defendant and the Plaintiff and could not have known that the Plaintiff had a claim in the Subject Property.

5.7 Counsel cited the case of **Magic Carpet Travel and Tours v Zambia National Commercial Bank Limited**<sup>2</sup>, where it was held, *inter alia*, that: -

***“A person who acquires title to land in the absence of any encumbrances who does so without having notice of prior fraudulent transaction acquires good title to the land.”***

5.8 It was submitted that the 2<sup>nd</sup> Defendant was sold the property in issue by the 1<sup>st</sup> Defendant, as shown by the Contract of Sale, at pages 4 and 5 of the 2<sup>nd</sup> Defendant’s Bundle of Documents. Counsel cited the case of **The Rating Valuation Consortium and D.W Zyambo and Associates (Suing as a firm) v The Lusaka City Council and Zambia National Tender Board**<sup>3</sup>, where it was held

that the act of signing the contract between the Appellant and the 1<sup>st</sup> Respondent is sufficient evidence of the offer and acceptance.

5.9 Counsel submitted that the 2<sup>nd</sup> Defendant has since fully developed the Subject Property as evidenced at pages 11 and 12 of the 2<sup>nd</sup> Defendant's Bundle of Documents.

5.10 Counsel prayed for this Court to grant the 2<sup>nd</sup> Defendant the reliefs as prayed for in her Defence and Counter-Claim.

## **6 CONSIDERATION AND DECISION OF THE COURT**

6.1 I have considered the pleadings and the evidence adduced before me. I have also considered the 2<sup>nd</sup> Defendant's Submissions and authorities cited, for which I am grateful to Counsel for the 2<sup>nd</sup> Defendant.

6.2 The Plaintiff claims for a declaration that the Plaintiff is the legal and *bona fide* owner of the Subject Property, a declaration that the Defendants have encroached on the Subject Property, an Order that the Plaintiff be granted vacant possession of the Subject Property, an Order that the Plaintiff be granted vacant possession of the Subject Property, Damages for encroachment of the Subject Property, Damages for inconvenience, Interest and any other relief the Court may deem fit.

6.3 On the other hand, the 2<sup>nd</sup> Defendant counter-claims for an Order that the Subject Property was lawfully offered to

the 1<sup>st</sup> Defendant after the 1<sup>st</sup> Defendant's payment of all fees relating to the Offer, a declaration that the 1<sup>st</sup> Defendant properly sold the Subject Property to the 2<sup>nd</sup> Defendant, a declaration that the action by the Plaintiff to obtain two Offer Letters and a Certificate of Title was fraudulently done, and a declaration that the structure that has been erected was legally done.

- 6.4 It is settled law that a person who commences a civil action must prove his case against the Defendant in order to succeed in his claim. To that effect, the learned authors of *Phipson on Evidence*<sup>2</sup>, in **paragraph 6-06**, at **page 151**, state the following regarding the burden of proof in civil cases: -

***“So far as the persuasive burden is concerned, the burden of proof lies upon the party who substantially asserts the affirmative of the issues. If, when the evidence is adduced by all parties, the party who has the burden has not discharged it, the decision must be against him.”***

- 6.5 Additionally, the standard to which a Plaintiff should prove his case was discussed by the Supreme Court in the case of *Zambia Railways Limited v Pauline S Mundia, Brian Sialumba*<sup>4</sup> as follows: -

***“The standard of proof in a civil case is not as rigorous as the one obtaining in a criminal case. Simply stated, the proof required is on a balance of probability as opposed to beyond all reasonable doubt in a criminal case. The old adage is true that he who asserts a claim in a civil trial***

***must prove on a balance of probability that the other party is liable...”***

- 6.6 It is important to note that a Counter-Claim is in its nature a cross suit, an independent cause of action from that of the Plaintiff. The same expectation of the Plaintiff to prove its claim against the Defendant becomes the position and expectation of the Defendant to prove the Counter-Claim against the Plaintiff.
- 6.7 The Plaintiff alleges that on 12<sup>th</sup> September, 2011, she was offered the Subject Property by the Ministry of Lands. The Plaintiff alleges that she started developing the Subject Property. She further alleges that when returned from the village, she found that the Defendants had demolished the structure she had erected without her consent. The Plaintiff reported the matter to the Police and the Ministry of Lands, who determined that the Subject Property belonged to her. The Plaintiff was later issued with a Certificate of Title relating to the Subject Property.
- 6.8 On the other hand, the 2<sup>nd</sup> Defendant alleges that the 1<sup>st</sup> Defendant was offered the said Subject Property on 12<sup>th</sup> September, 2011. The 2<sup>nd</sup> Defendant further alleges that by a Contract of Sale between the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, the 1<sup>st</sup> Defendant sold the Subject Property to the 2<sup>nd</sup> Defendant. It is asserted that the Certificate of Title issued to the Plaintiff relating to the Subject Property was fraudulently and irregularly obtained on the basis that the

Plaintiff obtained two Offer Letters relating to the Subject Property in unknown circumstances.

6.9 On my analysis of the facts and evidence on record, it is not disputed that both the Plaintiff and 1<sup>st</sup> Defendant were offered the Subject Property. It is also not disputed that the Plaintiff was later issued with a Certificate of Title in respect of the Subject Property. What is challenged is the circumstances in which the Plaintiff was issued with a Certificate of Title. Therefore, the issues that arise for determination in this matter are as follows: -

- a. Whether the Plaintiff is entitled to a Declaration that she is the legal and *bona fide* owner of the Subject Property.
- b. Whether the 2<sup>nd</sup> Defendant is entitled to an Order that the Subject Property was lawfully offered to the 1<sup>st</sup> Defendant and a Declaration that the 1<sup>st</sup> Defendant properly sold the Subject Property to her.
- c. Whether the Plaintiff is entitled to Damages for encroachment and inconvenience.

6.10 I shall address the issues in the manner they have been identified above, starting with whether the Plaintiff herein is entitled to a Declaration that she is the legal and *bona fide* owner of the Subject Property. The Plaintiff asserts that on 12<sup>th</sup> September, 2011, she was offered the Subject Property by the Ministry of Lands and started developing

it. She stated that when she returned from the village, she found that the structure that she had built had been demolished by the Defendants.

6.11 Following a complaint, that she made to the Police and the Ministry of Lands, the Ministry of Lands through the Secretary of the Task Force on Land Allocation informed her of its findings that she is the legal owner of the Subject Property.

6.12 The Plaintiff asserted that she was advised to re-apply for the Subject Property which she did. Consequently, an Offer Letter was issued to her and later, a Certificate of Title was also issued to her.

6.13 To support her assertions, the Plaintiff produced a copy of her Offer Letter dated 12<sup>th</sup> September, 2011; a copy of an Offer Letter dated 23<sup>rd</sup> March, 2017; a copy of a letter allegedly sent to the Officer in Charge at Chelston Police Station from the Task Force on Land Allocation, dated 14<sup>th</sup> August, 2015; a Statement for the payment of Ground Rent; and a copy of the Certificate of Title issued to her.

6.14 In analysing the foregoing evidence produced by the Plaintiff, I shall begin by considering the Certificate of Title issued in relation to the Subject Property. In the case of ***Anti-Corruption Commission v Barnet Development Corporation Limited***<sup>5</sup>, it was held as follows: -

***“Under Section 33 of the Lands and Deeds Registry Act, a certificate of title is conclusive evidence of ownership of land by a holder of a certificate of title. However, under section 34 of the same Act, a certificate of title can be challenged and cancelled for fraud or reasons of impropriety in its acquisition.” (Court’s emphasis)***

6.15 From the foregoing authority, it is clear that a Certificate of Title once issued is conclusive evidence of ownership, but can be cancelled for fraud or reasons of impropriety in its acquisition. Therefore, in determining the validity of the Certificate of Title issued to the Plaintiff in relation to the Subject Property, I will proceed to consider whether the 2<sup>nd</sup> Defendant has proved her allegations of fraud or irregularity in the manner that the Plaintiff obtained the Certificate of Title.

6.16 The 2<sup>nd</sup> Defendant herein has alleged that the Certificate of Title issued in relation to the Subject Property was fraudulently issued on the basis that the Plaintiff obtained two Offer Letters relating to the same Subject Property and that she obtained a Certificate of Title without disclosing to the Ministry of Lands that the 1<sup>st</sup> Defendant was issued with an Offer Letter earlier than her.

6.17 In the case of ***Gondwe v Ngwira***<sup>6</sup>, the Court guided as follows on proving allegations of fraud: -

***“In civil cases, fraud must be proved to a higher standard than a mere balance of probabilities. Fraud usually takes***

***the form of a statement that is false or suppression of what is true.”***

6.18 From the foregoing, it is clear that the onus of proving fraud squarely lies on the person alleging it and that the burden of proof is deemed to be much higher than the ordinary balance of probabilities.

6.19 From my analysis of the 2<sup>nd</sup> Defendant's evidence on Record, I find that aside from stating that the Plaintiff obtained two Offer Letters in relation to the Subject Property, she has not demonstrated how the Plaintiff's possession of the said Offer Letters amounts to fraud. At trial, the 2<sup>nd</sup> Defendant merely asserted that after the copy of the 1<sup>st</sup> Defendant's Offer Letter was taken from her and the 1<sup>st</sup> Defendant at the Police Station where they were detained, the Plaintiff was issued a second Offer Letter in relation to the Subject Property. However, the 2<sup>nd</sup> Defendant has not led any further evidence to support her assertion that the 1<sup>st</sup> Defendant's Offer Letter was taken from him and how the issuance of a second Offer Letter to the Plaintiff amounted to fraud on the Plaintiff's part.

6.20 Further, the 2<sup>nd</sup> Defendant has not led evidence to show that the Plaintiff did not notify the Ministry of Lands that the Offer Letter issued to the 1<sup>st</sup> Defendant in relation to the Subject Property was issued earlier than hers and how this alleged non-disclosure amounted to a fraud. Therefore, I find that 2<sup>nd</sup> Defendant has not proved her

allegations of fraud in the manner the Plaintiff was issued the Offer Letters and the Certificate of Title in relation to the Subject Property. Consequently, the 2<sup>nd</sup> Defendant's Counter-Claim for a Declaration that the action by the Plaintiff to obtain two Offer Letters and a Certificate of Title was fraudulent, lacks merit and is accordingly dismissed.

6.21 This brings me to the consideration of whether there was any impropriety or irregularity in the manner that the Certificate of Title was issued to the Plaintiff. On my analysis of the evidence on Record, I note that the Plaintiff was issued with the first Offer Letter on 12<sup>th</sup> September, 2011, at 11:19 hours. I also note that there is no copy of any receipt of payment by the Plaintiff of the sum indicated on the said Offer Letter. Therefore, there is no cogent evidence on Record, to show that the Plaintiff herein accepted the first Offer Letter issued to her.

6.22 I note further that the 1<sup>st</sup> Defendant was issued with the Offer Letter in relation to the Subject Property on 12<sup>th</sup> September, 2011 at 08:04 hours, which time is earlier than 11:19 hours, being the time the Plaintiff's Offer Letter was issued. Therefore, in applying the "*First in time, first in right*" equitable principle, the 1<sup>st</sup> Defendant's Offer Letter ranked higher than that of the Plaintiff's first Offer Letter. Consequently, the Plaintiff's claim to the Subject Property on the basis of the first Offer Letter issued to her has no basis and is accordingly dismissed.

6.23 On my further analysis of the copy of the Offer Letter issued to the 1<sup>st</sup> Defendant, I note that clause 5 of the said Offer provides as follows: -

*“If the sums mentioned in paragraph 1 above are not paid and evidence of their payment produced to me within 30 days of this offer will be deemed to have lapsed and the FARM will forthwith be offered to some other suitable party.”*

6.24 The foregoing, in my view, provides a 30-day period within which the 1<sup>st</sup> Defendant was required to pay the consideration sum for the Offer of the Subject Property.

6.25 From my analysis of the 1<sup>st</sup> Defendant’s copy of the receipt issued in relation to the sum indicated on the Offer Letter, I find that the payment was made on 1<sup>st</sup> October, 2013. This was approximately 2 years after the Offer Letter relating to the Subject Property was issued to him. I note further that no evidence has been led by the Defendants to show that the 30-day period within which payment was to be made by the 1<sup>st</sup> Defendant had been waived by the Commissioner of Lands. This, in my view, entails that at the time the 1<sup>st</sup> Defendant made payment of the consideration sum, the said Offer had lapsed.

6.26 I am further of the view that the payment of the consideration sum by the 1<sup>st</sup> Defendant approximately two years after the stated period, did not restore the Offer of

the Subject Property to the 1<sup>st</sup> Defendant. Consequently, the 1<sup>st</sup> Defendant did not acquire any transferable interest in the Subject Property.

6.27 This brings me to the consideration of the Contract of Sale executed between the 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant that was based on the 1<sup>st</sup> Defendant's Offer Letter. On my analysis of the said Contract of Sale, I note that it was executed on 13<sup>th</sup> June, 2013, and that the 1<sup>st</sup> Defendant only made payment of the sum indicated on the Offer Letter on 1<sup>st</sup> October, 2013. Therefore, I find that by the date the Contract of Sale was executed, the 1<sup>st</sup> Defendant's Offer Letter had lapsed and the 1<sup>st</sup> Defendant had not made any payment towards the sum indicated on the Offer Letter. Consequently, the 1<sup>st</sup> Defendant had not acquired any equitable interest in the Subject Property that could be transferred to the 2<sup>nd</sup> Defendant.

6.28 Pursuant to the '*Nemodat quod non habet*' rule which literally translates to mean 'no one can give that which he has not', it follows that the Contract of Sale between the 1<sup>st</sup> and 2<sup>nd</sup> Defendants was *void ab initio* and consequently, cannot be enforced. I am fortified by the case of ***Lonrho Cotton Limited v Mukuba textiles Limited***<sup>7</sup>, where it was held as follows: -

***“Where a property is sold by a person who is not the owner thereof and who did not sell under the authority, or with***

***the consent of the owners, the buyer acquires no better title than the seller.”***

6.29 Based on the foregoing, the 2<sup>nd</sup> Defendant’s claim of right to the Subject Property has no basis and is accordingly dismissed.

6.30 It follows, therefore, that the 2<sup>nd</sup> Defendant’s Counter-Claim for a Declaration that the 1<sup>st</sup> Defendant properly sold the Subject Property to the 2<sup>nd</sup> Defendant and for a Declaration that the structure that was erected on the Subject Property was legally done, lack merit and are accordingly dismissed.

6.31 I now turn to consider the validity of the Plaintiff’s second Offer Letter, issued in relation to the Subject Property on 23<sup>rd</sup> March, 2017 at 13:01 hours. The Plaintiff asserted that following investigations conducted at the Ministry of Lands, it was determined that she was the rightful owner of the Subject Property and she was advised to re-apply for the Subject Property which she did. Subsequently, she was issued with the second Offer Letter and was later issued with the Certificate of Title in relation to the Subject Property on 21<sup>st</sup> December, 2017.

6.32 To support the foregoing assertions, the Plaintiff produced a copy of a letter addressed to Chelston Police Station, allegedly written by the Secretariat of the Task Force on land on behalf of the Commissioner of Lands. In the said

letter, it is alleged that the Task Force Secretariat had determined that the 1<sup>st</sup> Defendant's Offer was fake and that the Plaintiff's Offer had been reinstated.

6.33 On my analysis of the foregoing, I find that the said letter bears no official stamp or letter head of the Ministry of Lands or Commissioner of Lands to support the assertion that it was written by the Secretariat of the Task Force on Land on behalf of the Commissioner of Lands.

6.34 Additionally, the said letter is not supported by other evidence such as a report of the Task Force's investigations from which the findings asserted therein were made. Therefore, I am of the view that the contents of the said letter cannot be relied upon in the determination of this matter.

6.35 On my analysis of the copy of the second Offer Letter issued to the Plaintiff and the copy of the receipt of payment of the sum indicated on the Offer Letter, I find that the Plaintiff made payment on the same date that the second Offer Letter was issued to her. I find further, that no evidence has been led by the Defendants to show that there was irregularity or impropriety in the manner that the second Offer Letter was issued to the Plaintiff. Similarly, no evidence has been led to show that there was irregularity or impropriety in the manner the Certificate of Title was issued to the Plaintiff. Consequently, the 2<sup>nd</sup> Defendant's allegations that the Offer Letters and

subsequent Certificate of Title were irregularly issued to the Plaintiff, lack merit and are accordingly are dismissed.

6.36 Having determined that the Offer letters and Certificate of Title issued to the Plaintiff were not fraudulently or irregularly issued, it follows that the Certificate of Title issued to the Plaintiff in relation to the Subject Property is valid. Consequently, the Plaintiff is entitled to a Declaration that she is the legal and *bona fide* owner of the Subject Property and I so declare.

6.37 I now turn to consider the Plaintiff's claim for an Order that the Plaintiff be granted vacant possession of the Subject Property. On my analysis of this claim, I find that as the Plaintiff is the registered legal owner of the Subject Property, she is entitled to the possession of the Subject Property. In making this determination, I am alive to the fact that the 2<sup>nd</sup> Defendant expended resources in building the house on the Subject Property. However, this fact does not affect the Plaintiff's legal interest in the Subject Property and anything attached to it. My finding is fortified by the case of ***Lubungu v Kapango and Others***<sup>8</sup>, in which the Supreme Court stated that: -

***“It is a settled principle of law that improvements to realty become part of realty and can never be returned, and to compel the land owner to make recompense would be unjust even if it can be demonstrated that the land owner had intended to effect similar improvements... In fact, we***

***have in a number of cases in this jurisdiction, held that a developer of land belonging to another does so at his/her peril as he/she stands to lose the value of those improvements.”***

6.38 Based on the foregoing, I Order that the Plaintiff be granted vacant possession of the Subject Property.

6.39 I now turn to consider the Plaintiff’s claim for damages for encroachment and inconvenience. In the case of ***J.Z. Care Hire v Malvin Chala and Another***<sup>9</sup>, the Supreme Court held as follows: -

***“It is for the person claiming any damages to prove the damage...”***

6.40 Based on the foregoing authority and my analysis of the evidence on Record, it is clear that the Plaintiff has been inconvenienced by the 2<sup>nd</sup> Defendant’s continued possession of the Subject Property. This is evident by the fact that the 2<sup>nd</sup> Defendant is currently living in the house that she built on the Subject Property.


6.41 Consequently, I Order that the Plaintiff be awarded damages for encroachment and inconvenience. The said damages shall be assessed and determined by the Deputy Registrar. The sum so determined shall carry interest at average short term bank deposit rate from the date of the Writ to the date of this Judgment and thereafter, interest will accrue at current Bank of Zambia lending rate up to the date of payment.

## **7. CONCLUSION**

- 7.1 In conclusion, the 2<sup>nd</sup> Defendant's Counter-Claim for a Declaration that the action by the Plaintiff to obtain two Offer Letters and a Certificate of Title was fraudulent, lacks merit and is accordingly dismissed.
- 7.2 The Plaintiff's claim to the Subject Property on the basis of the first Offer Letter issued to her has no basis and is accordingly dismissed.
- 7.3 The 1<sup>st</sup> Defendant did not have an interest in the Subject Property that could be transferred to the 2<sup>nd</sup> Defendant. Consequently, the Contract of Sale between the 1<sup>st</sup> and 2<sup>nd</sup> Defendants was *void ab initio* and cannot be enforced.
- 7.4 Accordingly, the 2<sup>nd</sup> Defendant's Counter-Claim for a Declaration that the 1<sup>st</sup> Defendant properly sold the Subject Property to the 2<sup>nd</sup> Defendant and for a Declaration that the structure that was erected on the Subject Property was legally done, lack merit and are accordingly dismissed.
- 7.5 The 2<sup>nd</sup> Defendant's allegations that the Offer Letters and subsequent Certificate of Title were fraudulently or irregularly issued to the Plaintiff, lack merit and are accordingly dismissed.

- 7.6 Consequently, the Certificate of Title issued to the Plaintiff in relation to the Subject Property is valid. Accordingly, I declare that the Plaintiff is the legal and *bona fide* owner of the Subject Property and Order the vacant possession of the Subject Property.
- 7.7 Finally, I order that the Plaintiff be awarded damages for encroachment and inconvenience. The said damages shall be assessed and determined by the Deputy Registrar. The sum so determined shall carry interest at average short term bank deposit rate from the date of the Writ to the date of this Judgment and thereafter, interest will accrue at current Bank of Zambia lending rate up to the date of payment
- 7.8 Costs are for the Plaintiff to be taxed in default of agreement.
- 7.9 Leave to appeal is granted

**SIGNED, SEALED AND DELIVERED AT LUSAKA, THIS 11<sup>TH</sup> DAY  
OF NOVEMBER, 2024.**



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**P. K. YANGAILO  
HIGH COURT JUDGE**