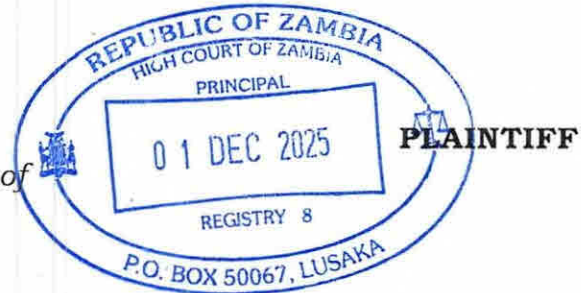


**IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2022/HP/0896

BETWEEN:

ROBERT YONA MWANZA
(Suing as Attorney for and on behalf of
ENOCK BANDA)



AND

SAM MUTOYA MUTOYA
GERALD MAMFUNDA

1ST DEFENDANT
2ND DEFENDANT

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 1st DAY OF
DECEMBER, 2025**

For the Plaintiff : in person
For the 1st Defendant : No appearance
For the 2nd Defendant : Mr. D. Mazumba, Messrs Douglas and Partners

J U D G M E N T

CASES REFERRED TO:

1. *Printing and Numerical Registered Company v Simpson* 1875 LR 19 EQ 462
2. *Tito v Waddel* (No. 2) 1977 CH D 106
3. *Gideon Mundanda v Timothy Mulwani and The Agricultural Finance Co. Ltd and S.S.S. Mwiinga* 1987 ZR 29
4. *Sithole v The State Lotteries Board* 1975 ZR 106
5. *Zambia Consolidated Copper Mines Limited v Eddie Katalayi and Max Chilongo* 2001 ZR 28
6. *Wesley Mulungushi v Catherine Bwale Mizi Chomba* 2004 ZR 96
7. *Colgate Palmolive Zambia Inc v Able Shemu Chuka* SCZ No 181 of 2005
8. *Sablehand Zambia Limited v Zambia Revenue Authority* 2009 ZR 109
9. *Clementina Banda Emmanuel Njanje v Boniface Mudimba* 2011 Vol 3 ZR 162
10. *Zimba Jane Ndelemani (Co-Administrator of the estate of Newton Bwalya Musanya)* 2012 ZR 372

11. *Kalumbwa and another v Mpenza and others* 2004 HN/21 (2013) ZR 209
12. *Hidah Ngosi v Attorney General and others* SCZ No 18 of 2015
13. *Gondwe and Ngwira* Appeal No. 37 of 2015
14. *Man Kaur v Kartar Singh Sangha* Appeal No 15 of 2016
15. *Silas Ngowani, Chilufya Lawrence, Chitalu Joyce, Teweshe Matelo, Mutinta Dominic, Longwani Davy and Machona Moses v Flamingo Farms Limited* SCZ No 5 of 2019
16. *A. M. G. Global Trust Ltd v Administrator General & another* Appeal No. 25 of 2020
17. *Christian Community Church in Zambia Registered Trustees v Christian Brethren Church (CMML) and 3 others* Appeal No.276 of 2020
18. *Rodney S Kapenda v Enock K Chitiya & another* Appeal No. 194 of 2021

LEGISLATION REFERRED TO:

1. *The Lands and Deeds Registry Act No 185 of the Laws of Zambia*
2. *The Rules of the Supreme Court of England, 1965, 1999 Edition*

OTHER WORKS REFERRED TO:

1. *Black Law's Dictionary, 9th Edition, by Bryan A. Garner Thomson Reuters, 2009*
2. *Halsbury's Laws of England, 4th Edition Re-Issue Vol 16*

1. INTRODUCTION

- 1.1 This matter commenced with the Plaintiff, Robert Yona Mwanza's application, which was made ex parte, for leave to issue and serve the Writ of summons out of jurisdiction on 10th June, 2022.
- 1.2 After leave was granted on 20th June, 2022, Robert Yona Mwanza filed the Writ of summons which was accompanied by a statement of claim and the other documents on 5th August 2022.

1.3 The Writ of Summons and statement of claim were amended on 29th September 2023, and the reliefs sought by virtue of the amendment are:

- (i) *An order for specific performance of the contract of sale between Robert Yona Mwanza and Sam Mutoya Mutoya on the ground, inter alia, that at the time of the purported sale of Stand No 1274, Kalulushi, between Sam Mutoya Mutoya and Gerald Mamfunda, Sam Mutoya Mutoya was in no position to sell the said piece of land as beneficial owner;*
 - (ii) *An order for the cancellation of the certificate of title which was issued in the name of Gerald Mamfunda for Stand No 1274, Kalulushi;*
 - (iii) *An order that Robert Yona Mwanza is entitled to ownership of Stand No 1274, Kalulushi and for the certificate of title for Stand No 1274, Kalulushi to vest in Robert Yona Mwanza;*
 - (iv) *An order for damages for inconvenience;*
 - (v) *An injunction restraining Gerald Mamfunda, Gerald Mamfunda's agents or servants or whomsoever from entering, using or occupying any part of Stand No 1274, Kalulushi and for Gerald Mamfunda to cease erection of any structure on the said land until further Order;*
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- (vi) *An order to demolish any structures put up on Stand No 1274, Kalulushi at Gerald Mamfunda's cost;*
- (vii) *Interest;*
- (viii) *Costs.*

2. STATEMENT OF CLAIM

- 2.1 Robert Yona Mwanza averred in the statement of claim, that on 15th October 2008, he entered into a written contract of sale with Sam Mutoya Mutoya, for a bare plot known as Stand No. 1274, Kalulushi. He stated that the contract was executed by Sam Mutoya Mutoya in his capacity as the beneficial owner of Stand No 1274, Kalulushi.
- 2.2 Robert Yona Mwanza contended that Sam Mutoya Mutoya acknowledged in writing, receipt of the cash sum of ZMW15,000.00 (then unrebased K15,000,000.00) as full and final payment of the purchase price.
- 2.3 He stated that upon receipt of the full purchase price, Sam Mutoya Mutoya surrendered to Robert Yona Mwanza all the original documents that were in his possession relating to the subject plot, including the original offer letter from the Commissioner of Lands, and the original lease charges receipt.
- 2.4 It was stated that Sam Mutoya Mutoya who contractually was enjoined to proceed to obtain certificate of title in respect of Stand No 1274, Kalulushi, in issue in his name, was also contractually expected to, once he procured the certificate of

title for Stand No 1274, Kalulushi, to hand over the same to Robert Yona Mwanza for the purpose of transfer of title as Sam Mutoya Mutoya had no legal interest in Stand No 1274, Kalulushi in issue, following the sale other than facilitation of transfer of title.

- 2.5 The assertion was that Robert Yona Mwanza's efforts to conclude the transaction with Sam Mutoya Mutoya, which took place at the premises of Robert & Partners Law Firm concerning the sale of the bare land known as Stand No. 1274, Kalulushi, could not materialize over the years, as Sam Mutoya Mutoya had, to date, neither been seen nor heard of.
- 2.6 It was contended that on 8th October 2021, when Robert Yona Mwanza was finally availed surveyors from the Kalulushi Municipal Council to be shown the physical location of Stand No. 1274, Kalulushi, he was amazed to discover that the said plot had been developed with a perimeter boundary wall, a gate, and a small caretaker's quarters had been constructed at one corner.
- 2.7 It was stated that in bewilderment and disbelief, Robert Yona Mwanza, on the 10th October 2021, at the Lands and Deeds registry, conducted a search, where a land computer printout on Stand No 1274, Kalulushi, was obtained. Robert Yona Mwanza stated that the computer printout for Stand No 1274, Kalulushi revealed that Sam Mutoya Mutoya obtained a 99-year lease, and a certificate of title for Stand No 1274, Kalulushi on 30th January 2019.

- 2.8 He alleged that Sam Mutoya Mutoya obtained the lease without revealing that fact to Robert Yona Mwanza, who kept waiting for Sam Mutoya Mutoya to one day emerge with the certificate of title.
- 2.9 Robert Yona Mwanza further stated that, what was revealed by the printout, was that Sam Mutoya Mutoya on the 16th April 2019, unbelievably and chillingly, purported to assign Stand No 1274, Kalulushi to Gerald Mamfunda with title irregularly, illegally and unconscionably passing from him to Gerald Mamfunda.
- 2.10 The contention was that the sale of Stand No 1274, Kalulushi and the subsequent transfer of the certificate of title by Sam Mutoya Mutoya to Gerald Mamfunda, was in breach of the contract that was executed between Robert Yona Mwanza and Sam Mutoya Mutoya, and was laced with impropriety, was fraudulent and illegal, and should not have been done as Sam Mutoya Mutoya could not pass interest or title in land, that he had already sold, and for which Sam Mutoya Mutoya had received full payment. As such, he did not beneficially own the land under the circumstances.
- 2.11 Robert Yona Mwanza particularized the breach of contract, impropriety/fraud, illegality as follows:
- Particulars of breach of contract
- (i) *Sam Mutoya Mutoya proceeding irregularly, illegally and unconscionably to purport to sell Stand No 1274, Kalulushi to Gerald Mamfunda despite of, and in the wake of the contract*

enjoining Sam Mutoya Mutoya to proceed with completion of the sale of Robert Yona Mwanza.

Particulars of Impropriety / Fraud

- (i) Sam Mutoya Mutoya knew he had entered into a contract for sale of Stand No 1274, Kalulushi, with Robert Yona Mwanza on 15th October, 2008.*
- (ii) Sam Mutoya Mutoya knew that he had received the mutually agreed full payment of the purchase price of ZMW15,000.00 for Stand No 1274, Kalulushi from Robert Yona Mwanza.*
- (iii) Sam Mutoya Mutoya surreptitiously decided to keep quiet and did not inform Robert Yona Mwanza when Sam Mutoya Mutoya eventually obtained the certificate of title for Stand No 1274, Kalulushi nor did Sam Mutoya Mutoya surrender the said certificate of title for the purpose of transferring ownership to Robert Yona Mwanza.*
- (iv) The whereabouts of Sam Mutoya Mutoya have not been known to Robert Yona Mwanza from the time the contract of sale was entered into and since receipt by Sam Mutoya Mutoya of cash in full and final payment of the purchase price.*
- (v) Sam Mutoya Mutoya's transaction with Gerald Mamfunda was not only tainted with but was deeply immersed in fraud and impropriety as Sam Mutoya Mutoya had no beneficial or legitimate*

interest whatsoever to Stand No 1274, Kalulushi plot purportedly sold to Gerald Mamfunda.

- (vi) *Sam Mutoya Mutoya having acknowledged receipt of the full sale price for Stand No 1274, Kalulushi from Robert Yona Mwanza, had become in equity, a trustee for Robert Yona Mwanza.*

Particulars of Illegality

- (i) *Sam Mutoya Mutoya having sold Stand No 1274, Kalulushi to Robert Yona Mwanza and received full payment for the plot did not have any interest or right whatsoever at law to sell the plot to Gerald Mamfunda – Stand No 1274, Kalulushi was not available so as to be sold as one can only sell what they have.*
- (ii) *Sam Mutoya Mutoya's responsibility should have ended at securing title in his name and liaising with Robert Yona Mwanza for purposes of transfer of title by Sam Mutoya Mutoya to Robert Yona Mwanza.*

2.12 Robert Yona Mwanza's assertion was that as a result of breach of contract, the impropriety laced, unconscionable, fraudulent and illegal purported sale of Stand No 1274, Kalulushi to Gerald Mamfunda, he had suffered loss and damage.

3. GERALD MAMFUNDA'S DEFENCE AND COUNTERCLAIM

3.1 In his defence, Gerald Mamfunda stated that the contract of sale between Robert Yona Mwanza and Sam Mutoya Mutoya,

as well as their other agreements, were in Robert Yona Mwanza's peculiar knowledge.

- 3.2 Gerald Mamfunda stated that since the purported contract of sale was executed on 15th October 2008, to the time that Robert Yona Mwanza commenced this action, it had been over thirteen (13) years, and during this time, Robert Yona Mwanza did not do anything to formalize his purported purchase.
- 3.3 Further contention was made, that Robert Yona Mwanza is in fact a fictitious person, and this matter is statute barred.
- 3.4 Additionally, it was stated that Robert Yona Mwanza's excuse that he was waiting for Sam Mutoya Mutoya to avail himself with the title for over thirteen (13) years did not make sense. His contention was that if Robert Yona Mwanza decided to go and see the Kalulushi Municipal Council Surveyors in order for them to show him the physical location of Stand No 1274, Kalulushi in dispute, on 8th October 2021, then it was only logical that he could have done the same earlier on.
- 3.5 It was further stated that it was clear from the Amended Statement of Claim, that when Robert Yona Mwanza purportedly purchased Stand No 1274, Kalulushi which is in dispute from Sam Mutoya Mutoya, he had no idea where the said Stand No 1274, Kalulushi was located, and if at all it had any erections or not.
- 3.6 He added that if anything, Robert Yona Mwanza could have even been sold non-existent land.

- 3.7 Gerald Mamfunda still in defence stated that he bought Stand 1274, Kalulushi, also known as Stand No. 1274, Kalulushi in the Copperbelt Province of the Republic of Zambia, after conducting a search and doing due diligence at the Lands and Deeds Registry, which proved that there were no encumbrances on the subject property, hence proceeding with the purchase.
- 3.8 His position was that Robert Yona Mwanza would be put to strict proof, that the sale between Sam Mutoya Mutoya and Gerald Mamfunda was legally executed, backed by the law and that title regularly, legally and conscionably passed from Sam Mutoya Mutoya to Gerald Mamfunda.
- 3.9 Gerald Mamfunda further contended that all that was required to be followed in terms of procedure was followed.
- 3.10 In that regard, his assertion was that firstly, Gerald Mamfunda inspected the documents for Stand No 1274, Kalulushi. Then, he went on to inspect the subject property, and lastly, he went to verify the documents with the Ministry of Lands at the Lands and Deeds Registry, which showed and proved that there were no encumbrances on the subject property.
- 3.11 The defence was also that the particulars of the alleged breach of contract, impropriety or fraud and illegality as alleged by Robert Yona Mwanza in his Amended Statement of Claim, were only meant to mislead the Honourable Court, and one would wonder what Robert Yona Mwanza had been
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doing over thirteen (13) years, and that in fact the matter was statute barred.

3.12 Gerald Mamfunda denied the reliefs sought by Robert Yona Mwanza.

GERALD MAMFUNDA'S AMENDED COUNTERCLAIM

3.13 Gerald Mamfunda counterclaim for:

- i) *A declaratory order that Gerald Mamfunda is the rightful and legal owner of property at Stand No. 1274, Kalulushi in the Copperbelt Province of the Republic of Zambia.*
- ii) *An order that this matter be dismissed for being statute barred.*
- iii) *An order to dismiss the matter for failure by Robert Yona Mwanza to show that he was given a power of Attorney to stand as Plaintiff in this matter and failure to call the purported Enock Banda to come and testify on his own or giving reasons why Enock Banda could not sue on his own and testify as per law stipulated.*
- iv) *Costs and any other reliefs.*

4. PLAINTIFF'S REPLY TO GERALD MAMFUNDA'S DEFENCE AND DEFENCE TO COUNTERCLAIM

4.1 Robert Yona Mwanza stated that Gerald Mamfunda's averments in response to the allegations that he had made, were common cause between him and Sam Mutoya Mutoya, and were expected to have been common cause between Sam Mutoya Mutoya and Gerald Mamfunda, unless Sam Mutoya

Mutoya on account of the sale of Stand No 1274, Kalulushi to Robert Yona Mwanza may not have wished through being bent on criminality, to have Gerald Mamfunda know that Sam Mutoya Mutoya had divested himself of any legal interest in Stand No 1274, Kalulushi, and as such, the right to sell Stand No 1274, Kalulushi to any other person or entity including Gerald Mamfunda.

4.2 Robert Yona Mwanza denied that this action is statute-barred on account of:

- (i) *Gerald Mamfunda having purportedly purchased the plot in issue in 2016, granted Robert Yona Mwanza could only have discovered the said illegal or criminal purchase from the day Gerald Mamfunda purportedly purchased the plot in 2016, which entailed that Robert Yona Mwanza's action would have been sustainable as time would have started to run in 2016. Issues raised by Gerald Mamfunda touching on Robert Yona Mwanza's alleged failure to follow through with completion with Sam Mutoya Mutoya were irrelevant.*
 - (ii) *Robert Yona Mwanza or anyone who could have claimed any interest in the subject property could have only discovered the illegal or criminal sale to Gerald Mamfunda through a physical site visit to the plot in issue through the Kalulushi Municipal*
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Council which only availed officers to Robert Yona Mwanza on 10th October 2021.

(iii) At the time of sale of Stand No 1274, Kalulushi in issue by Sam Mutoya Mutoya to Gerald Mamfunda, there had been no title issued to the Sam Mutoya Mutoya or Gerald Mamfunda and consequently, the only documents that were available at the Ministry of Lands (Lands Department) were the offer letter and receipt for lease charges both of whose originals remained to this day with Robert Yona Mwanza.

- 4.3 It was stated that Sam Mutoya Mutoya, having gone aground and remaining to this day untraceable and unheard of, despite efforts to track him down, could not have made for the completion of the conveyance of Stand No 1274, Kalulushi in issue to Robert Yona Mwanza.
- 4.4 Robert Yona Mwanza averred that the desire on his part to formalize or complete the conveyancing process was borne out by numerous visits to the Kalulushi Municipal Council to be shown Stand No 1274, Kalulushi, and the vein efforts to trace Sam Mutoya Mutoya to ensure that ownership exchanged hands, once Sam Mutoya Mutoya had signed the lease and obtained title.
- 4.5 The reply was further that Sam Mutoya Mutoya who had specifically visited Robert Yona Mwanza to sell Stand No 1274, Kalulushi in issue to him, was unbelievably nowhere
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to be seen after Sam Mutoya Mutoya received the full purchase price and had obtained title.

- 4.6 Robert Yona Mwanza contended that paragraphs 3 and 4 of Gerald Mamfunda's Amended Defence contained evidence, narratives and legal arguments, and ought to be struck out. Needless to say, that Robert Yona Mwanza from the time of purchase of the plot in issue from Sam Mutoya Mutoya, had been physically interfacing with Council officials, who had not been able or available to show Robert Yona Mwanza the property.
- 4.7 It was also stated that Sam Mutoya Mutoya following the sale of Stand No 1274, Kalulushi in issue to Robert Yona Mwanza, was legally and morally obliged, save for utter criminality on the part of Sam Mutoya Mutoya, to disclose the fact of prior sale to Robert Yona Mwanza, and the fact that Sam Mutoya Mutoya, having been divested of any interest, had no capacity as an owner to sell Stand No 1274, Kalulushi.
- 4.8 It was further the reply, that Enock Banda is not a fictitious person, but a person who was at the time of the transaction subject of this Court process, associated with Robert Yona Mwanza, and in whose name Robert Yona Mwanza wished to momentarily vest ownership of the purchased land in issue.
- 4.9 He also stated that the power of attorney by which Robert Yona Mwanza took out the proceedings in this Court, was on account of the fact that in spite of being a beneficial owner

of Stand No 1274, Kalulushi, Robert Yona Mwanza was not on the contract of sale.

- 4.10 Still in reply, Robert Yona Mwanza stated that in any case, the issue touching the power of attorney had already been dealt with by the Court.
- 4.11 It was denied that when Robert Yona Mwanza purportedly purchased Stand No 1274, Kalulushi in dispute from Sam Mutoya Mutoya, he had no idea where the said Stand No 1274, Kalulushi was located, and if at all it had erections or not, and that Robert Yona Mwanza could have even been sold non-existent land.
- 4.12 The reply was that through sale of Stand No 1274, Kalulushi to Robert Yona Mwanza, Sam Mutoya Mutoya, from whom Gerald Mamfunda traced his title, had divested himself of any beneficial interest in Stand No 1274, Kalulushi. As such, the right or capacity to legally transmit any interest in such land to any third party, including Gerald Mamfunda, had been lost.
- 4.13 It was stated that the sale between Sam Mutoya Mutoya and Gerald Mwanza could not thus be said to have been legally backed by law.
- 4.14 Robert Yona Mwanza alleged that there was no title in existence which could have been regularly or legally or conscionably obtained or issued to Sam Mutoya Mutoya, and that Gerald Mamfunda at the time of the alleged sale in 2016 from Sam Mutoya Mutoya to Gerald Mamfunda and Gerald Mamfunda, who was in a less favoured position in terms of

documents originally held by Sam Mutoya Mutoya, compared to Robert Yona Mwanza, should have requested for the original documents from Sam Mutoya Mutoya.

- 4.15 Robert Yona Mwanza contended that Gerald Mamfunda would have to prove the authenticity of the searches that he claimed he conducted on Stand No 1274, Kalulushi when the said purported searches were conducted, and what such searches revealed.
- 4.16 He further averred that the prior sale to Robert Yona Mwanza, not to mention the fraud, illegality, and impropriety involved in the sale of Stand No 1274, Kalulushi, as well as utter criminality, divested Sam Mutoya Mutoya of any beneficial interest in Stand No 1274, Kalulushi, and as such the right to sell the same to any party, including Gerald Mamfunda.
- 4.17 It was stated that Sam Mutoya Mutoya's purported sale of Stand No 1274, Kalulushi, through fraud, illegality, impropriety and utter criminality to Gerald Mamfunda having been only discovered in 2021, and noting that Gerald Mamfunda allegedly purchased Stand No 1274, Kalulushi in issue in 2016, the action could not be said to be statute barred.
- 4.18 Robert Yona Mwanza denied that all the procedural requirements were duly followed, being that Gerald Mamfunda first inspected the documents for Stand No 1274, Kalulushi, then Stand No 1274, Kalulushi itself, and finally verified the documents at the Ministry of Lands, where the

records confirmed that Stand No 1274, Kalulushi had no encumbrances.

5. DEFENCE TO GERALD MAMFUNDA'S AMENDED COUNTERCLAIM

- 5.1 Robert Yona Mwanza averred that Gerald Mamfunda's allegation about there being a fictitious person was baseless.
- 5.2 He also stated that he could not help but note, that Gerald Mamfunda had deliberately failed to plead anything about or disclosed from whom and exactly when, in terms of date, he purportedly purchased Stand No 1274, Kalulushi in issue.
- 5.3 The defence was further that Gerald Mamfunda had not disclosed the date of accrual of this action, which should have triggered the running of time under the **Limitation Act 1939**, granted that it was based on fraud, illegality, impropriety, not to mention utter criminality.
- 5.4 Robert Yona Mwanza stated that the circumstances pertaining to this case, did not render it to be caught up by limitation of time, in the manner that was alleged by Gerald Mamfunda or at all.
- 5.5 Robert Yona Mwanza's assertion was that this action is properly before Court, as the law did not by all accounts, countenance a seller of a property or land, selling an already sold property or land, which by virtue of a prior sale, could not be available for sale to a third party, as happened in this case.

6. EVIDENCE LED AT TRIAL

6.1 Robert Yona Mwanza was the only witness to his case. Sam Mutoya Mutoya did not make an appearance in this matter, while Gerald Mamfunda was also the only witness to his case.

PW1 – ROBERT YONA MWANZA

6.2 Robert Yona Mwanza produced his witness statement as his evidence. He testified in that witness statement that he practices and has been practicing as a lawyer under the name and style Robert & Partners since 2001.

6.3 It was his testimony that for a long time, even before Sam Mutoya Mutoya approached him, he had personally resolved to invest his money in land purchases as a means of preserving his funds.

6.4 Robert Yona Mwanza stated that at the time of the transaction between Enock Banda and Sam Mutoya Mutoya from the stand point of the contract of sale, Sam Mutoya Mutoya who then was known to him as a seller of plots, approached him at his office then, at Sanlam Building Oxford Street in Town Centre in Kitwe on the 11th December 2008, in the afternoon, to interest him in buying a plot, which he said was in his name and he was selling at K15,000,000.00 (unrebased).

6.5 Robert Yona Mwanza stated that he told Sam Mutoya Mutoya that he intended to purchase the plot in someone else's name, being Enock Banda, and that this was despite Sam Mutoya Mutoya not having met Enock Banda.

- 6.6 In still testifying, Robert Yona Mwanza stated that he had told Sam Mutoya Mutoya that he needed to see all the original documents that Sam Mutoya Mutoya had to support his ownership of the plot.
- 6.7 His evidence was that Sam Mutoya Mutoya, on the same day showed him the following documents:
- (i) *Original Offer letter from the Ministry of Lands for Stand No 1274, Kalulushi, appearing at pages 1 and 2 of his Bundle of Documents.*
 - (ii) *Original receipt from the Ministry of Lands on which Sam Mutoya Mutoya paid lease charges over Stand No 1274, Kalulushi, appearing at page 3 of his Bundle of Documents.*
- 6.8 The evidence that Robert Yona Mwanza further gave, was that when he inquired about the whereabouts of the plot, Sam Mutoya Mutoya was quick to tell him that the plot was in Kalengwa East, Kalulushi, and that roads to the said plot, had not been opened up, and that the plot, a bare one, was at the time inaccessible.
- 6.9 He stated that he showed interest in buying the plot, but he told Sam Mutoya Mutoya to see him at his office in the afternoon of 15th December 2008.
- 6.10 It was testified that in the meantime, through his contact who was then a director of Engineering at the Kalulushi Council, and whom he had previously known at Copperbelt University when they were students, assisted in establishing

that indeed the plot was inaccessible, but was on offer by the Council and Ministry of Lands to Sam Mutoya Mutoya.

- 6.11 Robert Yona Mwanza stated that he called one of persons he dealt with at the Ministry of Lands who established that Stand No 1274, Kalulushi, was on offer to Sam Mutoya Mutoya.
- 6.12 His testimony was that when Sam Mutoya Mutoya went to the office to see him in the afternoon of 15th December 2008, Sam Mutoya Mutoya had insisted on the price of ZMW15,000.00, and he had begged him to come down to at least ZMW13,000.00. However, Sam Mutoya Mutoya flatly refused to negotiate the price down.
- 6.13 Robert Yona Mwanza stated that before Sam Mutoya Mutoya arrived at his office, he had earlier on in the morning of the 15th October 2008, obtained ZMW15,000.00 cash ready and at the same time, he prepared a contract.
- 6.14 It was his evidence that feeling secure that Sam Mutoya Mutoya was handing him all the original documents for Stand No 1274, he personally handed Sam Mutoya Mutoya the cash sum of ZMW15,000.00 for purchase of the said plot. Robert Yona Mwanza stated that Sam Mutoya Mutoya signed the contract, and acknowledged receipt of the money in full and final settlement. Then later in the day, Robert Yona Mwanza requested Enock Banda to sign the contract.
- 6.15 He added that Sam Mutoya Mutoya also had to sign an acknowledgement of receipt of the purchase money. He

identified pages 4 -7 of his bundle of documents as the contract that was signed by Sam Mutoya Mutoya.

- 6.16 He stated that the Acknowledgement of Payment was also signed by Sam Mutoya Mutoya and was at page 8 of his bundle of documents.
 - 6.17 Robert Yona Mwanza testified that the contractual documents showed that he did not act as a lawyer for any party, but that he only wished to purchase Stand No 1274, Kalulushi in the name of Enock Banda.
 - 6.18 It was further his evidence, that Enock Banda was a jack of all trades who was involved, among other things, in welding and fabrication, and due to working with him for a long time on a daily basis through different assignments or commissioning him to do various work at his house, and on other projects, he came to trust him.
 - 6.19 Thus, Robert Yona Mwanza was sure that at an appropriate time Enock Banda would sign the documents to hand them back the plot to him. Robert Yona Mwanza referred to Enock Banda's national registration card which was at page 11 of his bundles of documents.
 - 6.20 He stated that his intention was to purchase the plot in the name of Enock Banda, which he was to eventually transfer to himself before commencing construction or selling it.
 - 6.21 Still in his testimony, Robert Yona Mwanza's evidence was that on receipt of the cash for the plot, Sam Mutoya Mutoya promised to follow through with obtaining a lease and a certificate of title, with a view to hand the same to him so
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that he could process change of title from Sam Mutoya Mutoya.

- 6.22 It was his testimony that on receipt of the full purchase price, he prodded Sam Mutoya Mutoya to surrender all the originals that he had in his possession of the documents relating to or connected to the subject plot. Robert Yona Mwanza testified that the said documents included the original offer letter which was signed in blue ink by the Commissioner of Lands, and the original lease charges receipt, which was written in blue ink.
- 6.23 It was stated that Sam Mutoya Mutoya, who contractually was enjoined to proceed to obtain a certificate of title in respect of Stand No 1274, Kalulushi in issue, in his name, was also contractually expected once he procured the certificate of title for Stand No 1274, Kalulushi, to hand over the same to him for the purpose of transfer of title, as Sam Mutoya Mutoya had no beneficial interest in Stand No 1274, Kalulushi in issue following the sale, other than facilitation of transfer of title.
- 6.24 Robert Yona Mwanza testified that the quest to conclude the transaction over the bare land, Stand No 1274, Kalulushi, which was sold as per the contract with Sam Mutoya Mutoya, could not materialize down the years, as Sam Mutoya Mutoya to this day, had never been seen or heard of.
- 6.25 He added that whatever efforts were made to track him down came to nought.
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- 6.26 Further testimony was given, that equally efforts that were made with the Council to have a physical visit to the plot were met with the excuse that the area was yet to be opened up or become accessible, and that the excuses continued as if in perpetuity.
- 6.27 It was Robert Yona Mwanza's evidence that on 8th October 2021, when he was finally informed that the plot was somehow accessible, he was availed surveyors from the Kalulushi Municipal Council to be shown the physical location of Stand No 1274, Kalulushi.
- 6.28 He told the Court as pleaded, that it was amazing to find that there was on this said plot, an erected perimeter boundary wall fence with a gate and a corner small caretaker's quarter.
- 6.29 Robert Yona Mwanza testified that in bewilderment and disbelief, and hoping that what he was suspecting was not the case, on the 11th October 2021, at the Lands and Deeds registry, he caused to be conducted a search, where a land computer printout on Stand No 1274, Kalulushi was obtained.
- 6.30 He stated that the same revealed that Sam Mutoya Mutoya did obtain a 99-year lease and certificate of title for Stand No 1274, Kalulushi on 30th January, 2019, which he testified were at pages 9 to 10 of his bundle of documents.
- 6.31 Robert Yona Mwanza further testified that what was revealed by the print out, was that Sam Mutoya Mutoya on the 16th April 2019, unbelievably and chillingly purported to assign Stand No 1274, Kalulushi to Gerald Mamfunda with title
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questionably and purportedly passing from him to Gerald Mamfunda.

- 6.32 His evidence was that he managed to contact Gerald Mamfunda's brother, Ricky Mamfunda, and eventually Gerald Mamfunda about the purported sale or purchase transaction concerning Stand No 1274, Kalulushi.
- 6.33 Robert Yona Mwanza stated that he had proposed that they work together to find and sit Sam Mutoya Mutoya down so that Sam Mutoya Mutoya could own up to his fraudulent sale.
- 6.34 Then when he was told that the firm Douglas & Partners handled the transaction between Sam Mutoya Mutoya and Gerald Mamfunda, and that an employee of the said firm brought together Sam Mutoya Mutoya and Gerald Mamfunda through a son in law of Sam Mutoya Mutoya, he demanded to have the name and phone number of the said son in law, but he received no cooperation.
- 6.35 Robert Yona Mwanza testified that thereafter, he resuscitated his search for Sam Mutoya Mutoya, and he had to drive to Luanshya after he heard that Sam Mutoya Mutoya may have run away there. However, he drew a blank on the whereabouts of Sam Mutoya Mutoya.
- 6.36 It was his evidence that what was disheartening was the fact that Sam Mutoya Mutoya had obtained the lease without revealing that fact to him, and he had kept waiting for Sam Mutoya Mutoya to one day emerge with the certificate of title
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so that the process of transfer from Sam Mutoya Mutoya could begin.

6.37 In his continued testimony, Robert Yona Mwanza stated that the sale of Stand No 1274, Kalulushi and the subsequent transfer of the certificate of title by Sam Mutoya Mutoya to Gerald Mamfunda, having been laced with impropriety, was also fraudulent and illegal, and should not have been done as Sam Mutoya Mutoya could not pass valid interest or title, be it legal or equitable, in land that he had already sold and received full payment for, and as such had no beneficial ownership under circumstances of the case.

6.38 He stated the particulars of impropriety or fraud as:

- (i) *Sam Mutoya Mutoya knew that he had entered into a contract for the sale of Stand No 1274, Kalulushi on 15th October 2008.*
 - (ii) *Sam Mutoya Mutoya knew that he had received the mutually agreed full payment of the purchase price of ZMW 15,000.00 for Stand No 1274, Kalulushi.*
 - (iii) *Sam Mutoya Mutoya surreptitiously decided to keep quiet and did not inform him or anyone from the stand point of the purchaser when he eventually obtained the certificate of title for Stand No 1274, Kalulushi nor did he surrender the said certificate of title for the purpose of transferring ownership as per understanding.*
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- (iv) *The whereabouts of Sam Mutoya Mutoya had not been known to Robert Yona Mwanza from the time the contract of sale was entered into and since receipt by Sam Mutoya Mutoya of cash in full and final payment of the purchase price.*
- (v) *Sam Mutoya Mutoya's transaction with Gerald Mamfunda was not only tainted with, but was deeply immersed in fraud and impropriety as Sam Mutoya Mutoya had no beneficial or legitimate interest whatsoever to Stand No 1274, Kalulushi plot, which was purportedly sold to Gerald Mamfunda.*
- (vi) *Sam Mutoya Mutoya having acknowledged receipt of the full sale price for Stand No 1274, Kalulushi from him had become in equity a trustee for Enock Banda and ultimately myself.*

6.39 As to the particulars of illegality, Robert Yona Mwanza testified that these were:

- (i) *Sam Mutoya Mutoya having sold Stand No 1274, Kalulushi to Robert Yona Mwanza and received full payment for the plot, did not have any interest or right whatsoever at law to sell the plot to Gerald Mamfunda - Stand No 1274, Kalulushi was not available so as to be sold as one can only sell what they have.*
- (ii) *Sam Mutoya Mutoya's responsibility should have ended at securing title in his name and liaising*

with Robert Yona Mwanza for purposes of transfer of title by Sam Mutoya Mutoya to Robert Yona Mwanza.

6.40 Robert Yona Mwanza in conclusion, stated that to ensure that he could proceed to Court against Sam Mutoya Mutoya and Gerald Mamfunda, as one who beneficially purchased and owned the plot, and directly dealt with Sam Mutoya Mutoya, he had to look for and was fortunate to find Enock Banda, to sign a Power of Attorney, and that the said Enock Banda was the one who was on the contract of sale. He referred to the power of attorney, stating that it was registered at Ministry of Lands, as evidenced at pages 12 to 14 of his bundle of documents.

6.41 In his supplementary witness statement, Robert Yona Mwanza drew the Court's attention to the following facts:

- (i) Gerald Mamfunda uncoerced had on record admitted to not only the fact of purchasing Stand No 1274, Kalulushi in issue between 2014 or 2016 but had also admitted having done so from Sam Mutoya Mutoya.*
- (ii) If this Court looked at the certificate of title which was exhibited by Gerald Mamfunda in his bundle of documents which was filed in this Court on the 12th April 2023, the same showed that the certificate of title in issue was only issued on 30th January 2019.*

- (iii) *Consequently, that at the time of the purported purchase by Gerald Mamfunda of Stand No 1274, Kalulushi in issue there was no certificate of title that was held by anyone not even Sam Mutoya Mutoya.*
- (iv) *There was the original letter of offer and the original receipt for lease charges which original documents were handed to Robert Yona Mwanza by Sam Mutoya Mutoya on the 15th December, 2008, which remained in Robert Mwanza's possession and made part of Gerald Mamfunda's bundle of documents.*
- (v) *The original offer letter and original receipt for lease charges were in Robert Mwanza's possession as the only documents that he could hold on to at the time of his purchase of the land in issue as he waited for the certificate of title from Sam Mutoya Mutoya and eventual transfer of title.*

6.42 Robert Yona Mwanza also testified that the legal ownership of Stand No 1274, Kalulushi in issue by Gerald Mamfunda was tainted, and the erection of any building on land unduly and fraudulently acquired, disentitled Gerald Mamfunda from seeking any compensation.

6.43 His evidence was further that the assignment as signed and as registered between Sam Mutoya Mutoya and Gerald Mamfunda was a fraud, and ought together with the title

obtained now in the name of Gerald Mamfunda to be cancelled.

- 6.44 Robert Yona Mwanza reiterated that the same piece of land which was claimed to be owned by Gerald Mamfunda, was also the same land pursuant to which he entered into a contract of sale with Sam Mutoya Mutoya, and on 15th December 2008, Robert Yona Mwanza paid Sam Mutoya Mutoya in full for Stand No 1274, Kalulushi.
- 6.45 He stated that the contract of sale and acknowledgement of full payment were respectively at pages 4 to 7 and 8 of Gerald Mamfunda's bundle of documents.
- 6.46 Robert Yona Mwanza stated that Sam Mutoya Mutoya did not even wait to obtain title after receiving full payment from him for the purchase of Stand No 1274, Kalulushi, but he instead proceeded to sell the same plot twice, this time to Gerald Mamfunda in 2016, as alleged by Gerald Mamfunda.
- 6.47 It was also his testimony, that Sam Mutoya Mutoya was thus contractually enjoined to transfer to him title of the said piece of land.
- 6.48 Robert Yona Mwanza testified that the clear failure by Sam Mutoya Mutoya to do so, constituted a material breach of the contract of sale for the land.

CROSS EXAMINATION OF ROBERT YONA MWANZA

- 6.49 In cross examination, when referred to the contract of sale which was at page 4 of his bundle of documents, Robert Yona Mwanza testified that the contract was between Sam Mutoya

Mutoya and Enock Banda on the face of it, and that the price was ZMW15,000.00.

- 6.50 He stated that at page 7, he signed as a witness for the vendor, and that he had an explanation for that. Robert Yona Mwanza told the Court that he sued on behalf of the purchaser, and that he did not see any conflict of interest.
- 6.51 His testimony, when he was referred to paragraph 5 of his witness statement, was that he did not want to purchase Stand No 1274, Kalulushi, in his name because he wanted to keep it a secret from anyone who knew him.
- 6.52 Robert Yona Mwanza testified that the purchaser was aware that he had an interest in Stand No 1274, Kalulushi, and that was why Enock Banda signed as a purchaser.
- 6.53 When further referred to paragraphs 7 and 8 of his witness statement, Robert Yona Mwanza's evidence was that he bought Stand No 1274, Kalulushi, without seeing it.
- 6.54 In respect of paragraph 10 of his witness statement, Robert Yona Mwanza stated that there was evidence to show that he withdrew the ZMW15,000.00 and it was in the acknowledgement which Sam Mutoya Mutoya signed at page 8 of his bundle of documents, to receive the cash.
- 6.55 Robert Yona Mwanza further in cross examination, agreed that Sam Mutoya Mutoya was not present to confirm that he received the money.
- 6.56 On being referred to paragraph 12 of his witness statement, Robert Yona Mwanza stated that he is a lawyer by profession. He told the Court that if there was title, property was secured

by a caveat, but there was no title, as in this case. His evidence was that he verbally agreed with Enock Banda to buy Stand No 1274, Kalulushi in Enock Banda's name, and that he had stated so in his Reply, even though, there was no written agreement.

- 6.57 Robert Yona Mwanza when referred to paragraph 18 of his witness statement, testified that the two copies which were printed from the computer were original. However, he stated that it was speculative to state that if two offer letters were printed and signed, they were originals, but that it followed that they were original copies.
- 6.58 On being referred to paragraph 20 of his witness statement, Robert Yona Mwanza told the Court, that he began searching for Sam Mutoya Mutoya, when he started visiting the Council between 2010 and 2011, until he eventually discovered that Sam Mutoya Mutoya had sold Stand No 1274, Kalulushi to another person.
- 6.59 Referring to paragraph 4 of his witness statement, his evidence was that he previously knew Sam Mutoya Mutoya, and that it was not the first time that Sam Mutoya Mutoya went to his office.
- 6.60 As regards the contents of paragraph 21 of his witness statement, Robert Yona Mwanza told the Court that he reiterated having started visiting the Council between 2010 and 2011, because Sam Mutoya Mutoya had not gotten back to him. He further stated that he did not write to the Council concerning Stand No. 1274, Kalulushi after purchasing it,
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as he would personally visit the Council and contact people he knew there, who, however, were not called as witnesses.

- 6.61 In reference to paragraph 22 of his witness statement, Robert Yona Mwanza stated that when he first went to Stand No. 1274, Kalulushi, after the Council took him there, he found some development on it. With reference to paragraph 25 of his witness statement, he testified that he tried to contact Sam Mutoya Mutoya when he found the development.
- 6.62 It was also Robert Yona Mwanza's evidence that after the contract was executed in 2018, he went to Luanshya Police because he heard that Sam Mutoya Mutoya had moved to Luanshya, but he did not report the matter formally.
- 6.63 His testimony, when he was referred to page 26 of his witness statement, and the last page of the contract of sale which had signatures and was at page 6 of Gerald Mamfunda's bundle of documents, was that Gerald Mamfunda signed the contract.
- 6.64 On being referred to paragraph 30 of his witness statement. Robert Yona Mwanza's evidence was that the particulars of fraud were not only applicable to Sam Mutoya Mutoya.
- 6.65 He told the Court that Gerald Mamfunda did not obtain money from him or enter into a contract with him or Enock Banda.
- 6.66 When further referred to paragraph 31 of his witness statement, Robert Yona Mwanza testified that the illegality

also touched Gerald Mamfunda, but Gerald Mamfunda did not illegally obtain money from him.

- 6.67 Robert Yona Mwanza stated that from the date of the contract in 2008 to 2022, when he went to Stand No 1274, Kalulushi, it was a period of thirteen (13) years. He explained that he did not inspect Stand No 1274, Kalulushi, because it was inaccessible, and he did not know where it was, but that the Council took him there. Robert Yona Mwanza denied that he bought non-existent land, stating that it was on title as he was testifying.
- 6.68 Robert Yona Mwanza when referred to the contract of sale at page 4 of Gerald Mamfunda's bundle of documents, stated that the contract was signed in 2016, and that he could not confirm that the road was accessible at the time.
- 6.69 His testimony when he was referred to paragraph 6 of his additional witness was that, according to his defence, Gerald Mamfunda inspected Stand No 1274, Kalulushi.
- 6.70 When further referred to paragraph 32 of his witness statement Robert Yona Mwanza's testimony was that, on the contract of sale, he was not a purchaser of Stand No 1274, Kalulushi. He stated that Enock Banda and himself had a verbal contract, but Enock Banda was not before Court to confirm so. Robert Yona Mwanza however, stated that he had an explanation.
- 6.71 He testified further in cross examination, that even if Stand No 1274, Kalulushi, was inspected, it had no encumbrances and one would still purchase it. However, his evidence was

that he did not agree that it had no encumbrances, and he would find fault with Gerald Mamfunda purchasing it.

6.72 Robert Yona Mwanza testified when he was referred to the letter of offer which was at page 1 of his bundle of documents, that offer letters had conditions. It was his evidence that Condition 4(3) stated that consent had to be obtained to assign, subdivide, mortgage or sublet. However, he told the Court that he had not seen the consent to assign.

6.73 Robert Yona Mwanza further in cross examination, stated that he did not know the whereabouts of Enock Banda. He explained that Enock Banda was a freelancer, who was engaged in building and fabrication works, and that he frequently moved from one town to another.

6.74 Robert Yona Mwanza explained that in 2021, he managed to locate Enock Banda through his brother, who was working at a shop in town, but he was no longer there.

6.75 He disagreed that it would have been better if Enock Banda confirmed their oral agreement.

6.76 Robert Yona Mwanza with regard to the last page of the contract of sale that was signed by Sam Mutoya Mutoya and Enock Banda which was at page 7 of his bundle of documents, testified that he witnessed Sam Mutoya Mutoya's signature on the contract of sale, which property he purchased, and pursuant to which, he had sued as an Attorney.

RE-EXAMINATION OF ROBERT YONA MWANZA

- 6.77 In re-examination, Robert Yona Mwanza clarified that he had stated that the contract appeared to be between Sam Mutoya Mutoya and Enock Banda on its' face, because the explanation regarding that was contained in his Reply. He further explained that he signed the document as a witness on behalf of Enock Banda.
- 6.78 Therefore, there was no conflict of interest, as he was acting in his capacity as his lawyer.
- 6.79 Further clarification was given, that Enock Banda was aware that Robert Yona Mwanza was purchasing Stand No 1274, Kalulushi, because he signed the said contract of sale for the property.
- 6.80 It was also stated that Robert Yona Mwanza knew that Stand No 1274, Kalulushi exists, and it was now on title and the acknowledgement of receipt of the money was evidence that he withdrew the ZMW15,000.00, and he also had the original offer and lease charges which Sam Mutoya Mutoya gave him after he paid.
- 6.81 In still clarifying, Robert Yona Mwanza stated that Sam Mutoya Mutoya should have been at Court as he was duly summoned. He explained that Sam Mutoya Mutoya sold plots for a living, and that he tried to contact Sam Mutoya Mutoya through Gerald Mamfunda's lawyers, and further, he went to Luanshya Police.
- 6.82 Clarification was also given, that the particulars of fraud touched on Gerald Mamfunda, as the transaction between

Gerald Mamfunda and Sam Mutoya Mutoya was fraudulent, which also extended to the particulars of illegality.

6.83 Robert Yona Mwanza testified that if Gerald Mamfunda had demanded the originals which he had, he would have been put on alert.

6.84 He explained that the issue was broader than Enock Banda having bought Stand No 1274, Kalulushi as Stand No 1274, Kalulushi which was bought was sold to another person.

6.85 That marked the close of the case for Robert Yona Mwanza.

DW1 – GERALD MAMFUNDA

6.86 Gerald Mamfunda, also produced his witness statement as his testimony. In that witness statement, his evidence was that sometime in 2014, Sam Mutoya Mutoya offered him the piece of land, being Stand No. 1274, Kalulushi for sale at the sum of ZMW30,000.00.

6.87 He stated that in compliance with the procedure for acquiring land, he went to inspect it in 2014, and then he inspected the document, being the offer letter, that Sam Mutoya Mutoya presented to him.

6.88 Gerald Mamfunda further testified that thereafter he went to verify the same document at Ministry of Lands at the Lands and Deeds Registry, where it was proved and verified that Sam Mutoya Mutoya was indeed the owner of Stand No. 1274, Kalulushi, and that it had no encumbrances.

6.89 Pages 1 and 2 of his bundle of documents was identified as the offer letter for Stand No. 1274, Kalulushi from the Ministry of Lands to Sam Mutoya Mutoya.

- 6.90 Gerald Mamfunda told the Court that when he inspected the property, it was just bare land, with no improvements on it.
- 6.91 His continued testimony was that after verifying the authenticity of the offer letter that was presented to him by Sam Mutoya Mutoya, and finding out that there was no encumbrance on the land, sometime in 2016, Sam Mutoya Mutoya and himself executed a Contract of Sale for Stand No. 1274, Kalulushi.
- 6.92 He added that Sam Mutoya Mutoya agreed to transfer the Certificate of Title to his name, as soon as he obtained it. Gerald Mamfunda identified pages 3 to 7 of his bundle of documents that as the Contract of Sale that he signed with Sam Mutoya Mutoya.
- 6.93 Further testimony was given, that on 30th of January, 2019 Sam Mutoya Mutoya obtained a Certificate of Title for Stand No. 1274, Kalulushi in his name. Then sometime in April, Sam Mutoya Mutoya executed an Assignment with Gerald Mamfunda, in order to have the names on the Certificate of Title changed from Sam Mutoya Mutoya's name to his name.
- 6.94 It was stated that the same was filed at the Ministry of Lands at the Lands and Deeds Registry on the 16th of April, 2019, with pages 8 to 12 of Gerald Mamfunda's bundle of documents being identified as the said Assignment.
- 6.95 Gerald Mamfunda testified that after the process of change of names on the Certificate of Title was completed, he got the Certificate of Title number 1000002294 which bore his name, and the sale of Stand No. 1274, Kalulushi was
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successful, and he became the legal owner of Stand No. 1274, Kalulushi.

6.96 His evidence was that in addition to the Certificate of Title, he also got a printout from the Lands and Deeds Registry which showed the change of ownership for Stand No. 1274, Kalulushi, adding that pages 13 to 21 of his bundle of documents were the Certificate of Title bearing his name and the printout of the Lands Register from the Ministry of Lands.

6.97 Gerald Mamfunda also testified after completing the sale of Stand No. 1274, Kalulushi, he erected the following structures on the said premises;

- (i) *Wall fence and a gate at the estimated cost of ZM180,000.00*
- (ii) *2 complete caretakers' houses with kitchens and bathrooms, water and electricity connections as well as borehole installation altogether valued at ZMW435,000.00*

6.98 It was further his testimony, that from the time that he bought Stand No. 1274, Kalulushi, up until the time that he finished with all the construction works, Robert Yona Mwanza did not at any point go to the said premises to claim ownership of Stand No. 1274, Kalulushi.

6.99 Gerald Mamfunda's testimony was that he legally obtained ownership of Stand No 1274, Kalulushi, as Sam Mutoya Mutoya was the owner of Stand No 1274, Kalulushi, and the search at the Lands and Deeds Registry proved that there

were no encumbrances on it at the time, that he was buying it from Sam Mutoya Mutoya.

6.100 He also stated that the Certificate of Title for Stand No. 1274, Kalulushi, was legally and rightfully issued to him and there was no fraud involved.

6.101 In his supplementary witness statement, Gerald Mamfunda stated that he purchased Stand No 1274, Kalulushi in question in 2014, and that Sam Mutoya Mutoya and himself agreed that the title to Stand No 1274, Kalulushi in question would pass to him once Sam Mutoya Mutoya obtained the same from the Ministry of Lands, as at the time he purchased Stand No 1274, Kalulushi, Sam Mutoya Mutoya only had an offer letter which was at pages 1 and 2 of his bundle of documents.

6.102 In further testifying, Gerald Mamfunda testified that on 30th of January 2019, Sam Mutoya Mutoya obtained a Certificate of Title for Stand No. 1274, Kalulushi in his name, and that it was only after that, that Sam Mutoya Mutoya and himself executed an Assignment to have the name on the Certificate of Title for Stand No 1274, Kalulushi changed from Sam Mutoya Mutoya's name into his name, and the same was filed at the Ministry of Lands at the Lands and Deeds Registry on the 16th of April 2019.

6.103 His evidence was further that at the time he filed the Assignment at the Ministry of Lands, there were no registered encumbrances against Stand No 1274, Kalulushi in question. Gerald Mamfunda further testified that upon

completion of the process for change of name on the Certificate of Title, he lawfully and procedurally obtained Certificate of Title No. 1000002294 in his name.

- 6.104 Consequently, the sale of Stand No. 1274, Kalulushi was successfully concluded, and he became the legal owner of the said property.
- 6.105 He stated that in addition to the Certificate of Title, he also obtained a printout from the Lands and Deeds Registry which reflected the change of ownership.
- 6.106 Gerald Mamfunda reiterated that while the process of change of ownership was happening, Robert Yona Mwanza did not at any point, present his purported claim that he was the owner of Stand No 1274, Kalulushi. Thus, it was Gerald Mamfunda's evidence, that from the time that he bought Stand No. 1274, Kalulushi, up until the time, that he finished with all the construction work, Robert Yona Mwanza did not at any point go to the said premises to claim ownership of the said Stand No 1274, Kalulushi.
- 6.107 His further evidence was that he legally obtained ownership of Stand No 1274, Kalulushi, as Sam Mutoya Mutoya was the owner of Stand No 1274, Kalulushi, and a site inspection as well as the search at the Lands and Deeds Registry, proved that there were no encumbrances on it, at the time that he bought it from Sam Mutoya Mutoya.
- 6.108 Gerald Mamfunda stated that the Certificate of Title for Stand No. 1274, Kalulushi, was legally and regularly issued to him, and there was no illegality that was involved.

6.109 As for the purported sale between Sam Mutoya Mutoya and Enock Banda and on whose behalf Robert Yona Mwanza held a Power of Attorney, Gerald Mamfunda testified that it was highly questionable, in that Robert Yona Mwanza had not stated why Enock Banda had not appeared as a party, or even just as a witness, and he had not stated that Enock Banda maybe suffering from any serious illness, which had been certified by a medical doctor.

CROSS EXAMINATION OF GERALD MAMFUNDA

6.110 When cross examined, Gerald Mamfunda stated that he recalled that Robert Yona Mwanza had phoned him, but he denied that Robert Yona Mwanza had suggested that they look for Sam Mutoya Mutoya in order to resolve the issue. He denied that Robert Yona Mwanza called Sam Mutoya Mutoya's brother, Ricky, so that they could look for Sam Mutoya Mutoya.

6.111 Gerald Mamfunda told the Court that Robert Yona Mwanza told him that he had gone to Luanshya to look for Sam Mutoya Mutoya, but to no avail. He stated that it was important that Sam Mutoya Mutoya be found because he sold him the piece of land.

6.112 He further testified in cross examination, that it was not worrisome to learn that Sam Mutoya Mutoya had first sold Stand No 1274, Kalulushi to Robert Yona Mwanza, but that Gerald Mamfunda was worried that Robert Yona Mwanza stated that they could settle the matter out of Court and he could pay him.

- 6.113 Gerald Mamfunda stated that Robert Yona Mwanza spoke about settlement, before he sued him, and that they used to go to the same church and they knew each other. Therefore, it was strange for him to settle the matter out of Court with such a background.
- 6.114 Still in cross examination, Gerald Mamfunda testified that Sam Mutoya Mutoya was based on the Copperbelt, adding that he was also from the Copperbelt, but he relocated to South Africa. He also testified that his relatives tried to trace Sam Mutoya Mutoya, and he heard that Sam Mutoya Mutoya attended a golf tournament in Luanshya the previous year.
- 6.115 It was stated that Sam Mutoya Mutoya represented himself in the transaction.
- 6.116 Gerald Mamfunda with reference to condition no. 2 of the conditions of sale, which was at page 7 of his bundle of documents, testified that it stated that the purchaser's advocates were Messrs. Douglas and Partners, while the vendor was in person. He added that Douglas and Partners represented him.
- 6.117 In further testifying, his evidence was that condition no. 10 stated that the purchaser would pay the legal fees for both the purchaser and the vendor, and that it was standard procedure, and the law firm could clarify if it represented both of them.
- 6.118 Further testimony was given that condition no. 6 stated that the vendor sold as beneficial owner.

- 6.119 Gerald Mamfunda when referred to pages 4 to 7 of Robert Yona Mwanza's bundle of documents, testified that it was a contract of sale between Sam Mutoya Mutoya and Enock Banda.
- 6.120 He told the Court that page 5 showed that it was Stand No. 1274 Kalululushi, that was being sold, and that he bought the same one.
- 6.121 His evidence was that the date of sale at page 4, was indicated as 15th December 2008, and that he bought the plot in 2016 from Sam Mutoya Mutoya, and he did not know what right Sam Mutoya Mutoya had to sell him Stand No 1274, Kalulushi.
- 6.122 Gerald Mamfunda also testified that Sam Mutoya Mutoya only obtained title for the property on 30th January 2019, and when Gerald Mamfunda purchased the property, Sam Mutoya Mutoya did not have title.
- 6.123 He stated that he had an offer and an original survey diagram but he did not know about the receipt for the lease charges. He added that he was given a computer-generated offer and he could not verify that it was original.
- 6.124 On being referred to the letter of offer, which was at pages 1 to 2 of Robert Yona Mwanza's bundle of documents, Gerald Mamfunda testified that page 2 was signed, but he did not know if the offer that he was given had an original stamp and signature.
- 6.125 When referred to the receipt which was issued to Mutoya Sam Mutoya on 19th September, 2008 for land charges which was

at page 3 of Robert Yona Mwanza's bundle of documents, he stated that he did not recall if Sam Mutoya Mutoya handed him an original like that one, or if he had one. His evidence was that the originals did not matter even though Sam Mutoya Mutoya did not have title.

6.126 Gerald Mamfunda stated that he was not worried because the money was paid after due diligence was done, and the Council confirmed that Sam Mutoya Mutoya was the owner of Stand No 1274, Kalulushi.

6.127 Still in cross examination, his testimony was that the surveyors went with him to Stand No 1274, Kalulushi, and that Sam Mutoya Mutoya's name was in the minute book as having been offered the land at the Council.

6.128 He stated that when the surveyors took him to Stand No 1274, Kalulushi they did not find anything there.

6.129 Further testimony was given that Gerald Mamfunda did not have any document from the Council to show that they sanctioned him to buy the plot, and that he did not ask them to do so.

6.130 His evidence was that he found the offer letter when he conducted a search, and that he did not search for the receipt for lease charges. Gerald Mamfunda testified that he went with Sam Mutoya Mutoya's NRC to confirm if he owned Stand No 1274, Kalulushi, and Kalulushi Council confirmed. However, he stated that his witness statement did not refer to the original offer or lease charges.

6.131 It was his testimony, when he was referred to paragraph 7 of his witness statement, that he had stated what he constructed on the property. Then, when referred to the amended defence and counterclaim which was at pages 7 to 10 of Robert Yona Mwanza's bundle of pleadings, Gerald Mamfunda stated that he had not pleaded anything relating to what he had constructed on Stand No 1274, Kalulushi.

6.132 He told the Court that Sam Mutoya Mutoya had the right to sell Stand No 1274, Kalulushi and that he did not know Sam Mutoya Mutoya did not have any interest in Stand No 1274, Kalulushi having sold it to Enock Banda.

RE-EXAMINATION OF GERALD MAMFUNDA

6.133 In re-examination, Gerald Mamfunda testified that he did not know that Sam Mutoya Mutoya had sold Stand No 1274, Kalulushi to Enock Banda. He clarified that Robert Yona Mwanza called him around 2021, and he found it strange that Robert Yona Mwanza had suggested an out-of-Court settlement, because he had already been sold Stand No 1274 before Sam Mutoya Mutoya sold the land, and others might also have sold the same plot in order to extort money from him.

6.134 Gerald Mamfunda stated that condition 2 of the conditions of sale at page 7 of his bundle of documents, stated that Messrs. Douglas and Partners represented him, while the vendor was in person. He added that condition 10 did not contradict condition 2 as he was being represented by Messrs. Douglas and Partners.

6.135 Further clarification was given, that Gerald Mamfunda did not solely rely on the letter of offer in buying Stand No 1274, Kalulushi, but that he also did due diligence in the presence of the seller.

6.136 He stated that he could not tell if the letter of offer was original, as it was computer-generated.

6.137 That marked the close of the case for Gerald Mamfunda.

7. DECISION OF THIS COURT

7.1 I have considered the evidence in this matter and the submissions which were filed by the parties.

ISSUES NOT IN DISPUTE

7.2 It is not in dispute that Stand No 1274, Kalulushi, was offered to Sam Mutoya Mutoya by the Ministry of Lands on 4th July 2008.

7.3 The facts which are not in contention are that Sam Mutoya Mutoya entered into a contract of sale for the property known as Stand No 1274 Kalulushi with Enock Banda on 15th December, 2008 with Robert Yona Mwanza contending that Enock Banda was the purchaser of the said property on his behalf.

7.4 The facts which are further not in issue, are that on 30th January 2019, Sam Mutoya Mutoya obtained a certificate of title for Stand No 1274, Kalulushi in his name.

7.5 It is common cause that Sam Mutoya Mutoya assigned Stand No 1274, Kalulushi to Gerald Mamfunda, who is now the registered proprietor of the said land.

ISSUES IN DISPUTE

- 7.6 It is in dispute whether Robert Yona Mwanza is entitled to specific performance of the contract of sale that he alleges that he entered into with respect to Stand No 1274, Kalulushi, with Sam Mutoya Mutoya using Enock Banda.
- 7.7 Further in contention, is whether Robert Yona Mwanza is entitled to a declaration that he is the rightful owner of Stand No 1274, and that the certificate of title which was issued for the property, in the names of Gerald Mamfunda should be cancelled.
- 7.8 The issues that are also in contention, are whether Gerald Mamfunda is a bona fide purchaser for value, and therefore entitled to a declaratory order that he is the rightful and legal owner of Stand No 1274, Kalulushi.

ANALYSIS

- 7.9 The first issue is whether Robert Yona Mwanza is entitled to specific performance of the contract of sale, that he alleges that he entered into for Stand No 1274, Kalulushi with Sam Mutoya Mutoya.
- 7.10 In order to determine this issue, it will however be noted that Gerald Mamfunda raised two jurisdictional issues in this matter namely, being the issue of Robert Yona Mwanza's locus standi and the issue of the matter being statute barred.

WHETHER ROBERT YONA MWANZA HAS LOCUS STANDI

- 7.11 Gerald Mamfunda counterclaimed for an order to dismiss this matter, for failure by Robert Yona Mwanza to show that he was given a Power of Attorney, to stand as Plaintiff in this

matter, and for failure to call the purported Enock Banda to come and testify on his own or giving reasons why Enock Banda could not sue on his own and testify as per law stipulated.

- 7.12 Robert Yona Mwanza in his Reply, stated that the issue touching on the Power of Attorney was already dealt with by the Court.
- 7.13 In his submissions, and in support of his position, Gerald Mamfunda relied on the Indian case of ***Man Kaur v Kartar Singh Sangha*** ⁽¹⁴⁾. He submitted that Robert Yona Mwanza has no locus standi in this matter, and that the contract of sale which was at pages 4 to 7 of Robert Yona Mwanza's bundle of documents, showed that Sam Mutoya Mutoya was the seller, and Robert Yona Mwanza was the witness to the sale of the land.
- 7.14 It was also submitted that Enock Banda needed to have been called as a witness, because Robert Yona Mwanza did not have locus standi to sue on his behalf, when he was a witness for the seller to the transaction with Sam Mutoya Mutoya.
- 7.15 In the submissions in Reply, Robert Yona Mwanza stated that the Court adequately dealt with the issue of locus standi in its' Ruling dated 25th November 2022, where it held as follows:

“Robert Yona Mwanza in the affidavit in reply has exhibited the Power of Attorney as ‘RYM10’, which shows that it is stamped by the Registrar of Lands

and Deeds. That Power of Attorney among other powers, gives Robert Yona Mwanza as attorney for Enock Banda, authority to represent him by bringing and defending actions in his name. Therefore, the issue relating to Robert Yona Mwanza's capacity to sue has been established. As regards Robert Yona Mwanza having signed as Sam Mutoya Mutoya's witness on that contract of sale that was executed between Sam Mutoya Mutoya and Enock Banda, whom he has now sued, Robert Yona Mwanza in reply, has stated that the preliminary issue has not been raised in compliance with Order 3 Rule 2 of the High Court Rules, as amended by Statutory Instrument No 58 of 2020.

...

If Gerald Mamfunda wishes to raise preliminary issues regarding Robert Yona Mwanza, he is at liberty to file the appropriate application."

- 7.16 The Ruling of 25th November 2022, quoted above shows that this Court made a pronouncement on the issue of the Power of Attorney. It was determined that the Power of Attorney gave Robert Yona Mwanza, as Attorney for Enock Banda, authority to represent him by bringing and defending actions in his name. Therefore, the issue relating to Robert Yona Mwanza's capacity to sue was established by the Ruling of the Court.

- 7.17 It will also be noted that Gerald Mamfunda was reminded of his liberty to bring an appropriate application against Robert Yona Mwanza, with regard to the issue relating to Robert Yona Mwanza having signed as Sam Mutoya Mutoya's witness on the contract of sale that was executed between Sam Mutoya Mutoya and Enock Banda, whom he had now sued.
- 7.18 It is noteworthy, that no such application was brought before Court, and the same was only raised in the amended pleadings and the submissions. It will therefore be dealt with as the claims are dealt with.

WHETHER THE MATTER IS STATUTE BARRED

- 7.19 Gerald Mamfunda asked for relief to dismiss the matter on the ground that it is statute barred. In his defence, Gerald Mamfunda questioned what Robert Yona Mwanza had been doing over a period of thirteen (13) years.
- 7.20 In response, Robert Yona Mwanza stated that this matter is not statute barred, and he advanced as one of the reasons that he had taken that position, as being that Gerald Mamfunda purportedly purchased the plot in issue in 2016. Robert Yona Mwanza contended that he could only have discovered the said illegal or criminal purchase from that day, which entailed that Robert Yona Mwanza's action was sustainable, as time would have started to run in 2016.
- 7.21 In support of his claim, Gerald Mamfunda relied on **Section 2(1)(a) of the Limitation Act 1939** and the case of **Zimba**

Jane Ndelemani (Co-Administrator of the estate of Newton Bwalya Musanya) (10).

- 7.22 It was submitted that the contract between Enock Banda and Sam Mutoya Mutoya was entered into in 2008, and the action by Robert Yona Mwanza in respect of the first relief for specific performance of the contract, was entered into in 2008.
- 7.23 It was further stated that the action was statute barred as it could not be brought beyond the stipulated time frame of six (6) years.
- 7.24 In the submissions in Reply, Robert Yona Mwanza stated that the issue of the matter being statute barred was the subject of determination in this Court's Ruling of 25th September 2023. It was submitted that Gerald Mamfunda did not see it fit or necessary to appeal this Court's determination of whether or not Robert Yona Mwanza's action is statute barred, and therefore, the issue is otiose.
- 7.25 As rightly submitted by Robert Yona Mwanza, the issue of the matter being statute barred was determined in this Court's Ruling of 25th September 2023. In that Ruling it was held as follows:

“...the cause of action against Gerald Mamfunda accrued the moment the certificate of title was issued to him on 17th April, 2019. As seen earlier noted an amendment dates back to when an action was commenced. These proceedings were commenced on 5th August, 2022, a period of

Fourteen (14) years after Robert Yona Mwanza executed the contract of sale with Sam Mutoya Mutoya. The statement of claim alleges that Sam Mutoya Mutoya obtained a certificate of title on 16th April, 2019. And the allegation is that he was supposed to have the certificate of title issued in Robert Yona Mwanza's name.

Therefore, the cause of action against Sam Mutoya Mutoya accrued on that date. The claims are consequently not statute barred.”

7.26 This Court therefore already determined that this matter is not statute barred and that limb of submission fails and it is dismissed.

WHETHER ROBERT YONA MWANZA IS ENTITLED TO SPECIFIC PERFORMANCE

7.27 Robert Yona Mwanza alleged that he entered into a written contract of sale with Sam Mutoya Mutoya for Stand No. 1274, Kalulushi, at a consideration of ZMW15,000.00. He averred that he paid the full purchase price which was acknowledged by Sam Mutoya Mutoya.

7.28 Further, Sam Mutoya Mutoya handed him the original offer letter and a receipt for the lease charges.

7.29 In his testimony, Robert Yona Mwanza stated that on receipt of the cash for the plot, Sam Mutoya Mutoya promised to follow through with obtaining a lease and a certificate of title with a view to handing over the same to Robert Yona Mwanza

so that he could process change of title to himself from Sam Mutoya Mutoya.

- 7.30 It was further Robert Yona Mwanza's evidence that Sam Mutoya Mutoya, who was contractually enjoined to obtain a certificate of title for Stand No 1274, Kalulushi and hand it over for transfer, failed to do so, and that he subsequently disappeared despite efforts to locate him.
- 7.31 Evidence was given, that Robert Yona Mwanza made attempts with the Kalulushi Municipal Council so that he could be shown Stand No 1274, Kalulushi. However, those attempts were repeatedly met with excuses that the area where the plot was, was inaccessible until October 2021, when Robert Yona Mwanza was finally informed that the plot was accessible, and he was availed surveyors to show him Stand No 1274, Kalulushi.
- 7.32 He testified that he inspected it, and discovered that it had been developed with a wall fence, gate, and caretaker's quarters. Robert Yona Mwanza stated that a search at the Lands and Deeds Registry, revealed that Sam Mutoya Mutoya obtained a 99-year lease and a Certificate of Title for Stand No 1274, Kalulushi in January 2019.
- 7.33 Then later, in April 2019, Sam Mutoya Mutoya purportedly and irregularly assigned Stand No 1274, Kalulushi to Gerald Mamfunda.
- 7.34 On the other hand, Gerald Mamfunda testified that in 2014, Sam Mutoya Mutoya offered to sell Stand No. 1274, Kalulushi to him at ZMW30,000.00. His evidence was that

after inspecting Stand No 1274, Kalulushi and verifying at the Ministry of Lands that Sam Mutoya Mutoya was the registered owner and that it had no encumbrances, he proceeded with the transaction.

- 7.35 In that regard he testified that in 2016, they executed a Contract of Sale, with an agreement that title would be transferred once it was obtained.
- 7.36 Gerald Mamfunda stated that on 30th January 2019, Sam Mutoya Mutoya obtained the Certificate of Title and, in April 2019, they executed an Assignment to transfer ownership to him. His evidence was that the change was filed on 16th April 2019, and he subsequently received a Certificate of Title No. 1000002294 in his name.
- 7.37 Gerald Mamfunda added that he also obtained a printout of the Lands Register, which confirmed the change of ownership.
- 7.38 He testified that after becoming the legal owner, he developed Stand No 1274, Kalulushi by constructing a wall fence and a gate at a cost of approximately ZMW180,000.00 and two caretaker houses with full utilities and a borehole which were valued at ZMW435,000.00.
- 7.39 Gerald Mamfunda stated that throughout this period, Robert Yona Mwanza never visited or asserted any claim to Stand No 1274, Kalulushi.
- 7.40 In support of the claim for specific performance, in his submissions, Robert Yona Mwanza relied on the cases of ***Gideon Mundanda v Timothy Mulwani and The***

Agricultural Finance Co. Ltd and S.S.S. Mwiinga ⁽³⁾

where the Supreme Court cited the 25th Edition of *Chitty on Contracts* at paragraph 1764 where it is stated that the law takes the view that damages cannot adequately compensate a party for breach of a contract for the sale of an interest in a particular piece of land or of a particular house (however ordinary).

7.41 The case of ***Tito v Waddel (No. 2)*** ⁽²⁾ was also relied on where it was held as follows:

“The question is not simply whether damages are an adequate remedy, but whether specific performance as it were, will do more perfect and complete justice than an award of damages. This is particularly so in all cases dealing with a unique subject matter such as land.”

7.42 Robert Yona Mwanza also submitted that Sam Mutoya Mutoya is a rogue who could not pass title or interest to any third party having already sold Stand No 1274, Kalulushi to Enock Banda.

7.43 In support of this submission, Robert Yona Mwanza relied on the cases of ***Christian Community Church in Zambia Registered Trustees v Christian Brethren Church (CMML) and 3 others*** ⁽¹⁷⁾ and ***A. M. G. Global Trust Ltd v Administrator General & another*** ⁽¹⁶⁾.

7.44 The evidence on record, and in particular the contract of sale which is at pages 4 to 7 of Robert Yona Mwanza’s bundle of documents, does indeed show that Enock Banda and Sam

Mutoya Mutoya entered into a contract of sale for Stand No 1274, Kalulushi in question on 15th December 2008, at a consideration of ZMW15,000.00.

- 7.45 The special conditions of sale, and in particular special condition no. 3, reveals that Sam Mutoya Mutoya was, at the time of the sale, in possession of an original offer letter from the Commissioner of Lands and an original lease charge receipt.
- 7.46 Then special condition no. 5, shows that Sam Mutoya Mutoya was required to surrender those documents to Enock Banda. On the other hand, special condition no. 6 provided that Sam Mutoya Mutoya relinquished all interest and claims in Stand No 1274, Kalulushi, passing ownership to Enock Banda.
- 7.47 The Acknowledgement of payment document is at page 8 of Robert Yona Mwanza's bundle of documents. It shows that Sam Mutoya Mutoya acknowledged receipt of the ZMW15,000.00 cash payment for Stand No 1274, Kalulushi from Enock Banda on 15th December 2008.
- 7.48 It is a trite principle of law, that contracts which are entered into freely and voluntarily by persons with capacity to contract, should be enforced by the courts of law. This principle was stated in the case of ***Printing and Numerical Registered Company v Simpson*** ⁽¹⁾ and was adopted in the case of ***Colgate Palmolive Zambia Inc v Able Shemu Chuka*** ⁽⁷⁾, where it was held as follows;

“if there is something more that public policy requires, it is that men of full age and competent understanding, shall have the utmost liberty of contracts, and that their contracts, when entered into freely and voluntarily shall be sacred and shall be enforced by the courts of justice”.

- 7.49 Enock Banda and Sam Mutoya Mutoya entered into a contract of sale for Stand No 1274, Kalulushi. It is, however, noteworthy that at the time of the contract, Sam Mutoya Mutoya was only in possession of an offer letter from the Commissioner of Lands and a lease charges receipt.
- 7.50 It is trite law, that proof of ownership of land is established by a certificate of title.
- 7.51 ***Sections 33 and 54 of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia***, provide as follows in that regard:

“33. A Certificate of Title shall be conclusive as from the date of its issue and upon and after the issue thereof, notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the President or otherwise, which but for Parts III to VII might be held to be paramount or to have priority; the Registered Proprietor of the land comprised in such Certificate shall, except in case of fraud, hold the same subject only to such encumbrances, liens, estates or interests as may be shown by such

Certificate of Title and any encumbrances, liens, estates or interests created after the issue of such Certificate as may be notified on the folium of the Register relating to such land but absolutely free from all other encumbrances, liens, estates or interests whatsoever:

...

54. Every Provisional Certificate and every Certificate of Title, duly authenticated under the hand and seal of the Registrar, shall be received in all courts of law and equity as evidence of the particulars therein set forth or endorsed thereon, and of their being entered in the Register, and shall, unless the contrary is proved by the production of the Register or a copy thereof certified under the hand and seal of the Registrar, or unless the rectification of a Provisional Certificate is ordered by the Court, be conclusive evidence that the person named in such Provisional Certificate or Certificate of Title, or in any entry thereon, as seised of or as taking estate or interest in the land therein described is seised or possessed of such land for the estate or interest therein specified as from the date of such Certificate or as from the date from which the same is expressed to take effect, and that such Certificate has been duly issued.”

7.52 In this matter, Sam Mutoya Mutoya did not possess a certificate of title for Stand No 1274, Kalulushi. By being in possession of only an offer for the land and not a certificate of title, Sam Mutoya Mutoya only had an equitable interest in the land.

7.53 However, as guided by the Supreme Court case of ***Wesley Mulungushi v Catherine Bwale Mizi Chomba*** ⁽⁶⁾, the lack of title is not a bar to the conclusion of a legally binding contract as there are other factors that may establish someone's right to land before a certificate of title is formally issued.

7.54 Further, the Supreme Court in the case of ***Hidah Ngosi v Attorney General and others*** ⁽¹²⁾, recognised inchoate rights by referring to ***Black's Law Dictionary, 9th Edition*** which defines *inchoate interest* as;

“A property interest that has not yet vested.”

7.55 It will also be noted that ***Halsbury's Laws of England, 4th Edition Re-Issue Vol 16*** in ***paragraph 1332 at page 895*** states that:

“An equitable interest arises under a trust created when by virtue of a deed, will or other instrument the legal owner of the land (the trustee) is bound to hold the property for the benefit of another, the cestui que trust (the beneficiary)...”

7.56 In this matter, Sam Mutoya Mutoya had an offer letter for Stand No 1274, Kalulushi from the Ministry of Lands and he adhered to the condition for the payment of the lease charges

as stipulated in the offer letter, as shown by the receipt which is at page 3 of Robert Yona Mwanza's bundle of documents.

- 7.57 A reading of the contract of sale which was entered into between Sam Mutoya Mutoya and Enock Banda, further, reveals that it was a special condition of the sale, that the title would commence with a certificate of title, which would be issued in the name of Sam Mutoya Mutoya for transfer into the name of Enock Banda or his nominee.
- 7.58 Robert Yona Mwanza told the Court that Sam Mutoya Mutoya was contractually enjoined to obtain the certificate of title for Stand No 1274, Kalulushi, in his own name and then hand it over to Robert Yona Mwanza to facilitate the transfer to himself, as Sam Mutoya Mutoya no longer had any legal interest in Stand No 1274, Kalulushi, after the sale.
- 7.59 However, Sam Mutoya Mutoya could not be located thereafter, and Robert Yona Mwanza now seeks specific performance of the contract of sale.
- 7.60 As guided on the grant of the remedy of specific performance in the cases of *Tito v Waddel* ⁽²⁾ and *Gideon Mundanda v Timothy Mulwani and The Agricultural Finance Co. Ltd and S.S.S. Mwiinga* ⁽³⁾, specific performance will be granted where the court is of the view that it will do more perfect and complete justice than an award of damages.
- 7.61 In this matter, Enock Banda paid the full purchase price for Stand No 1274, Kalulushi as evidenced on the

acknowledgment of receipt at which is at page 8 of Robert Yona Mwanza's bundle of documents.

- 7.62 It will however, be noted that Robert Yona Mwanza who claims to have purchased the property, did not visit Stand No 1274, Kalulushi, before, during and after the transaction, on the basis that it was inaccessible.
- 7.63 Robert Yona Mwanza testified that when he finally did on 10th October, 2021, he discovered that there was an erected perimeter boundary wall fence with a gate as well as a small caretaker's quarter at the corner.
- 7.64 It was also his testimony, that he later conducted a search at the Lands and Deeds Registry at the Ministry of Lands, where he found that Sam Mutoya Mutoya obtained a certificate of title on 30th January 2019, and in April 2019, he conveyed Stand No 1274, Kalulushi, to Gerald Mamfunda.
- 7.65 Robert Yona Mwanza therefore showed that Enock Banda entered into a valid contract with Sam Mutoya Mutoya, and he fulfilled the condition of payment of the full purchase price. By virtue of that, he acquired an equitable interest in the land, and he should be entitled to completion of the contract as there was nothing illegal about the contract of sale.
- 7.66 Sam Mutoya Mutoya did not respond to the Court process and as such he did not deny that when the contract of sale was entered into with Enock Banda, the actual beneficial owner of the property was in fact Robert Yona Mwanza, and

that it was in fact Robert Yona Mwanza who paid the purchase price of K15, 000, 000.00 (unrebased) in full.

- 7.67 At page 11 of Robert Yona Mwanza's bundle of documents is a national registration card for Enock Banda which shows that in fact Enock Banda exists.
- 7.68 As Sam Mutoya Mutoya has not rebutted the assertion that although Enock Banda signed the contract of sale as purchaser of the property, the beneficial owner of the property was in fact Robert Yona Mwanza, who actually signed as witness for the vendor Sam Mutoya Mutoya.
- 7.69 The Power of Attorney that appointed Robert Yona Mwanza as Attorney for Enock Banda which was registered at the Ministry of Lands in Clause 4 provided that the certificate of title for Stand No 1274 Kalulushi would be obtained in the name of Robert Yona Mwanza's name.
- 7.70 Robert Yona Mwanza's assertion that he is the person who beneficially acquired ownership of Stand No 1274, Kalulushi remains credible testimony going by the evidence as has just been seen.
- 7.71 However, the evidence that is on record, shows that Sam Mutoya Mutoya on obtaining the certificate of title for Stand 1274, Kalulushi on 30th January 2019, he did in April 2019, convey the said property to Gerald Mamfunda.
- 7.72 Thus, the question is whether Gerald Mamfunda is a bona fide purchaser for value without notice?

WHETHER GERALD MAMFUNDA IS A BONA FIDE PURCHASER FOR VALUE

- 7.73 In his testimony, Robert Yona Mwanza stated that Gerald Mamfunda neither received any money from him nor entered into any contract with him or Enock Banda. He further clarified that although the illegality mentioned in his witness statement also involved Gerald Mamfunda, it did not relate to Gerald Mamfunda obtaining money from him.
- 7.74 Robert Yona Mwanza further testified that although land that had no encumbrances could ordinarily be purchased after inspection, he disagreed that Stand No 1274, Kalulushi, had no encumbrances. He maintained that Gerald Mamfunda was at fault for purchasing it from Sam Mutoya Mutoya as he had already purchased it from Sam Mutoya Mutoya.
- 7.75 It was Robert Yona Mwanza's contention that had Gerald Mamfunda demanded the original letter of offer when Sam Mutoya Mutoya offered him to buy the land, as at the time, Sam Mutoya Mutoya did not have a certificate of title for the property, he would have been put on alert.
- 7.76 Gerald Mamfunda on the other hand, testified that in line with land acquisition procedures, he inspected Stand No 1274, Kalulushi in 2014, reviewed the offer letter that was provided to him by Sam Mutoya Mutoya, and he further verified the said letter of offer at the Ministry of Lands, where it was confirmed that Sam Mutoya Mutoya was the owner of Stand No. 1274, Kalulushi.
- 7.77 He added that Stand No 1274, Kalulushi had no encumbrances. Gerald Mamfunda also testified that Stand

No 1274, was bare, with no improvements on it when he physically inspected it.

- 7.78 Then thereafter, sometime in 2016, Sam Mutoya Mutoya and himself executed a Contract of Sale for Stand No. 1274, Kalulushi, and Sam Mutoya Mutoya agreed to transfer the Certificate of Title to his name as soon as he obtained it.
- 7.79 Gerald Mamfunda stated that on 30th January 2019, Sam Mutoya Mutoya obtained the Certificate of Title for Stand No. 1274 in his name. Then in April 2019, Sam Mutoya Mutoya and Gerald Mamfunda executed an Assignment to transfer the title into Gerald Mamfunda's name, and the document was filed at the Ministry of Lands on 16th April 2019.
- 7.80 It was Gerald Mamfunda's evidence that after completing the sale, he erected a wall fence and two complete caretaker's houses. He stated that from the time that he bought Stand No 1274, Kalulushi to the time that he finished the construction, Robert Yona Mwanza did not at any point go to the said premises to claim ownership of Stand No 1274, Kalulushi.
- 7.81 In his submissions, Robert Yona Mwanza relied on the case of ***A. M. G. Global Trust Ltd v Administrator General & another*** ⁽¹⁶⁾ where it was held as follows:

“The learned trial Judge seems to have based his reasoning for holding that the 2nd Respondents were the rightful owner of the property, on the fact that there was due diligence done by the 2nd

Respondent and that there had been no encumbrance on the land.

...

Consequently, even if due diligence was undertaken, and no encumbrance found the property, it did not mean that the transaction that finally resulted in the new certificate of title being issued to the 2nd Respondent was valid. There was impropriety in the acquisition of the property, irrespective of the fact that the 2nd Respondent conducted a due diligence and advertised for issuance of a duplicate certificate of title. The 2nd Respondent cannot in the circumstances be said to be the rightful owner of Stand No. 6860 Olympia, Lusaka, as he did not acquire good title from the rogue and vagabond seller.”

7.82 He submitted that it was clear from the facts of this case and the law, that Gerald Mamfunda's acquisition of title for Stand No 1274, Kalulushi was tainted with fraud, impropriety or illegality as Sam Mutoya Mutoya lacked capacity in terms of beneficial ownership to pass or confer any legal interest or title to any third party such as Gerald Mamfunda.

7.83 In response, Gerald Mamfunda contended that he was an innocent purchaser for value, without notice of Robert Yona Mwanza's interest in Stand No 1274 Kalulushi.

7.84 In support of that position, he relied on the case of **Rodney S Kapenda v Enock K Chitiya & another** ⁽¹⁸⁾ where the Court of Appeal held as follows:

“The question we are now left to determine is whether the learned trial court correctly found that the appellant could have gone further in his due diligence in order to ascertain the proprietary status of the subject property. We are inclined to agree with the lower court in this regard. The appellant's conduct fell short of the standard of due diligence required when one is purchasing land, which both the Supreme Court and ourselves have reiterated in a number of cases, including Elias Tembo v Maureen Chirwa, Duncan Chirwa, The Attorney General and Lusaka City Council and Peggy Kandesha.”

7.85 Further reliance was placed on the cases of **Kalumbwa and another v Mpenza and others** ⁽¹¹⁾ and **A. M. G. Global Trust Ltd v Administrator General & another** ⁽¹⁶⁾.

7.86 Gerald Mamfunda submitted that Stand No 1274, Kalulushi, had no encumbrances when he bought it, and that he inspected it, and then proceeded to purchase it. He stated that the time that he entered into a contract of sale, Robert Yona Mwanza had not done anything on Stand No 1274, Kalulushi, as the purported buyer had not taken any step in ensuring that Stand No 1274, Kalulushi, was inspected or viewed or surveyed, before the purchase.

- 7.87 He submitted that there was no evidence that had been shown, that at the time Gerald Mamfunda was purchasing Stand No 1274, Kalulushi, Sam Mutoya Mutoya was not the legal owner of the said Stand No 1274, Kalulushi, in accordance with the evidence that was in Robert Yona Mwanza's bundle of documents.
- 7.88 Gerald Mamfunda further submitted that the certificate of title was not illegally or irregularly issued to him.
- 7.89 In support of this position, he relied on the case of **Gondwe and Ngwira** ⁽¹³⁾ where it was held that:

“It is not in dispute that when the Appellant went to view the House, she found it occupied by a young man. It is also not in dispute that she did not enquire from him what interest he had in it. Given the principle in Hunt v Luck, which we upheld in Mwenya and Randee v Kapinga, the Appellant cannot be said to have been a bona fide purchaser for value without notice. We wish to restate our holding in Nora Mwaanga Kayoba & Alizani Banda v Eunice Kumwenda Ngulube & Andrew Ngulube, that:

“In purchasing real properties parties are expected to approach such transaction with much more serious inquiries to establish whether or not the property in question has encumbrances. Buying real property is not as

casual as buying household goods or other personal property.”

7.90 He also relied on the case of ***Zambia Consolidated Copper Mines Limited v Eddie Katalayi and Max Chilongo*** ⁽⁵⁾ where the Supreme Court held that:

“However, the legal position, as we see it, was that it was not possible without proper basis to ignore the rights of Kangali who was an innocent purchaser for value and who had no reason to suspect there was to be an adverse claim. There would be no justification to inflict injustice on the third party in the name of justice for the appellants.”

7.91 Gerald Mamfunda submitted that the evidence that is before this Honourable Court, pointed to the fact that Gerald Mamfunda was an innocent purchaser for value without notice, and he had no reason to suspect that there was any encumbrance on Stand No 1274, Kalulushi, and Robert Yona Mwanza only showed up thirteen (13) years later, after the purported contract of sale was entered into.

7.92 ***Black Law’s Dictionary, 9th Edition, by Bryan A. Garner Thomson Reuters, 2009 at page 1355*** defines a *bona fide purchaser* as follows:

“One who buys something for value without notice of another’s claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller’s

title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims.

Generally, a bona fide purchaser for value is not affected by the transferor's fraud against a third party and has superior right to the transferred property as against the transferor's creditor to the extent of the consideration that the purchaser paid."

- 7.93 In this matter, Gerald Mamfunda stated that he followed the proper land acquisition procedures by inspecting Stand No. 1274 in 2014, and confirming at the Ministry of Lands that Sam Mutoya Mutoya was the rightful owner. His evidence was also that Stand No 1274, Kalulushi had no encumbrances, and when he inspected it, he observed that Stand No 1274, Kalulushi was bare and undeveloped.
- 7.94 Robert Yona Mwanza, however, stated that Sam Mutoya Mutoya handed him the original offer letter, which was signed in blue ink by the Commissioner of Lands and the original lease charges receipt, which was also written in blue ink.
- 7.95 In cross examination, Robert Yona Mwanza was referred to paragraph 18 of his witness statement, and he testified that the two copies which were printed from a computer, were original, but he contended that stating that the two printed and signed offer letters were originals, was speculative, even

though it would generally follow that they were original copies.

- 7.96 It was also Robert Yona Mwanza's testimony that if Gerald Mamfunda had demanded the originals which he had, he would have been put on alert.
- 7.97 In his testimony, Gerald Mamfunda, testified that he had an offer letter and the original survey diagram, but he was unaware of any receipt for lease charges. He added that the offer that he received was computer-generated, and he could not confirm whether it was original.
- 7.98 His evidence was that he could not recall whether Sam Mutoya Mutoya had given him an original document like the one which was at page 3 of Robert Yona Mwanza's bundle of documents, or whether he ever had one himself. Gerald Mamfunda added that the originality of the documents was not important to him because, despite Sam Mutoya Mutoya lacking title, and that he paid the purchase price only after conducting due diligence, and receiving confirmation from the Council that Sam Mutoya Mutoya owned Stand No 1274, Kalulushi.
- 7.99 The definition of bona fide purchaser for value in ***Black's Law Dictionary*** guides that a bona fide purchaser for value is one who has no notice of another person's claim to property.
- 7.100 Gerald Mamfunda alleges that he inspected Stand No 1274, Kalulushi and it had no encumbrances, an allegation that Robert Yona Mwanza disputes, stating that although land

without encumbrances could ordinarily be purchased after inspection, he disagreed that Stand No 1274, Kalulushi, had no encumbrances. He maintained that Gerald Mamfunda was at fault in purchasing it.

7.101 The Courts have also guided that in order for one to be a bona fide purchaser for value the notice must not be actual, constructive or imputed.

7.102 In the case of ***Clementina Banda Emmanuel Njanje v Boniface Mudimba*** ⁽⁹⁾ it was held that:

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

...

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

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

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

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

7.103 Robert Yona Mwanza stated that Gerald Mamfunda could have had constructive notice if he had asked for the original documents from Sam Mutoya Mutoya.

- 7.104 It will however be noted that Gerald Mamfunda testified that not only did he inspect Stand No 1274, Kalulushi, but he also confirmed from the Council that Sam Mutoya Mutoya owned Stand No 1274, Kalulushi.
- 7.105 Robert Yona Mwanza testified that he did not visit Stand No 1274, Kalulushi during the sale transaction or thereafter. As Robert Yona Mwanza did not visit the property and inevitably place anything on the land that would have put Gerald Mamfunda on notice of his interest in the property, Gerald Mamfunda was not put on notice of any interest that Robert Yona Mwanza had in the property.
- 7.106 Therefore, there was no way that Gerald Mamfunda could have had notice of Robert Yona Mwanza's interest in Stand No 1274, Kalulushi.
- 7.107 Further, Robert Yona Mwanza did not register a caveat on Stand No 1274, Kalulushi when he entered into a contract of sale with Sam Mutoya Mutoya. As such, Gerald Mamfunda could not have had notice of his interest in Stand No 1274, Kalulushi as the only document on record was the offer letter to Sam Mutoya Mutoya.
- 7.108 In relation to the original offer letter and the lease charges receipt, Gerald Mamfunda stated that he was given a computer-generated offer letter and an original survey diagram. It would not be prudent to conclude that the said letter of offer was a computer-generated copy and consequently it should have amounted to constructive notice

of Robert Yona Mwanza's interest in Stand No 1274, Kalulushi as there is nothing that supports that position.

7.109 Gerald Mamfunda testified that the Council confirmed that Sam Mutoya Mutoya owned Stand No 1274, Kalulushi. The investigations that Gerald Mamfunda conducted established that Sam Mutoya Mutoya was offered Stand No 1274, Kalulushi.

7.110 Gerald Mamfunda having conducted investigations into ownership of the land which established that there was no other person who had an interest in the property, he is therefore a bona fide purchaser for value without notice of Robert Yona Mwanza's claim. I accordingly find so.

WHETHER THERE WAS FRAUD IN THE SALE OF STAND 1274, KALULUSHI TO GERALD MAMFUNDA

7.111 Robert Yona Mwanza's contention is that Sam Mutoya Mutoya's sale and transfer of Stand No 1274 Kalulushi to Gerald Mamfunda was in breach of the contract of sale, and was improper, fraudulent, and illegal.

7.112 This he alleged, was because Sam Mutoya Mutoya had already sold Stand No 1274, Kalulushi to him, received full payment, and he no longer had any beneficial interest or title to pass.

7.113 Gerald Mamfunda in response contended that the Certificate of Title for Stand No. 1274, Kalulushi, was legally and rightfully issued to him, and there was no fraud that was involved.

7.114 It is trite, that the law requires a party that alleges fraud to particularize that fraud in their pleadings.

7.115 **Order 12 Rule (1)(a) of the Rules of the Supreme Court of England 1965 (1999 edition) White Book** provides that:

“2. - Particulars of pleading

(1) Subject to paragraph (2), every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing,

(2) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies; ...”

7.116 It is also a requirement of the law, that a party alleging fraud has to clearly and distinctly lead evidence at trial, to prove the allegations of fraud, as was stated in the case of ***Sablehand Zambia Limited v Zambia Revenue Authority*** ⁽⁸⁾ where it was held as follows:

“Where fraud is an issue in the proceedings, then a party or wishing to rely on it must ensure that it is clearly and distinctly alleged. Further, at the trial of the cause, the party alleging fraud must equally lead evidence, so that the allegation is clearly and distinctly proved.

Allegations of fraud must, once pleaded, be proved on a higher standard of proof, than on a mere

balance of probabilities, because they are criminal in nature.”

7.117 In this matter, it is noteworthy that not only did Robert Yona Mwanza allege fraud, but he also particularized the fraud in his pleadings. In his witness statement, he gave testimony to support the particulars of fraud, such as Sam Mutoya Mutoya knowing he had sold Stand No 1274, Kalulushi to him, and had received the full agreed purchase price of ZMW 15,000.

7.118 Robert Yona Mwanza contended that Sam Mutoya Mutoya however secretly failed to inform him when he later obtained the certificate of title, and he did not surrender it for transfer as agreed.

7.119 In the submissions, Robert Yona Mwanza relied on the case of ***Sailas Ngowani and 6 others v Ziwolile Ngwira*** ⁽¹⁵⁾, where it was held that:

“Where fraud is the basis for the application for an order directing cancellation, such fraud must be specifically alleged in the pleadings and proved at trial. To this extent the lower court judge cannot be faulted. The approach of the lower court judge, however, does not appear to us to accord with the position of the law as we have explained it, that is to say, other instances than fraud could possibly lead to cancellation of a certificate of title.”

- 7.120 It was submitted that Gerald Mamfunda's case was founded on the immoral or illegal act of Sam Mutoya Mutoya which immoral or illegal act had not been refuted in any way by Gerald Mamfunda.
- 7.121 The evidence on records shows that Robert Yona Mwanza through Enock Banda and Sam Mutoya Mutoya entered into a contract of sale for the land which had special conditions. It has been found that Sam Mutoya Mutoya did not fulfil his obligations under the contract.
- 7.122 Sam Mutoya Mutoya however received payment in full for the piece of land as acknowledged by the receipt. He therefore, had an obligation to obtain title in his name, and inform Robert Yona Mwanza, to enable Robert Yona Mwanza change title into his name to complete the transaction. However, Sam Mutoya Mutoya did not do so.
- 7.123 Instead, he later sold Stand No 1274, Kalulushi to Gerald Mamfunda which was against the agreement that he had with Robert Yona Mwanza.
- 7.124 *Fraud* is defined by ***Black's Law Dictionary 9th Edition*** at page 731 as:

"1. A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. 2. A misrepresentation made recklessly without belief in its' truth to induce another person to act. 3. A tort arising from a knowing misrepresentation, concealment of material facts or reckless

misrepresentation made to induce another to act to his or her detriment.4. Unconscionable dealing esp in contract law...

7.125 The holding in the case of ***Sithole v The State Lotteries Board*** ⁽⁴⁾;

“If a party alleges fraud the extent of the onus on the party alleging is greater than a simple balance of probabilities”.

7.126 The Supreme Court in the case of ***Silas Ngowani, Chilufya Lawrence, Chitalu Joyce, Teweshe Matelo, Mutinta Dominic, Longwani Davy and Machona Moses v Flamingo Farms Limited*** ⁽¹⁵⁾ held that;

“We agree therefore with Counsel for the appellants that fraud as prescribed in Section 33 of the Lands and Deeds Registry Act does not provide the only pathway of the law as circumvention of the procedure prescribed in law, which would render null and void, the allocation of land would be just as fatal.

Other transgressions of the law such as circumvention of the procedure prescribed in the law, which would render null and void the allocation of land, would be just as fatal.”

7.127 Going by the definition of fraud that has been seen above, and the acts by Sam Mutoya Mutoya of not informing Robert Yona Mwanza that he had obtained title to the land, and proceeding to sell the said land to Gerald Mamfunda without

telling Gerald Mamfunda that he had previously sold the land to Robert Yona Mwanza and he received full payment for the land, he acted fraudulently.

7.128 However, **Section 59 of the Lands and Deeds Registry Act Chapter 185 of the Laws of Zambia** provides for a bona fide purchaser for value as follows:

“59. Nothing in Parts III to VII shall be so interpreted as to render subject to action for recovery of damages, or for possession, or to deprivation of any land in respect to which a Certificate of Title has been issued, any purchaser or mortgagee bona fide for valuable consideration of such land on the ground that his vendor or mortgagor may have become a Registered Proprietor through fraud, or error, or under any void or voidable instrument, or may have derived from or through a Registered Proprietor through fraud or error, or under any void or voidable instrument, and this whether such fraud or error consists in wrong description of the boundaries or of the parcels of any land, or otherwise howsoever.”

7.129 Thus, going by the above provision of the law which is in tandem with the definition of bona fide purchaser for value as given by **Black’s Law Dictionary** which I have stated above, one who has been established as a bona fide purchaser for value cannot be deprived ownership of land

where the vendor of the property transfers it to them and there is fraud in the manner of transfer.

8. CONCLUSION

- 8.1 Being a bona fide purchaser for value is a complete defence and Gerald Mamfunda having established that he is a bona fide purchaser for value, Robert Yona Mwanza cannot succeed on his claim that he is the legal owner of the property known as Stand No 1274 Kalulushi, and he should be granted an Order for specific performance of the contract of sale.
- 8.2 Robert Yona Mwanza further cannot succeed on the claim for cancellation of the certificate of title which was issued to Gerald Mamfunda for Stand No 1274 Kalulushi and damages for inconvenience.
- 8.3 Gerald Mamfunda accordingly succeeds on his counterclaim that he is the rightful and legal owner of the property Stand No 1274 Kalulushi in the Copperbelt Province of the Republic of Zambia.
- 8.4 Robert Yona Mwanza's claim all fail, and they are dismissed with costs to Gerald Mamfunda, which shall be taxed in default of agreement. Leave to appeal is granted.

DATED AT LUSAKA THE 1st DAY OF DECEMBER, 2025

S. Kaunda
S. KAUNDA NEWA
HIGH COURT JUDGE

