

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

2022/HP/1791

BETWEEN:

**DA-CHENG WOOD PROCESSING COMPANY  
LIMITED**

PLAINTIFF

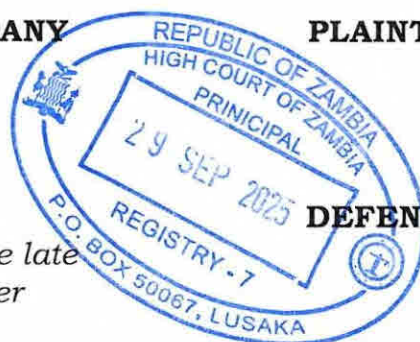
AND

**PEREKA NYIRENDA**

(Sued as Administratrix of the estate of the late  
Patricia Ruth Myepa Nyirenda and occupier  
of Farm No. 288a/L, Makeni, Lusaka)

DEFENDANT

(By original action)



AND BETWEEN:

**PEREKA NYIRENDA**

(Suing as Administratrix of the estate of the late  
Patricia Ruth Myepa Nyirenda)

PLAINTIFF

AND

**DA CHENG WOOD PROCESSING LIMITED**

(By counterclaim)

DEFENDANT

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

For the Plaintiff : Mr M. Ntanda, Messrs Regan Blankeinflein Gates Legal  
Practitioners

For the Defendant : Mr N. Ng'andu, Messrs Shamuwana and Company

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## J U D G M E N T

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CASES REFERRED TO:

1. *Khalid Mohammed v The Attorney General* 1982 ZR 49
2. *Colgate Palmolive (Zambia) Inc-v Able Shemu Chuka and 110 others*  
Appeal No. 181 of 2001

3. *Kayoba and another v Ngulube and another* SCZ Judgment No. 19 of 2003
4. *Charity Oparacha v Winfridah Murumbiwa* 2004 ZR 141
5. *Gray Nachandwe Mudenda v Dorothy Chileshe* 2006 ZR 57
6. *Lindiwe Kate Chinyanta v Doreen Chiwele and Judith Tembo* 2007 ZR 246
7. *Anti-Corruption Commission v Barnnet Development Corporation Limited* SCZ No. 5 of 2008
8. *Clementina Banda Emmanuel Njanje v Boniface Mudimba*
9. *Neighbours City Estates Limited v Mark Mushili* Appeal No. 47 of 2013
10. *Patrick Dickson Ngulube v Robson Malipenga* SCZ Judgment No. 13 of 2015
11. *Hildah Ngosi (suing as Administrator of the estate of Washington Ngosi) v The Attorney General* SCZ Judgment No. 18 of 2015
12. *James Onwuka v Joyce Siandwazi Reid and 3 Others* Appeal No 29 of 2015
13. *Benson Munganama v Fredah Ngoma and the Attorney General* Appeal No. 186 of 2015
14. *Wisdon Chiyala and Busiku Chiyala v Joseph Kamanga* Appeal No 15 of 2017
15. *Elias Tembo v Maureen Chirwa, Duncan Chirwa and the Attorney General* Appeal No. 5 of 2018
16. *Gillian Kasempa Mutinta v New Future Financial Company Limited and another* Appeal No. 13 of 2023

LEGISLATION REFERRED TO:

1. *The Intestate Succession Act Chapter 59 of the Laws of Zambia*
2. *The Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia*
3. *The Money Lenders Act Chapter 398 of the Laws of Zambia*

OTHER WORKS REFERRED TO:

1. *Black Law's Dictionary, 8th Edition, by Bryan A. Garner Thomas Reuters, 2004*
2. *Oxford Dictionary of Law, Sixth Edition, by Elizabeth A. Martin, Jonathan Law, Oxford University Press, 2006*

## 1. INTRODUCTION

- 1.1 The Plaintiff, Da-Cheng Wood Processing Company Limited, commenced this matter on 14<sup>th</sup> November, 2022

by Originating Summons which was accompanied by an affidavit and a List of Authorities and Skeleton Arguments seeking summary possession of the property known as the remaining extent of Subdivision L of Farm No 288A Lusaka.

- 1.2 Pereka Nyirenda in response, filed an affidavit in opposition and a List of Authorities in opposition on 5<sup>th</sup> December, 2022.
- 1.3 At the hearing on 12<sup>th</sup> December, 2022, Counsel for Pereka Nyirenda submitted that the matter should not have been commenced by Originating Summons as the question of ownership of the property was in issue, which could not be resolved by affidavit evidence.
- 1.4 There was no opposition to the submission, and I granted an Order to amend the originating process to be by Writ of Summons.
- 1.5 Thus, on 16<sup>th</sup> December 2022, Da Cheng Wood Processing Company Limited filed the Writ of Summons, which was accompanied by a statement of claim and the other requisite documents, in which it claims the following reliefs:
  - i. *An Order for vacant possession of Farm No. 288a/L, Makeni, Lusaka;*
  - ii. *Mesne profits from the date of change of ownership until possession is delivered up;*
  - iii. *Any other relief the Court may deem fit;*
  - iv. *Interest; and*

v. *Costs.*

1.6 Alternatively, Da-Cheng Wood Processing Company Limited claims for the following:

i. *Payment of USD93,650.00 being monies due under the loan agreement;*

ii. *Simple interest from the date of default to the date of the writ at 4% per month;*

iii. *Damages for breach of contract;*

iv. *Interest; and*

v. *Costs.*

## **2. STATEMENT OF CLAIM**

2.1 The basis for seeking the reliefs, as set out in the statement of claim, are that on 31<sup>st</sup> October 2019, Da-Cheng Wood Processing Company Limited entered into a contract with the deceased Patricia Ruth Myepa Nyirenda, whose estate is administered by Pereka Nyirenda.

2.2 The averment was that under that contract, Da-Cheng Wood Processing Company Limited was to loan the sum of USD63,277.00 to Patricia Ruth Myepa Nyirenda for a period of six (6) months.

2.3 It was stated that it was further agreed that USD30,373.00 would be the total interest to be charged on the loan for the six (6) months period.

2.4 Da Cheng Wood Processing Company Limited contended that Patricia Ruth Myepa Nyirenda, as beneficial owner, offered subdivision L of Farm No. 288a Makeni in Lusaka, Zambia as collateral for the loan.

- 2.5 In still averring, it was contended that it was also agreed that should Patricia Ruth Myepa Nyirenda default in paying the loan, the contract amount would be treated as consideration for the purchase of the property, and Patricia Ruth Myepa Nyirenda would convert ownership of the property from her name to Da- Cheng Wood Processing Company Limited's name.
- 2.6 The contention was further that, concurrent to the loan agreement, and in order to make clear their intention to execute a sale of the property at the time of entering into the loan agreement, the parties freely executed a contract of sale which was dated 31<sup>st</sup> October 2022.
- 2.7 The averment was that upon Patricia Ruth Myepa Nyirenda's failure to repay the loan amount, and as earlier agreed by the parties, Patricia Ruth Myepa Nyirenda, by a Deed of Settlement, which was dated 6<sup>th</sup> November 2020, proceeded to process change of ownership from her name to Da-Cheng Wood Processing Company Limited's name.
- 2.8 It was stated that upon the demise of Patricia Ruth Myepa Nyirenda, and subsequent to the change of ownership of the property by and from Patricia Ruth Myepa Nyirenda to Da-Cheng Wood Processing Company Limited, Pereka Nyirenda was appointed as Administratrix of the estate of Patricia Ruth Myepa Nyirenda, and she was in occupation of the property.
- 2.9 It was further alleged that Da-Cheng Wood Processing Company Limited attempted by letter, and by meeting to

have Pereka Nyirenda vacate Da-Cheng Wood Processing Company Limited's premises, as the same did not form part of the estate of Patricia Ruth Myepa Nyirenda or at all.

2.10 The particulars of the claim were contended as:

**PARTICULARS OF CLAIM**

- i. Da- Cheng Wood Processing Company Limited is and was at all material times the owner and entitled to possession of subdivision L of Farm No. 288a, Makeni, Lusaka in the Republic of Zambia;*
- ii. Pereka Nyirenda wrongfully remained and continues to remain in possession of the said property;*
- iii. By reason of these matters, Da- Cheng Wood Processing Company Limited has been deprived of the use and enjoyment of the land and has suffered damage. A reasonable sum for the use and enjoyment of the land is ZMW20,000.00 per month; and*
- iv. Further, Da- Cheng Wood Processing Company Limited is entitled to and claims interest at the short-term deposit rate from date of commencement of the proceedings to date of Judgment and thereafter at the Bank of Zambia lending rate until possession is delivered up.*

2.11 It was stated that Pereka Nyirenda's trespass and continued stay on the property, had continued to prejudice Da-Cheng Wood Processing Company Limited.

### **3. DEFENCE AND COUNTER CLAIM**

- 3.1 In the Defence which was filed by Pereka Nyirenda on 26<sup>th</sup> June 2023, she contended that Da-Cheng Wood Processing Company Limited is licensed under the ***Money Lenders Act, Chapter 398 of the Laws of Zambia***, as trading under the name Da Cheng Money Lenders.
- 3.2 Pereka Nyirenda admitted that she was in possession of the remaining extent of subdivision L of Farm No. 288a (the property), Lusaka. She added that she was in such occupation in her capacity as Administratrix of the estate of the late Blackmore Gadi Chafwa Nyirenda.
- 3.3 It was denied, that on 31<sup>st</sup> October 2019, Da- Cheng Wood Processing Company Limited entered into a contract with the deceased, Patricia Ruth Myepa Nyirenda, in which Da-Cheng Wood Processing Company Limited was to loan the sum of USD63,277.00 to the deceased for a period of six (6) months.
- 3.4 Further denial was made, that under the contract, it was agreed that the sum of USD30,373.00 would be the total interest that would be charged on the loan for the six (6) months period.
- 3.5 Pereka Nyirenda averred in the alternative, that on 6<sup>th</sup> November 2019, Da-Cheng Wood Processing Company

Limited paid the sum of ZMW175,000.00 as a loan to Patricia Ruth Myepa Nyirenda.

- 3.6 Her contention was that prior to the loan of ZMW175,000.00, on 12<sup>th</sup> July 2019, Da- Cheng Wood Processing Company Limited entered into a loan agreement with Patricia Ruth Myepa Nyirenda in which Da- Cheng Wood Processing Company Limited agreed to lend the sum of ZMW140,000.00 for a period of six (6) months with interest at a rate of 8% per month.
- 3.7 She stated that as collateral for the loan, Patricia Ruth Myepa Nyirenda pledged the property, which formed part of the estate of the late Blackmore Gadi Chafwa Nyirenda.
- 3.8 It was also Pereka Nyirenda's contention, that Da-Cheng Wood Processing Company Limited availed the sum of ZMW136,500.00 on 16<sup>th</sup> July 2019, to Patricia Ruth Myepa Nyirenda's bank account.
- 3.9 She further alleged that the interest rate that was applied to the loan agreements by Da-Cheng Wood Processing Company Limited was contrary to the provisions of the ***Money Lenders Act***.
- 3.10 Further in her defence, Pereka Nyirenda stated that the property, was at all material times, the property of the estate of the late Blackmore Gadi Chafwa Nyirenda.
- 3.11 She denied that it was also agreed that should Patricia Ruth Myepa Nyirenda default in paying the loan, the contract amount would be treated as consideration for the purchase of the property, and that Patricia Ruth Myepa

Nyirenda would convert ownership of the property from her name to Da-Cheng Wood Processing Company Limited's name.

- 3.12 Admission was made, that Patricia Ruth Myepa Nyirenda and Da-Cheng Wood Processing Company Limited entered into a contract of sale on 31<sup>st</sup> October 2019, for the property. The defence was however that the contract of sale was null and void ab initio.
- 3.13 Still in defence, Pereka Nyirenda contended that the contract of sale was unenforceable on grounds that Patricia Ruth Myepa Nyirenda's appointment as Administratrix of the estate of the late Blackmore Gadi Chafwa Nyirenda by the Local Court was a nullity and further, no prior authority was obtained from the High Court before entering into the contract of sale.
- 3.14 She admitted that Da- Cheng Wood Processing Company Limited proceeded to change ownership of Subdivision L of Farm No. 288a, Lusaka.
- 3.15 Further admission was made, that following the demise of Patricia Ruth Myepa Nyirenda, Pereka Nyirenda was appointed as Administratrix of her estate.
- 3.16 It was averred that by a letter dated 23<sup>rd</sup> August 2021, Pereka Nyirenda contacted Da-Cheng Wood Processing Company Limited through her advocates, expressing concern over transactions relating to the property, which did not belong to the late Patricia Ruth Myepa Nyirenda.

3.17 Pereka Nyirenda denied that she was trespassing on Da-Cheng Wood Processing Company Limited's land. She also denied the particulars of claim, and the allegation that her trespass and continued stay on the property had continued to prejudice Da-Cheng Wood Processing Company Limited.

**COUNTERCLAIM**

3.18 In the counterclaim, Pereka Nyirenda repeated her defence.

3.19 She also stated that she is the Administratrix of the estate of the late Blackmore Gadi Chafwa Nyrienda, following the grant of Letters of Administration by the High Court on 6<sup>th</sup> September 2022.

3.20 It was Pereka Nyirenda's averment that on 3<sup>rd</sup> May 2005, Blackmore Gadi Chafwa Nyrienda died intestate, and thereafter Pereka Nyirenda's siblings, Patricia Ruth Myepa Nyirenda and Mwiza Eugene Joshua Nyirenda, were appointed as Co Administrators of his estate by the Local Court in 2006.

3.21 She stated that following the death of Mwiza Eugene Nyirenda in 2013, Patricia Ruth Myepa Nyirenda was appointed the sole Administratrix by the Local Court on 6<sup>th</sup> October 2015, which appointment was reconfirmed on 19<sup>th</sup> January 2019.

3.22 The contention was that the Local Court had no jurisdiction to appoint Patricia Ruth Myepa Nyirenda as

Administratrix of the estate of the late Blackmore Gadi Chafwa Nyirenda.

- 3.23 Pereka Nyirenda also stated that Blackmore Gadi Chafwa Nyirenda's estate comprised Subdivision L of Farm 288a, Lusaka.
- 3.24 Her averment was that on 10<sup>th</sup> July 2019, Patricia Ruth Myepa Nyirenda was issued with a certificate of title for the property.
- 3.25 The contention was that as the property formed part of the estate of the late Blackmore Gadi Chafwa Nyirenda, it was illegal for a certificate of title to be issued in a personal capacity to Patricia Ruth Myepa Nyirenda.
- 3.26 Pereka Nyirenda stated that on 12<sup>th</sup> July 2019, Patricia Ruth Myepa Nyirenda proceeded to obtain a loan from Da-Cheng Wood Processing Company Limited in the sum of ZM140,000.00 for a period of 6 months with interest at 8% and she pledged Subdivision L of Farm 288a, Lusaka as collateral for the loan.
- 3.27 Her assertion was that sometime in October 2019, Da-Cheng Wood Processing Company Limited and Patricia Ruth Myepa Nyirenda purportedly entered into a contract of sale, in which Patricia Ruth Myepa Nyirenda agreed to sell to Da- Cheng Wood Processing Company Limited, the property at a consideration of USD63,277.00.
- 3.28 It was averred that on completion of the conveyancing transaction, a certificate of title for the property was issued to Da- Cheng Wood Processing Company Limited.

- 3.29 However, Pereka Nyirenda contended that she would show that the certificate of title was illegally issued to Da-Cheng Wood Processing Company Limited, on grounds that no prior authority was obtained from the High Court before the sale of the property by the then Administratrix of the estate, Patricia Ruth Myepa Nyirenda.
- 3.30 Further allegation was made, that Da- Cheng Wood Processing Company Limited did not conduct due diligence to ascertain ownership of the property before entering into any loan agreement or contract of sale or both, with Patricia Ruth Myepa Nyirenda.
- 3.31 Pereka Nyirenda also contended that Da- Cheng Wood Processing Company Limited had constructive knowledge that Subdivision L of Farm 288a, Lusaka formed part of the estate of Blackmore Gadi Chafwa Nyirenda.
- 3.32 Her further assertion was that by a letter dated 23<sup>rd</sup> August 2021, she advised Da-Cheng Wood Processing Company Limited that the property, was the property of the estate of the late Blackmore Gadi Chafwa Nyirenda.
- 3.33 Pereka Nyirenda stated that Da- Cheng Wood Processing Company Limited had neglected, refused or failed to reconvey the property, back to the estate of the late Blackmore Gadi Chafwa Nyirenda.
- 3.34 Pereka Nyirenda counterclaimed the following:
- i. A declaration that the remaining extent of Subdivision L of Farm 288a Lusaka, forms part the*

*estate of the late Blackmore Gadi Chafwa Nyirenda;*

- ii. An Order directing that the contract of sale dated 31<sup>st</sup> October 2019, for the remaining extent of Subdivision L of Farm 288a Lusaka, is void and unenforceable;*
- iii. An Order directing the cancellation of the certificate of title No. 89481 for the remaining extent of Subdivision L of Farm 288a Lusaka which was issued in the name of Da-Cheng Wood Processing Company Limited;*
- iv. An Order directing the reversion of the remaining extent of Subdivision L of Farm 288a Lusaka, Lusaka to the estate of the late Blackmore Gadi Chafwa Nyirenda;*
- v. Costs; and*
- vi. Any other relief that the Court may deem fit.*

#### **4. REPLY AND DEFENCE TO COUNTER CLAIM**

##### **REPLY**

- 4.1 In the Reply, Da- Cheng Wood Processing Company Limited joined issue with Pereka Nyirenda on several paragraphs of the defence.
- 4.2 It was also contended that the Patricia Ruth Myepa Nyirenda, with a sound mind at the time of the contract, and in exercise of her freedom of contract, did, without any force, fraud, misrepresentation or indeed any claim of

illegality, freely enter into the contract which was mentioned in paragraph 3 of the statement of claim.

- 4.3 The assertion was that the said contract was within the confines of the ***Money Lenders Act***.
- 4.4 The reply was further that ownership of the property in dispute at the time of the sale belonged to Patricia Ruth Myepa Nyirenda, and that it was in Patricia Ruth Myepa Nyirenda's name.
- 4.5 It was averred that a certificate of title is conclusive evidence of ownership of land, and that Da-Cheng Wood Processing Company Limited was a bona fide purchaser for value.
- 4.6 Further contention was made, that Patricia Ruth Myepa Nyirenda sold the property in dispute to Da-Cheng Wood Processing Company Limited as beneficial owner, as opposed to Pereka Nyirenda's assertion that Patricia Ruth Myepa Nyirenda sold the property as Administratrix of the estate of the late Blackmore Gadi Chafwa Nyirenda.
- 4.7 It was further stated that there is no requirement for a beneficial owner of a property, to obtain a Court order as a condition precedent to their disposal of their own property.
- 4.8 As such, questions as to the validity or lack thereof of Patricia Ruth Myepa Nyirenda's appointment as Administratrix, and Pereka Nyirenda's averment regarding the requirement to obtain an Order of sale, were now, irrelevant in this matter.

**DEFENCE TO COUNTERCLAIM**

- 4.9 In defence to the counterclaim, Da Cheng Wood Processing Company Limited stated that it never transacted with the estate of Blackmore Gadi Chafwa Nyirenda, and that the estate was not a party to these proceedings or at all.
- 4.10 It was disputed that on 10<sup>th</sup> July 2019, Patricia Ruth Myepa Nyirenda was issued with a certificate of title for the property. The defence was that at the material time, no transaction of any kind was undertaken between Da-Cheng Wood Processing Company Limited and Patricia Ruth Myepa Nyirende, with assertion being made that Patricia Ruth Myepa Nyirenda obtained the certificate of title before she ever met Da- Cheng Wood Processing Company Limited.
- 4.11 It was admitted that before ownership of the property changed into Patricia Ruth Myepa Nyirenda's name, it was in the name of Blackmore Gadi Chafwa Nyirenda.
- 4.12 However, Da- Cheng Wood Processing Company Limited stated that after conducting due diligence on ownership of the property by ascertaining the validity and the originality of the certificate of title, by obtaining the Land's Register and placing a caveat, Da- Cheng Wood Processing Company Limited, had nothing that stopped it from purchasing the property in dispute from Patricia Ruth Myepa Nyirenda, who was the beneficial owner at the material time.

- 4.13 It was stated that after conducting due diligence, and after ascertaining the legitimacy of ownership of the property, genuine ownership of the property was transferred to Da-Cheng Wood Processing Company Limited, by Patricia Ruth Myepa Nyirenda's hand.
- 4.14 Da Cheng Wood Processing Company Limited, admitted that on 12<sup>th</sup> July 2019, Patricia Ruth Myepa Nyirenda proceeded to obtain a loan from it, but stated that it was in the sum of USD63,277.00 for a period of 6 months with interest at 8%, and that Patricia Ruth Myepa Nyirenda pledged Subdivision L of Farm 288a, Lusaka as collateral for the loan.
- 4.15 Admission was also made, that Patricia Ruth Myepa Nyirenda did, voluntarily, facilitate the transfer of title to Da- Cheng Wood Processing Company Limited by applying for and obtaining State's Consent to Assign and obtaining a property transfer tax certificate, among others.
- 4.16 It was denied that the certificate of title was illegally issued to Pereka Nyirenda on grounds that no prior authority was obtained from the High Court before the sale of the property, by the then Administratrix of the estate, Patricia Ruth Myepa Nyirenda.
- 4.17 Further denial was made, that Da- Cheng Wood Processing Company Limited did not conduct due diligence to ascertain ownership of the property before

entering into any loan agreement or contract of sale or both with Patricia Ruth Myepa Nyirenda.

- 4.18 It was further stated that ownership of the subject property had transferred to Patricia Ruth Myepa Nyirenda as per the original genuine certificate of title as averred in paragraph 25 of Pereka Nyirenda's counterclaim.
- 4.19 The contention was that a certificate of title is conclusive proof of ownership of land.
- 4.20 It was admitted that Pereka Nyirenda wrote a letter dated 23<sup>rd</sup> August 2021, in which she purported to advise Da-Cheng Wood Processing Company Limited of the purported ownership of the property. However, Da-Cheng Wood Processing Company Limited clarified to Pereka Nyirenda matters relating to the ownership of the property by the letter dated 31 August 2021, and which was marked 'Without Prejudice.'
- 4.21 The assertion was that Da-Cheng Wood Processing Company Limited could not reconvey property, that it lawfully owned to Pereka Nyirenda or any person without having sold or gifted them or at all.
- 4.22 Da-Cheng Wood Processing Company Limited denied the reliefs sought in the counterclaim, and stated that Pereka Nyirenda had not specifically disclosed any cause of action to entitle her to the reliefs that she sought against Da-Cheng Wood Processing Company Limited from this Honourable Court.

**5. EVIDENCE AT TRIAL**

5.1 At trial, Chisiki Matafwali testified on behalf of Da-Cheng Wood Processing Company Limited. Pereka Nyirenda also gave evidence, while Mbiko Moyo, a representative of Indo Zambia Bank, was subpoenaed and testified as a witness.

**PW1 – CHISIKI MATAFWALI**

- 5.2 Chisiki Matafwali produced her amended witness statement as her evidence. She testified that by a contract of sale which was dated 31<sup>st</sup> October 2019, Da-Cheng Wood Processing Company Limited purchased the property from the late Patricia Ruth Myepa Nyirenda at the price of USD63,277.00.
- 5.3 She identified the contract of sale which was at pages 16 to 22 of Da-Cheng Wood Processing Company Limited's bundle of documents.
- 5.4 Her testimony was that Clause 1 of the special conditions of the contract of sale, provided that the property was sold subject to the Law Association of Zambia General Conditions of Sale 2018, so far as they were not inconsistent with or varied by the special conditions.
- 5.5 In further testifying, Chisiki Matafwali stated that special condition no. 13 of the contract of sale, provided that Patricia Ruth Myepa Nyirenda sold the property as a beneficial owner, and that special condition no. 17 stated that Patricia Ruth Myepa Nyirenda sold the property free from any encumbrance or liabilities whatsoever in nature. She added that special condition no. 18 provided that

vacant possession was to be passed to Da-Cheng Wood Processing Company Limited upon completion.

- 5.6 Further in her testimony, Chisiki Matafwali stated that the parties executed a deed of settlement, whereby Patricia Ruth Myepa Nyirenda in paragraph 3 of the Testatum, opted to sell the property in order to settle her indebtedness, and she permitted Da- Cheng Wood Processing Company Limited to change ownership of the property from her name into Da- Cheng Wood Processing Company Limited's name.
- 5.7 She referred to a copy of the Deed of Settlement which was at pages 29 to 35 of Da-Cheng Wood Processing Company Limited's bundle of documents.
- 5.8 It was also her testimony, that Patricia Ruth Muyepa Nyirenda voluntarily obtained State's Consent to Assign on 19<sup>th</sup> November 2020, and that a copy of the grant of the State Consent to Assign was at page 36 of Da- Cheng Wood Processing Company Limited's bundle of documents.
- 5.9 She added that Patricia Ruth Myepa Nyirenda paid property transfer tax in relation to the property, and she referred to the tax payment receipt and PTT clearance certificate which were at pages 45 and 51 of Da- Cheng Wood Processing Company Limited's bundle of documents. Page 2 of Da- Cheng Wood Processing Company Limited's supplementary bundle of documents was stated as being the PTT receipt at page 2.

- 5.10 Chisiki Matafwali further testified that Patricia Ruth Myepa Nyirenda was the holder of the certificate of title No. CT-60128, which served as proof of ownership of the property that she sold to Da-Cheng Wood Processing Company Limited, together with a print-out of the Lands Register, and that she also executed a Deed of Rectification as beneficial owner.
- 5.11 A copy of the certificate of title, and the Lands Register were said to be at pages 1 to 8 and 37 to 41 of Da-Cheng Wood Processing Company Limited's bundle of documents respectively.
- 5.12 Chisiki Matafwali further identified pages 23 to 25 of Da-Cheng Wood Processing Company Limited's bundle of documents as being the Deed of Rectification.
- 5.13 Still in her testimony, Chisiki Matafwali stated that at the instance of Patricia Ruth Myepa Nyirenda, Da-Cheng Wood Processing Company Limited obtained a certificate of title No. 89481, relating to the property, identifying pages 46 to 50 of Da-Cheng Wood Processing Company Limited's bundle of documents, as the said Certificate of Title.
- 5.14 In conclusion, Chisiki Matafwali's evidence was that upon attempt to obtain possession of the property, the premises were unlawfully occupied by Pereka Nyirenda, who had since refused to vacate the premises.

**CROSS EXAMINATION OF CHISIKI MATAFWALI**

- 5.15 In cross examination, Chisiki Matafwali testified that she is a Legal Practitioner.
- 5.16 Her evidence was further that Da-Cheng Wood Processing Company Limited was involved in the business of money lending, and that Pereka Nyirenda got a loan from Da-Cheng Wood Processing Company Limited.
- 5.17 Chisiki Matafwali when referred to the Statement of Commitment which was at pages 20 to 24 of Pereka Nyirenda's bundle of documents, testified that Patricia Ruth Myepa Nyirenda was given a loan on 12<sup>th</sup> July 2019. She added that the take home amount as shown at page 21, was ZMW140,000.00 at an interest of 8%, and that the period of the loan was 6 months.
- 5.18 Her testimony was also that the total interest that was payable was ZMW129,231.00, and that the interest payable was calculated on the take home amount.
- 5.19 Further in cross examination, Chisiki Matafwali testified that she could not pay the ZMW3,500.00 which was deducted from the take home amount of ZMW140,000.00, although it was indicated at page 22.
- 5.20 On being referred to the Statement of Commitment, which was at pages 20 to 21 of Pereka Nyirenda's bundle of documents, her evidence was that she believed that the full ZMW140,000.00 was paid to Patricia Ruth Myepa Nyirenda, and that the loan was to be repaid over a period of six (6) months.
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- 5.21 It was Chisiki Matafwali's evidence that she believed that the loan was not repaid, but that she had no evidence to show that it was paid.
- 5.22 Her continued testimony in cross examination, was that Patricia Ruth Myepa Nyirenda obtained a loan in the amount of USD63,277.00, but she could not confirm if it was paid by bank transfer.
- 5.23 She further stated that a contract of sale was signed when the USD63,277.00 loan was given.
- 5.24 Chisiki Matafwali told the Court that Da- Cheng Wood Processing Company Limited purchased the property pursuant to a settlement, and after that, Da- Cheng Wood Processing Company Limited was a bona fide purchaser for value without notice.
- 5.25 Chisiki Matafwali testified, when she was referred to pages 17 to 23 of Da- Cheng Wood Processing Company Limited's bundle of pleadings, specifically, paragraph 11 at page 14, that the defence was that due diligence was conducted before purchasing the property.
- 5.26 Her evidence was that Da Cheng Wood Processing Company Limited had not brought a certificate of the official search, but that a printout was before Court, which was not a certificate of the official search.
- 5.27 On being referred to the Lands Register which was at pages 37 to 41 of Da-Cheng Wood Processing Company Limited's bundle of documents, Chisiki Matafwali's evidence was that it was dated 22<sup>nd</sup> December 2020, and

that it was obtained on the day that the certificate of title was obtained.

- 5.28 It was her testimony that, based on the printout at the time the loan was obtained, the late Blackmore Gadi Chafwa Nyrienda owned the property, whose estate Patricia Ruth Myepa Nyirenda administered.
- 5.29 Chisiki Matafwali testified that at entry no. 14 at page 39, Patricia Ruth Myepa Nyirenda registered an order of appointment, and at entry no. 18 at page 40, a caveat was placed on the property as beneficiary of the estate with other children.
- 5.30 She stated that she was not aware that there were other beneficiaries under the estate.
- 5.31 Still in cross examination, Chisiki Matafwali testified that based on the printout, there was no direct transaction that transferred ownership to Da-Cheng Wood Processing Company Limited. She however pointed out that the order of appointment as Administrator permitted Patricia Ruth Myepa Nyirenda to deal with the property.
- 5.32 It was her testimony that the Local Court issues Orders of Appointment as Administrator, where a deceased dies intestate. Her evidence was that no order was obtained from the High Court to sell the property.
- 5.33 Chisiki Matafwali when referred to page 1 of Da-Cheng Wood Processing Company Limited's Supplementary bundle of documents, testified that the page contained

emails, and she stated that she authored the second email, which was dated 19<sup>th</sup> January 2021.

- 5.34 Her evidence was that the company changed ownership of the property, and that she was Legal Counsel for the company.
- 5.35 It was Chisiki Matafwali's evidence, when she was referred to pages 46 to 50 of Da- Cheng Wood Processing Company Limited's bundle of documents, that it was a certificate of title in Da- Cheng Wood Processing Company Limited's name, which was dated 22<sup>nd</sup> December 2020. She added that it had the same date as on the printout, which was at pages 37 to 44 of the same bundle of documents.
- 5.36 It was agreed that there was no other printout before Court.
- 5.37 Further in cross examination, Chisiki Matafwali testified that Da-Cheng Wood Processing Company Limited maintained bank accounts with Stanbic Bank, and that payments to clients were sometimes made from those accounts. However, she stated that she could not confirm whether Patricia Ruth Myepa Nyirenda had ever been paid from the said account.
- 5.38 It was also her testimony that before transferring the money, they did not go to view the property.
- 5.39 Chisiki Matafwali testified when she was referred to paragraph 33 at page 10 of Da-Cheng Wood Processing Company Limited's bundle of pleadings, that she did not recall what they did, when put on notice.

**RE-EXAMINATION OF CHISIKI MATAFWALI**

- 5.40 In re-examination, Chisiki Matafwali clarified that at the time that the transaction was done, the late Patricia Ruth Myepa Nyirenda was the beneficial owner of the property, so there was no need to seek leave to sell the property.
- 5.41 That marked the close of Da Cheng Wood Processing Company Limited's case.

**DW1 – PEREKA NYIRENDA**

- 5.42 Pereka Nyirenda produced her witness statement as her testimony. She testified in that witness statement, that she is the Administratrix of the estate of the late Patricia Ruth Myepa Nyirenda. Her evidence was further that she is the Administratrix of the estate of the late Blackmore Gadi Chafwa Nyirenda, as shown by the grant of Probate which was dated 6<sup>th</sup> September, and was at page 1 of her bundle of documents.
- 5.43 Pereka Nyirenda stated that Blackmore Gadi Chafwa Nyirenda died on 3<sup>rd</sup> May 2005, intestate, and that he was survived by the following children; Patricia Ruth Myepa Nyirenda, Khumbo Kenneth Nyirenda, Mwiza Eugene Joshua Nyirenda, and herself.
- 5.44 It was also her testimony that Patricia Ruth Myepa Nyirenda was appointed as Administratrix of Blackmore Gadi Chafwa Nyirenda's estate by the Local Court on 6<sup>th</sup> October 2015, as shown by the Order of appointment which was at page 2 of Pereka Nyirenda's bundle of documents.

- 5.45 Pereka Nyirenda's testimony was that at the time of Blackmore Gadi Chafwa Nyirenda's death, he was the registered owner of Subdivision L of Farm 288a, Lusaka, which was in extent of 100 acres, approximately 40.4686 hectares, as could be seen from the Certificate of Title for the property, which was at pages 3 to 5 of Pereka Nyirenda's bundle of documents.
- 5.46 She testified that Patricia Ruth Myepa Nyirenda proceeded to subdivide and transfer a portion of Subdivision L of Farm 288A, Lusaka, to the United Church of Zambia Registered Trustees and Ahmad Al Khatib Investments Limited, leaving a remaining extent of 30.3127 hectares of Subdivision L of Farm 288A, Lusaka.
- 5.47 It was further her evidence that on 13th April 2018, Patricia Ruth Myepa Nyirenda wrote to the Ministry of Lands requesting that correction be made to the registration details for the property, which appeared to stand in the name of Ahmad Al Khatib Investments Limited, instead of Blackmore Gadi Chafwa Nyirenda.
- 5.48 She referred to a copy of the unsigned letter which was at page 6 of her bundle of documents, as well as the demand notice, and the receipt which were at pages 7 and 8 of the same bundle of documents.
- 5.49 Pereka Nyirenda's testimony was that on 17<sup>th</sup> April 2018, Patricia Ruth Myepa Nyirenda proceeded to lodge a caveat at the Ministry of Lands as Administratrix of Blackmore Gadi Chafwa Nyirenda's estate, and she identified a copy

of the Lodgment Schedule which was at pages 9 to 10 of Pereka Nyirenda's bundle of documents.

- 5.50 She stated that a caveat was subsequently registered on 19<sup>th</sup> April 2018, as confirmed by an extract of the Lands Register printout from the Ministry of Lands, which was at page 40 of Da- Cheng Wood Processing Company Limited's bundle of documents.
- 5.51 Pereka Nyirenda testified that Patricia Ruth Myepa Nyirenda died on 17<sup>th</sup> June 2021.
- 5.52 In her continued testimony, she stated that following the death of Patricia Ruth Myepa Nyirenda, it came to her attention that, on 10<sup>th</sup> January 2019, another Order of appointment as Administratrix over her father's estate was obtained from the Local Court appointing Patricia Ruth Myepa Nyirenda. Pereka Nyirenda stated that page 11 of her bundle of documents was the said Order of Appointment as Administrator.
- 5.53 She added that she discovered that Patricia Ruth Myepa Nyirenda obtained a Certificate of Title which was dated 10<sup>th</sup> July 2019, for the property, being 30.3127 hectares in her own personal capacity, and not as Administratrix of Blackmore Gadi Chafwa Nyirenda's estate.
- 5.54 That Certificate of Title was said to be at pages 12 to 19 of Pereka Nyirenda's bundle of documents.
- 5.55 Pereka Nyirenda told the Court that Blackmore Gadi Chafwa Nyirenda did not bequeath subdivision L of Farm

288a, Lusaka to Patricia Ruth Myepa Nyirenda, as he did not leave a Will.

- 5.56 Her evidence was that on 12<sup>th</sup> July 2019, Patricia Ruth Myepa Nyirenda obtained a loan in the sum of ZMW140,000.00 from Da-Cheng Wood Processing Company Limited, which company traded as DA Cheng Money Lenders, for a period of 6 months with an interest of 8% per month.
- 5.57 Pereka Nyirenda in that regard, referred to the Statement of Commitment, the Processing and Security Form and the Extension of Default Agreement, which were at pages 20 to 24 of her bundle of documents.
- 5.58 Her evidence was further that as security for the borrowing, Patricia Ruth Myepa Nyirenda pledged Subdivision L of Farm 288a, Lusaka as collateral, and in addition she also agreed to transfer ownership of certificate of title for the property after three (3) months of the loan expiry period date, in the event of default.
- 5.59 Pereka Nyirenda stated that her sister did not obtain permission from the Court to pledge the property as security.
- 5.60 Her testimony was also that on 16<sup>th</sup> July 2019, Da-Cheng Wood Processing Company Limited disbursed the sum of ZMW136,500.00 to Patricia Ruth Myepa Nyirenda's bank account.
- 5.61 It was her evidence that before the expiry of the loan, Da-Cheng Wood Processing Company Limited and Patricia
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Ruth Muyepa Nyirenda entered into a contract of sale dated 31<sup>st</sup> October 2019, for Subdivision L of Farm 288a, Lusaka for the sum total of USD63,277.00. The contract of sale was identified as being at pages 26 to 32 of her bundle of documents.

- 5.62 Pereka Nyirenda testified that no authority was sought from the Court by Patricia Ruth Myepa Nyirenda, prior to selling Subdivision L of Farm 288a, Lusaka to Da-Cheng Wood Processing Company Limited.
- 5.63 It was also her testimony, that Patricia Ruth Myepa Nyirenda did not show that a sum of USD63,277.00 was paid by Da- Cheng Wood Processing Company Limited to Pereka Nyirenda, for the purchase of Subdivision L of Farm 288a, Lusaka.
- 5.64 She added that the only amount that was received from Da- Cheng Wood Processing Company Limited was the sum of ZMW136,500.00 on 16<sup>th</sup> July 2019 and ZMW175,000.00 on 6<sup>th</sup> November 2019, with reference being made to the Account Statement which was at page 33 of her bundle of documents.
- 5.65 Pereka Nyirenda's continued evidence was that, by a letter dated 23<sup>rd</sup> August 2021, her Advocates wrote to Da-Cheng Wood Processing Company Limited expressing concern over the transactions relating to the property, which did not belong to her sister, but to Blackmore Gadi Chafwa Nyirenda. She identified the said letter, which was at pages 34 to 35 of her bundle of documents.
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- 5.66 It was Pereka Nyirenda's evidence that Da-Cheng Wood Processing Company Limited had insisted that Subdivision L of Farm 288a, Lusaka, was Patricia Ruth Muyepa Nyirenda's property.
- 5.67 She also stated that to date Da-Cheng Wood Processing Company Limited had not disclosed to her what due diligence it conducted before accepting Subdivision L of Farm 288a, Lusaka as collateral for the loan or entering into the contract of sale.
- 5.68 Pereka Nyirenda testified that Patricia Ruth Muyepa Nyirenda did not obtain authority from the Court to transfer the property to Da-Cheng Wood Processing Company Limited, which formed part of Blackmore Gadi Chafwa Nyirenda's estate.

**CROSS EXAMINATION OF PEREKA NYIRENDA**

- 5.69 In cross examination, Pereka Nyirenda testified that she is the Administratrix of the estate of the late Patricia Ruth Myepa Nyirenda, and that she undertood her duties, which did not include undoing Patricia Ruth Myepa Nyirenda's decisions.
- 5.70 When referred to the letter which was at page 6 of her bundle of documents, Pereka Nyirenda's evidence was that she would know if Patricia Ruth Myepa Nyirenda wrote the letter, or if it reached the Commissioner of Lands.
- 5.71 Her testimony when she was referred to entry no. 18 of the Lands Register, which was at page 40 of Da-Cheng

Wood Processing Company Limited's bundle of documents, was that it was a registration of a caveat, and that the receipt for the entry was at page 8 of her bundle of documents.

5.72 Pereka Nyirenda stated that the letter which was at page 6 of her bundle of documents, referred to the registry and not the title deed.

5.73 It was her testimony that the Lands Register did not contain an entry for the registration of a Deed of Rectification, and she did not know if it was possible that Patricia Ruth Myepa Nyirenda did not write the letter which was at page 6.

5.74 Pereka Nyirenda when referred to entry no. 23 of the Lands Register, which was at page 42 of Da- Cheng Wood Processing Company Limited's bundle of documents, testified that it was the caveat that Da- Cheng Wood Processing Company Limited registered.

5.75 She added that when the caveat was placed, Patricia Ruth Myepa Nyirenda was the title holder for the property.

5.76 It was also Pereka Nyirenda's testimony that when Da- Cheng Wood Processing Company Limited lodged the caveat, there was no encumbrance on the property.

5.77 Her testimony when she was referred to the Deed of Rectification, which was at page 23 of Da- Cheng Wood Processing Company Limited's bundle of documents, was that Patricia Ruth Myepa Nyirenda executed the said Deed of Rectification.

- 5.78 Further testimony was given, that at page 24 in the first recital of the Deed of Rectification, Patricia Ruth Myepa Nyirenda had stated that she was the owner of the land, and that in the second recital, she had stated that her name was incorrectly stated.
- 5.79 Pereka Nyirenda's evidence when she was referred to the letter dated 30<sup>th</sup> October, 2020, which was at page 26 of the same bundle of documents, was that Patricia Ruth Myepa Nyirenda in that letter, had written that if she failed to pay, the property would belong to Da-Cheng Wood Processing Company Limited.
- 5.80 It was also her testimony, when she was referred to Clause 3 of the Deed of Settlement which was at pages 29 and 30 of Da-Cheng Wood Processing Company Limited's bundle of documents, that it stated that Patricia Ruth Myepa Nyirenda surrendered the property as settlement of the debt.
- 5.81 Pereka Nyirenda testified that at page 29, the date was 6<sup>th</sup> November 2020, and that at that date, the property was in Patricia Ruth Myepa Nyirenda's name.
- 5.82 On being referred to entry no. 22 of the Lands Register which was at page 41 of the said bundle of documents, Pereka Nyirenda's evidence was that the capacity in which Patricia Ruth Myepa Nyirenda held property was not stated.

- 5.83 Her further evidence was that Patricia Ruth Myepa Nyirenda did not own real property, and that she needed the Court's permission to sell her property.
- 5.84 As regards paragraph 23 of her witness statement, Pereka Nyirenda testified that ZMW136,500.00 was transferred to Patricia Ruth Myepa Nyirenda's bank account.
- 5.85 When referred to the Return Acknowledgment Receipt from the Zambia Revenue Authority (ZRA) which was dated 10<sup>th</sup> December, 2020, which was addressed to Patricia Ruth Myepa Nyirenda, and was at page 2 of Da-Cheng Wood Processing Company Limited's supplementary bundle of documents, Pereka Nyirenda told the Court that it stated that the liability amount was ZMW68,022.75, and that she would not know if it was 5% of ZMW136,500.00.

**RE-EXAMINATION OF PEREKA NYIRENDA**

- 5.86 There was no re-examination.

**DW2 – MBIKO MOYO**

- 5.87 Mbiko Moyo, a banker from Indo-Zambia Bank, Main Branch, testified that he was served with a subpoena, pursuant to which he produced the bank statements that were the subject of the subpoena.
- 5.88 He further stated that he had obtained the statements from the bank's co-banking system, called Flexcube. In that regard, his testimony was that as a user, he logged into the system, accessed the print function, and

generated the statements, which he sought to produce in evidence.

5.89 Mbiko Moyo further stated that the statements ran from 1<sup>st</sup> January 2019 to 31<sup>st</sup> December 2020.

5.90 He produced that bank statements and they were marked as 'D1'.

#### **CROSS EXAMINATION OF MBIKO MOYO**

5.91 In cross-examination, Mbiko Moyo testified that he worked in operations, and that his responsibilities included attending to the opening of accounts, managing cash for the branch, authorizing the opening and closing of accounts, as well as authorizing both internal and external transfers.

5.92 He stated that he had a Bachelor's Degree in Information Technology, a Post-Graduate Diploma in Programme Management and a Certificate in Information Processing.

5.93 It was further Mbiko Moyo's evidence that he had his Identification Card, but he did not know if it was on the Court record.

5.94 He testified that he could only speak to the bank statements and nothing else in relation to the matter.

#### **RE-EXAMINATION OF MBIKO MOYO**

5.95 There was no re-examination.

5.96 That marked the close of the case for Pereka Nyirenda.

### **6. DECISION OF THIS COURT**

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

**ISSUES NOT IN DISPUTE**

- 6.2 It is not in dispute, that the property in issue, being Subdivision L of Farm No 288a Lusaka, was in the names of Blackmore Gadi Chafwa Nyirenda, as per the certificate of title which was issued on 27<sup>th</sup> July, 1970.
- 6.3 It is common cause that Blackmore Gadi Chafwa Nyirenda died intestate on 3<sup>rd</sup> May, 2005, and that Patricia Ruth Myepa Nyirenda was appointed as Administrator of his estate by the Local Court on 6<sup>th</sup> October, 2015.
- 6.4 Also, not in dispute, is that Patricia Ruth Myepa Nyirenda obtained an Order of Appointment as Administrator of the estate of the late Blackmore Gadi Chafwa Nyirenda from the Local Court on 10<sup>th</sup> January, 2019.
- 6.5 The facts which are not in dispute, are that ownership of the property, Subdivision L of Farm No 288a Lusaka was later on, on 10<sup>th</sup> July, 2019, changed into Patricia Ruth Myepa Nyirenda's name, from Blackmore Gadi Chafwa Nyirenda's name.
- 6.6 It is common cause, that before her death, Patricia Ruth Myepa Nyirenda entered into a contract of sale with Da-Cheng Wood Processing Company Limited on 31<sup>st</sup> October 2019 for the remaining extent of the property, Subdivision L of Farm 288a Lusaka, at a consideration of USD63,277.00.

- 6.7 It is not in dispute that on completion of the conveyance, a certificate of title for the property was issued to Da-Cheng Wood Processing Company Limited.
- 6.8 The facts that are further not in dispute, are that Patricia Ruth Myepa Nyirenda died on 17<sup>th</sup> June, 2021.
- 6.9 It is not in contention that after Patricia Ruth Myepa Nyirenda's death, Pereka Nyirenda was appointed as Administratrix of her estate.
- 6.10 The facts which are also not in contention, are that by a letter dated 23<sup>rd</sup> August 2021, Pereka Nyirenda's Advocates wrote to Da-Cheng Wood Processing Company Limited expressing concern over the transactions relating to the property, stating that it did not belong to Patricia Ruth Myepa Nyirenda, but rather, that it belonged to Blackmore Gadi Chafwa Nyirenda.
- 6.11 It is also common cause that on 6<sup>th</sup> September, 2022, Pereka Nyirenda was appointed Administrator of the estate of the late Blackmore Gadi Chafwa Nyirenda by the High Court.
- 6.12 It is also not in dispute, that Da-Cheng Wood Processing Company Limited has not reconveyed the property back to the estate of the late Blackmore Gadi Chafwa Nyirenda, despite requests being made by Pereka Nyirenda to do so.

**ISSUES IN DISPUTE**

- 6.13 It is in dispute, whether Da-Cheng Wood Processing Company Limited, is a bona fide purchaser for value and

as a result, it is entitled to vacant possession of the property.

6.14 What is also in contention, is whether Patricia Ruth Myepa Nyirenda lawfully obtained ownership of the property, and whether she had capacity to transfer ownership of the property to Da-Cheng Wood Processing Company Limited.

6.15 The issues that are further in dispute, are whether the property should revert to the estate of Blackmore Gadi Chafwa Nyirenda?

**ANALYSIS**

6.16 In her testimony, Chisiki Matafwali testified that Da-Cheng Wood Processing Company Limited entered into a contract of sale with Patricia Ruth Myepa Nyirenda on 31<sup>st</sup> October 2019, for the property at a consideration of USD63,277.00.

6.17 She stated that the special conditions of the contract of sale, showed that Patricia Ruth Myepa Nyirenda sold the property as beneficial owner, free from encumbrances and that vacant possession would be given to Da-Cheng Wood Processing Company Limited upon completion.

6.18 It was also her evidence, that Patricia Ruth Myepa Nyirenda was the holder of a certificate of title which served as proof of ownership of the property, and that at the instance of Patricia Ruth Myepa Nyirenda, Da-Cheng Wood Processing Company Limited obtained a certificate of title.

- 6.19 Her testimony was that when Da-Cheng Wood Processing Company Limited attempted to gain possession of the property, the premises were unlawfully occupied by Pereka Nyirenda.
- 6.20 In defence, Pereka Nyirenda testified that she is the Administratrix of the estate of the late Blackmore Gadi Chafwa Nyirenda, as well as for the estate of Patricia Ruth Myepa Nyirenda.
- 6.21 She told the Court that Blackmore Gadi Chafwa Nyirenda died intestate, and he was survived by children, who included Patricia Ruth Myepa Nyirenda, who was appointed as Administratrix of his estate by the Local Court.
- 6.22 Pereka Nyirenda also testified, that at the time of his death, Blackmore Gadi Chafwa Nyirenda was the registered owner of the Subdivision L of Farm 288a, Lusaka.
- 6.23 She further stated that later, Patricia Ruth Myepa Nyirenda decided to subdivide the property, and to transfer part of it to the UCZ Registered Trustees and another part to Ahmad Al Khatib Investments Limited. It was her evidence that the remaining extent of Subdivision L of Farm 288a, Lusaka was 30.3127 hectares.
- 6.24 Pereka Nyirenda told the Court that Patricia Ruth Myepa Nyirenda wrote to the Ministry of Lands to correct the registration details for the property, which appeared to have been entered in the names of Ahmad Al Khatib

Investments Limited as opposed to Blackmore Gadi Chafwa Nyirenda.

- 6.25 Pereka Nyirenda also stated that after Patricia Ruth Myepa Nyirenda's death, she discovered that Patricia Ruth Myepa Nyirenda had obtained another order of appointment as Administratrix of the estate of the late Blackmore Gadi Chafwa Nyirenda from the Local Court, and that on 10<sup>th</sup> July 2019, Patricia Ruth Myepa Nyirenda obtained a certificate of title for the property, in her personal capacity.
- 6.26 The contention by Pereka Nyirenda was that Blackmore Gadi Chafwa Nyirenda did not bequeath the property to Patricia Ruth Myepa Nyirenda, as he did not leave a Will. She stated that Patricia Ruth Myepa Nyirenda obtained a loan from Da-Cheng Wood Processing Company Limited and she pledged the property as collateral, without the permission of the Court.
- 6.27 Her evidence was also that before the expiry of the loan agreement, Patricia Ruth Myepa Nyirenda and Da-Cheng Wood Processing Company Limited entered into a contract of sale for the property at a consideration of USD63,277.00, without prior authority from the Court.
- 6.28 Pereka Nyirenda stated that her Advocates wrote to Da-Cheng Wood Processing Company Limited expressing concern over the transactions relating to the property, as it did not belong to Patricia Ruth Myepa Nyirenda.

- 6.29 Her evidence was further that Patricia Ruth Myepa Nyirenda did not show that a sum of USD63,277.00 was paid by Da-Cheng Wood Processing Company Limited to Pereka Nyirenda for the purchase of the property.
- 6.30 Pereka Nyirenda's testimony was that Da-Cheng Wood Processing Company Limited had not shown what due diligence it conducted before accepting the property as collateral.
- 6.31 In Da-Cheng Wood Processing Company Limited's submissions, it was stated that in determining the legality of the transactions between Da-Cheng Wood Processing Company Limited and Patricia Ruth Myepa Nyirenda, a critical examination of the status of the property, and the capacity in which Patricia Ruth Myepa Nyirenda contracted should be done.
- 6.32 It was submitted that Patricia Ruth Myepa Nyirenda applied for a loan from Da-Cheng Wood Processing Company Limited, which was secured by the property, and that the certificate of title, and the Lands Register showed that Patricia Ruth Myepa Nyirenda was the registered owner of the property.
- 6.33 **Sections 33 and 54 of the Lands and Deeds Registry Act Chapter 185 of the Laws of Zambia**, were relied on, as well as the case of ***Anti-Corruption Commission v Barnnet Development Corporation Limited*** <sup>(7)</sup>.
- 6.34 It was stated that where a certificate of title is presented as proof of ownership, it constitutes conclusive evidence,

unless it is contradicted by an entry in the register or affected by an encumbrance or competing interest.

- 6.35 The submission was that Pereka Nyirenda had failed to adduce any evidence that the certificate of title was acquired illegally.
- 6.36 It was also submitted that Pereka Nyirenda had not challenged entries No. 18 to 22 on the Lands Register, which led to the issuance of the certificate of title in Patricia Ruth Myepa Nyirenda's name.
- 6.37 Further submission was made, that these transactions may well have been undertaken with Pereka Nyirenda's knowledge and consent. It was stated that no application was made to the Registrar of Lands, seeking rectification of title to reflect any representative capacity in which Patricia Ruth Myepa Nyirenda may have held the property as contemplated in **Section 11 of the Lands and Deeds Registry Act**.
- 6.38 With regard to the transfer of ownership of the property from Patricia Ruth Myepa Nyirenda to Da-Cheng Wood Processing Company Limited, it was submitted that it was imperative to observe that Patricia Ruth Myepa Nyirenda contracted in her personal capacity, and as evidenced by the loan agreement and certificate of title, she was the beneficial owner of the property.
- 6.39 It was stated that Patricia Ruth Myepa Nyirenda was an adult of full capacity, competent to enter into a legally binding contract, and there was nothing on the record to

suggest that she was coerced into executing the loan agreement or the subsequent assignment.

- 6.40 Da Cheng Wood Processing Company Limited submitted that although the arrangement began as a loan, Patricia Ruth Myepa Nyirenda's intention clearly evolved, as demonstrated by her execution of the Deed of Settlement.
- 6.41 It was further submitted that this matter is distinguishable from the case of ***Gillian Kasempa Mutinta v New Future Financial Company Limited and another*** <sup>(16)</sup> where the Supreme Court found that despite the existence of a contract of sale, the evidence on record indicated that the true nature of the transaction was a loan, and that the property was pledged as security, while being held in a representative capacity.
- 6.42 It was submitted that in this case however, Patricia Ruth Myepa Nyirenda presented herself as a registered proprietor, which was supported by the certificate of title. Thus, although the transaction began as a loan, her intention demonstrably shifted towards a sale.
- 6.43 In further submission, it was stated that where parties of full contractual age and sound mind, reduce their agreement into writing, they are bound by the terms. Further, in the absence of fraud, duress, misrepresentation or any other vitiating factor, the contract must be enforced as written.
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6.44 In support of this submission, the case of **Colgate Palmolive (Zambia) Inc-v Able Shemu Chuka and 110 others** <sup>(2)</sup> was relied on.

6.45 In her submissions, Pereka Nyirenda stated that the property was initially owned by Blackmore Gadi Chafwa Nyirenda, and after his death, Patricia Ruth Myepa Nyirenda was appointed as Administratrix of his estate by the Local Court.

6.46 **Section 43(2) of the Intestate Succession Act Chapter 59 of the Laws of Zambia** was cited which provides as follows:

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

6.47 It was submitted that the cited section was subject of judicial pronouncement in the cases of **Charity Oparacha v Winfridah Murumbiwa** <sup>(4)</sup> and **James Onwuka v Joyce Siandwazi Reid and 3 others** <sup>(12)</sup>.

6.48 The submission was that as the value of the subject property far exceeded ZMW50,000.00, Patricia Ruth Myepa Nyirenda was required to obtain letters of administration from the High Court, as the property formed part of Blackmore Gadi Chafwa Nyirenda's estate. Therefore, her appointment by the Local Court was invalid.

6.49 In referring to the consequences which arise out of actions that are taken by an Administratrix whose appointment is invalid for want of jurisdiction, the case of ***Gillian Mutinta Kasempa v New Future Finance and Zhong Cheng Zambia Mining Materials Limited*** <sup>(16)</sup> was relied on. stating that it was held as follows in that matter:

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

6.50 In line with the above authority, it was submitted that any action or omission by an Administratrix who was appointed by the Local Court, where the appointment was invalid due to lack of jurisdiction, it was likewise invalid.

6.51 Thus, the submission was that it followed that the transfer of the property from Blackmore Gadi Chafwa Nyirenda's estate to Patricia Ruth Myepa Nyirenda was a nullity, and held no legal standing.

6.52 Further submission was made, that as a result, ownership of the property never vested in Patricia Ruth Myepa Nyirenda in accordance with the law.

6.53 It was also submitted that as Patricia Ruth Myepa Nyirenda had no legal interest in the subject property,

that she could pass to Da-Cheng Wood Processing Company Limited, the Supreme Court in the case of ***Wisdon Chiyala and Busiku Chiyala v Joseph Kamanga*** <sup>(14)</sup> stated as follows:

***“the Latin maxim, nemo dat quod non habet, is apt, as one indeed cannot give what he does not have.”***

6.54 It was also submitted that the mere registration of the property in the name of Patricia Ruth Myepa Nyirenda did not change the fact that she lacked authority to deal with the property in the first place.

6.55 ***Section 21 of the Lands and Deeds Registry Act*** was relied on in that regard, which states as follows:

***“21. Registration shall not cure any defect in any instrument registered or confer upon it any effect or validity other than that provided by this Part.”***

6.56 It was further submitted that even assuming that Patricia Ruth Myepa Nyirenda’s appointment was validly made, nonetheless, she could not derive a personal benefit from her office as Administratrix by transferring the property to herself, in total disregard of the provisions of the law that surround the distribution of intestate estates.

6.57 In support of the submission, ***Sections 19(1) and 34 of the Intestate Succession Act*** as well as the cases of ***Gray Nachandwe Mudenda v Dorothy Chileshe*** <sup>(5)</sup> and ***Lindiwe Kate Chinyanta v Doreen Chiwele and Judith Tembo*** <sup>(6)</sup> were relied on.

- 6.58 It was submitted that Pereka Nyirenda's evidence that Patricia Ruth Myepa Nyirenda was one of the four beneficiaries was unchallenged. Further submission was made, that Patricia Ruth Myepa Nyirenda was not the sole child of Blackmore Gadi Chafwa Nyirenda, and therefore not the only beneficiary, which was confirmed by herself, when she lodged a caveat on the property was shown at page 9 of Pereka Nyirenda's bundle of documents.
- 6.59 It was therefore submitted that Patricia Ruth Myepa Nyirenda could not use her position, as Administratrix, to inherit the subject property to the exclusion of all the other beneficiaries.

#### **DECISION**

- 6.60 In this matter, the evidence on record shows that Da-Cheng Wood Processing Company Limited entered into a contract of sale with Patricia Ruth Myepa Nyirenda for the property, as evidenced by the contract of sale which is at pages 16 to 22 of Da-Cheng Wood Processing Company Limited's bundle of documents.
- 6.61 In that contract of sale, which is dated 31<sup>st</sup> October 2019, and which was executed by Patricia Ruth Myepa Nyirenda and Da-Cheng Wood Processing Company Limited, Patricia Ruth Myepa Nyirenda sold 30.3127 Hectares of Subdivision L of Farm 288a, Lusaka, the property, to Da-Cheng Wood Processing Company Limited at a consideration of USD63,777.00.

- 6.62 It will be noted that at the time of the sale, Patricia Ruth Myepa Nyirenda was in possession of a certificate of title for the property, which was in her name, as shown at pages 1 to 8 of Da-Cheng Wood Processing Company Limited's bundle of documents.
- 6.63 As rightly submitted by Da-Cheng Wood Processing Company Limited, where a certificate of title is presented as proof of ownership, it constitutes conclusive evidence of ownership of the land.
- 6.64 **Section 33 of the Lands and Deeds Registry Act** in that respect provides as follows:

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

*from all other encumbrances, liens, estates or interests whatsoever:*

*...”*

6.65 In addition to **Section 33, Section 34 of the said Lands and Deeds Registry Act**, spells out the instances in which an action can be brought against the holder of a certificate of title.

6.66 It provides that:

***“34. (1) No action for possession, or other action for the recovery of any land, shall lie or be sustained against the Registered Proprietor holding a Certificate of Title for the estate or interest in respect to which he is registered, except in any of the following cases, that is to say:***

***(a) the case of a mortgage as against a mortgagor in default;***

***(b) the case of the President as against the holder of a State Lease in default;***

***(c) the case of a person deprived of any land by fraud, as against the person registered as proprietor of such land through fraud, or against a person deriving otherwise than as a transferee bona fide for value from or through a person so registered through fraud;***

*(d) the case of a person deprived of or claiming any land included in any Certificate of Title of other land by misdescription of such other land, or of its boundaries, as against the Registered Proprietor of such other land, not being a transferee, or deriving from or through a transferee, thereof bona fide for value;*

*(e) the case of a Registered Proprietor claiming under a Certificate of Title prior in date in any case in which two or more Certificates of Title have been issued under the provisions of Parts III to VII in respect to the same land.*

*(2) In any case other than as aforesaid, the production of the Register or of a copy of an extract therefrom, certified under the hand and seal of the Registrar, shall be held in every court of law or equity to be an absolute bar and estoppel to any such action against the Registered Proprietor of land the subject of such action, and in respect of which a Certificate of Title has been issued, any rule of law or equity to the contrary notwithstanding.”*

6.67 In her testimony, Chisiki Matafwali stated that Patricia Ruth Myepa Nyirenda was a holder of a certificate of title

which served as proof of ownership of the property. She also testified that at the instance of Patricia Ruth Myepa Nyirenda, Da-Cheng Wood Processing Company Limited obtained a certificate of title.

- 6.68 In its' submissions, Da-Cheng Wood Processing Company Limited stated that Pereka Nyirenda has failed to adduce any evidence to demonstrate that the Patricia Ruth Myepa Nyirenda acquired the Certificate of Title illegally.
- 6.69 It was also stated that the transactions that led to Patricia Ruth Myepa Nyirenda acquiring a certificate of title from Blackmore Gadi Chafwa Nyirenda may have been undertaken with Pereka Nyirenda's knowledge and consent.
- 6.70 Further submission was made, that no application seeking rectification of the title to reflect Patricia Ruth Myepa Nyirenda's representative capacity was made to the Registrar of Lands.
- 6.71 It was submitted that Patricia Ruth Myepa Nyirenda transferred ownership to Da-Cheng Wood Processing Company Limited, as beneficial owner of the property as evidenced by the loan agreement and the certificate of title.
- 6.72 The submission was that there was nothing on the record to suggest that Patricia Ruth Myepa Nyirenda was coerced into executing the loan agreement or the subsequent assignment.

- 6.73 Pereka Nyirenda on the other hand contended that Blackmore Gadi Chafwa Nyirenda did not bequeath the property to Patricia Ruth Myepa Nyirenda, as he did not leave a Will. Rather, Patricia Ruth Myepa Nyirenda obtained a loan from Da-Cheng Wood Processing Company Limited, and pledged the property as collateral without permission from the Court.
- 6.74 Pereka Nyirenda further testified that Patricia Ruth Myepa Nyirenda entered into a contract of sale with Da Cheng Wood Processing Company Limited without prior authority from the Court.
- 6.75 In submission, Pereka Nyirenda stated that Patricia Ruth Myepa Nyirenda obtained letters of Administration from the Local Court, as opposed to the High Court, and she dealt with property which was beyond the limit permitted by the Letters of Administration from the Local Court. Therefore, her actions were invalid.
- 6.76 A perusal of the Land Register which is at pages 37 to 44 of Da-Cheng Wood Processing Company Limited's bundle of documents, documents the history for the property.
- 6.77 Entry No. 10 shows that a certificate of title in the names of Blackmore Gadi Chafwa Nyirenda was issued on 27<sup>th</sup> July, 1970, and the certificate of title at which is at pages 3 to 5 of Pereka Nyirenda's bundle of documents confirms that fact.
- 6.78 Then at entry No. 14, which is dated 13<sup>th</sup> May 2016, Patricia Ruth Myepa Nyirenda registered an Order of

appointment as Administratrix for the estate of Blackmore Gadi Chafwa Nyirenda.

- 6.79 A perusal of Pereka Nyirenda's bundle of documents shows that two Orders of Appointment of an Administrator were granted to Patricia Ruth Myepa Nyirenda by the Local Court, for the estate of Blackmore Gadi Chafwa Nyirenda, as shown at pages 2 and 11, and are dated 6<sup>th</sup> October 2015 and 10<sup>th</sup> January 2019, respectively.
- 6.80 Then at entries No. 15 and 16 of the Land Register, it shows that Patricia Ruth Myepa Nyirenda transferred subdivision 2, through a Deed of Assent, and subdivision 3 through a Deed of Assignment to the UCZ Registered Trustees and Ahmad Al Khatib Investments Limited, respectively.
- 6.81 It was Pereka Nyirenda's testimony that Patricia Ruth Myepa Nyirenda wrote to the Ministry of Lands requesting correction of the registration details for the property, which were entered in the names of Ahmad Al Khatib Investments Limited, as opposed to Blackmore Gadi Chafwa Nyirenda, with reference being made to the letter which was at page 6 of Pereka Nyirenda's bundle of documents.
- 6.82 A reading of the said letter, shows that it is dated 13<sup>th</sup> April 2018, and it was written to the Commissioner of Lands by Patricia Ruth Myepa Nyirenda, requesting correction of the name on the property number F/288a/L,

which was appearing as under Ahmad Al-Khatib Investments Limited, instead of Blackmore Gadi Chafwa Nyirenda.

- 6.83 In light of that, at entry no. 18 of the Lands Register, which is dated 19<sup>th</sup> April 2019, Patricia Ruth Myepa Nyirenda placed a caveat on the property as claiming interest as beneficiary and all the other surviving children of Blackmore Gadi Chafwa Nyirenda.
- 6.84 It will be noted that the caveat was withdrawn at entry no. 19, by Ahmad Al Khatib Investments Limited, and at entry no. 20, Ahmad Al Khatib Investments Limited registered a Court Order.
- 6.85 Entry No. 21 shows that Ahmad Al Khatib Investments Limited was the Assignor, and Patricia Ruth Myepa Nyirenda was the Assignee, and the document that was registered is a Vesting Assent.
- 6.86 Then at entry no. 22, is the certificate of title in question, which is in Patricia Ruth Myepa Nyirenda's name. Thereafter, the transactions that led to the sale of the property to Da-Cheng Wood Processing Company Limited are documented.
- 6.87 The Lands Register therefore shows that Patricia Ruth Myepa Nyirenda was initially appearing as the Administratrix of the estate of the late Blackmore Gadi Chafwa Nyirenda, and as testified and confirmed by the documents, the property was once registered in the names

of Ahmad Al Khatib Investments Limited which was possibly in error.

- 6.88 It will, however be noted, that following rectification, the property was thereafter registered in the names of Patricia Ruth Myepa Nyirenda, but not in her capacity as Administratrix of the estate of Blackmore Gadi Chafwa Nyirenda.
- 6.89 From the certificate of title, therefore, at the time that Patricia Ruth Myepa Nyirenda conveyed the property to Da-Cheng Wood Processing Company Limited, she did so in the capacity as beneficial owner of the property.
- 6.90 In the submissions, which were filed on behalf of Pereka Nyirenda, it was stated that Patricia Ruth Myepa Nyirenda was one of the four children for Blackmore Gadi Chafwa Nyirenda, who qualified as beneficiaries of his estate in accordance of with the ***Intestate Succession Act***.
- 6.91 The property in issue was governed by ***Section 9 of the Intestate Succession Act*** which provides as follows:
- “9. (1) Notwithstanding section five where the estate includes a house the surviving spouse or child or both, shall be entitled to that house: Provided that-***
- (a) where there is more than one surviving spouse or child or both they shall hold the house as tenants in common; and***
-

***(b) the surviving spouse shall have a life interest in that house which shall determine upon that spouse's remarriage.***

***(2) Where the estate includes more than one house the surviving spouse or child or both shall determine which of the houses shall devolve upon them and the remainder shall form part of the estate."***

6.92 Therefore, Patricia Ruth Myepa Nyirenda could not proceed to use her position as Administratrix of the estate of the late Blackmore Gadi Chafwa Nyirenda, to inherit the property to the exclusion of all the other beneficiaries.

6.93 A further analysis of the Lands Register reveals the manner in which Patricia Ruth Myepa Nyirenda conveyed the property to Da-Cheng Wood Processing Company Limited. It will be noted from the same, that after Subdivision L of Farm 288a was registered in the names of Ahmad Al Khatib Investments Limited, it was later rectified to reflect the names of Patricia Ruth Myepa Nyirenda, firstly, by a Court Order, and then by a Vesting Assent.

6.94 Further observation will be made, as shown at entry no. 14 of the Lands Register, that Patricia Ruth Myepa Nyirenda registered her appointment as Administratrix of the estate of Blackmore Gadi Chafwa Nyirenda on 13<sup>th</sup> May, 2016, and that is the capacity in which she held the property.

- 6.95 It has been seen that when Subdivision L of Farm 288a was registered in the names of Ahmad Al Khatib Investments Limited, this was rectified by a Court Order and a Vesting Assent.
- 6.96 A Vesting Assent is defined in the ***Oxford Dictionary of Law, Sixth Edition, by Elizabeth A. Martin, Jonathan Law, Oxford University Press, 2006 at page 563*** as:
- “A document that transfers ownership of settled land from representatives of a deceased tenant for life or a statutory owner to the beneficiary entitled to it under the settlement. The assent must be signed by the personal representatives, but need not be executed as a deed, and it should contain the same information required to be included in a vesting deed by the Settled Land Act 1925.”***
- 6.97 In this matter, what is evident is that neither of the parties produced the Court Order or the Vesting Assent which resulted in Patricia Ruth Myepa Nyirenda holding the property in her personal capacity.
- 6.98 It can, however, be seen that entry no. 21 of the Lands Register reflects that Ahmad Al Khatib Investments Limited was the Assignor, and Patricia Ruth Myepa Nyirenda was the Assignee, and the document that was registered was a Vesting Assent.
- 6.99 A reading of the definition of a vesting assent shows that it is a document that transfers ownership from a personal representative to a beneficiary.

6.100 The entry, therefore, was erroneous or irregular, as Ahmad Al Khatib Investments Limited could not have transferred the land to Patricia Ruth Myepa Nyirenda by means of a Vesting Assent, because Ahmad Al Khatib Investments Limited, was not the Administrator of Blackmore Gadi Chafwa Nyirenda's estate.

6.101 The Lands Register clearly show that Patricia Ruth Myepa Nyirenda registered her appointment as Administratrix of the estate of the late Blackmore Gadi Chafwa Nyirenda.

**WHETHER DA CHENG WOOD PROCESSING COMPANY LIMITED IS A BONAFIDE PURCHASER FOR VALUE?**

6.102 Da-Cheng Wood Processing Company Limited claims to be a bona fide purchaser for value without notice. In that respect, Chisiki Matafwali testified as to how Da-Cheng Wood Processing Company Limited acquired the property.

6.103 Her testimony was that Patricia Ruth Myepa Nyirenda was the holder of the certificate of title No. CT-60128 which served as proof of ownership of the property that she sold to Da-Cheng Wood Processing Company Limited.

6.104 It was also her evidence that the same, together with a print-out from the Lands Register, as well as the execution of a Deed of Rectification showed that Patricia Ruth Myepa Nyirenda was the beneficial owner of the property.

6.105 In the submissions, it was stated that Da-Cheng Wood Processing Company Limited conducted due diligence on the property, as evidenced by the processing and security

form which was at page 22 of Pereka Nyirenda's bundle of documents.

6.106 The submission was that conducting a search and verification of the location via GPS, were prerequisites for the loan approval and disbursement. It was further stated that Da Cheng Wood Processing Company Limited placed a caveat on the property, which was later withdrawn, to allow Patricia Ruth Myepa Nyirenda to rectify her name on the certificate of title, and thereafter, a second caveat was then placed on the property.

6.107 It was also submitted that Da-Cheng Wood Processing Company Limited conceded that for a search to be considered a valid official search, it had to comply with **Section 23 of the Lands and Deeds Registry Act** as per the decision in the case of **Benson Munganama v Fredah Ngoma and the Attorney General** <sup>(13)</sup> where the Supreme Court held that:

***"A distinction needs to be drawn between a general search under section 22 and an official search under section 23 as read with regulation 13 of the Lands and Deeds Registry Act. For a search to be valid it needs to comply with the provisions of section 23. Section 23 stipulates as follows:***

***"23. (1) Where any person requires search to be made at the Registry for entries of any***

*matters or documents, whereof entries are required or allowed to be made in the Registry, he may, on payment of the prescribed fee, lodge at the Registry a requisition in that behalf.*

*(2) The Registrar shall thereupon make the search required, and shall issue a certificate setting forth the result thereof.*

*(3) In favour of a purchaser or an intending purchaser, as against persons interested under or in respect of matters or documents whereof entries are required or allowed as aforesaid, the certificate, according to the tenor thereof, shall be conclusive, affirmatively or negatively, as the case may be.*

*(4) Every requisition under this section shall be in writing, signed by the person making the same, specifying the name against which he desires search to be made, or in relation to which he requires a certificate of result of search, and other sufficient particulars."*

*Section 23 provides what information should be contained in the search certificate. One important characteristic about an official search is that the Registrar of Lands issues a certificate in*

***accordance with section 23 after a requisition has been made in accordance with Regulation 13. The general search made under section 22 does not qualify as an official search. It follows therefore that the case of Eustace Spaita Bobo and Annessie Banda Bobo v Kabinga relied upon by the appellant was wrongly decided in so far as official searches under the Lands and Deeds Registry Act are concerned.”***

- 6.108 The submission was that the observation that was made in the above case, was not the sole factor that influenced the Supreme Court in deciding that case, but that there were additional irregularities that the Appellants should have noticed, but they failed to do so.
- 6.109 It was submitted that a physical visit at the property would not have revealed anything beyond the entries that were on the Lands Register. Further submission was made that Da-Cheng Wood Processing Company Limited visited the property as evidenced by the Processing and Security Form, which was at page 22 of Pereka Nyirenda’s bundle of documents, which visit would not have revealed an existing registered interest on the property.
- 6.110 In still submitting, Da Cheng Wood Processing Company Limited stated that the tax registration certificate which was at page 9 of its’ bundle of documents, showed that Patricia Ruth Myepa Nyirenda resided at Plot no. 288a Subdivision L, Makeni, Lusaka, and that this address

remained consistent in the various documents, such as the loan agreement and the orders of appointment as Administratrix.

6.111 It was stated that even before obtaining a loan from Da-Cheng Wood Processing Company Limited, Patricia Ruth Myepa Nyirenda resided at the property, while Pereka Nyirenda resided at Plot No. 8300 Mulungushi Road, Roma Township, Lusaka.

6.112 Therefore, Da-Cheng Wood Processing Company Limited would not have found Pereka Nyirenda on the property, and thereby be put on notice of any existing interest.

6.113 **Section 58 of the Lands and Deeds Registry Act** was also relied on, stating that Da-Cheng Wood Processing Company Limited was under no obligation to inquire about how Patricia Ruth Myepa Nyirenda acquired the property.

6.114 Further reliance was placed on the case of ***Elias Tembo v Maureen Chirwa, Duncan Chirwa and the Attorney General*** <sup>(15)</sup> where it was held that:

***“We agree with Mr. Sholomo that investigating how a seller acquired title is different from ascertaining whether or not there are encumbrances registered at the Lands and Deeds Registry. There is no law that requires a purchaser of land to make inquiries into how the vendor acquired title to the land on offer.”***

- 6.115 In her testimony, Pereka Nyirenda testified that by a letter dated 23<sup>rd</sup> August 2021, her Advocates wrote to Da-Cheng Wood Processing Company Limited, expressing concern over the transactions relating to the property, as it did not belong to Patricia Ruth Myepa Nyirenda, but to Blackmore Gadi Chafwa Nyirenda.
- 6.116 She also stated that to date, Da-Cheng Wood Processing Company Limited had not disclosed to her what due diligence it conducted before accepting the property as collateral for the loan or entering into the contract of sale.
- 6.117 In Pereka Nyirenda's submissions, it was stated that there was no indication that Da-Cheng Wood Processing Company Limited took any steps to verify the true ownership of the property, other than being in possession of a copy of the certificate of title, which was in the name of Patricia Ruth Muyepa Nyirenda.
- 6.118 Further submission was made, that there was nothing to show that Da-Cheng Wood Processing Company Limited carried out an inquiry or investigation to determine that the property was in fact owned by Patricia Ruth Myepa Nyirenda and that there were no other competing interests.
- 6.119 It was also stated that when Da-Cheng Wood Processing Company Limited and Patricia Ruth Myepa Nyirenda entered into a loan agreement, one of the things that Da-Cheng Wood Processing Company Limited undertook, was to conduct a physical file verification, as shown by the

Processing and Security Form which was at page 22 of Pereka Nyirenda's bundle of documents.

- 6.120 However, no evidence was adduced to show that Da-Cheng Wood Processing Company Limited did make the relevant queries at the Ministry of Lands in relation to the status of the property.
- 6.121 Pereka Nyirenda's continued submission, was that there was a conspicuous absence of any supporting evidence to substantiate the claim that a physical visit was done at the property, and that GPS verification was performed. Therefore, Da-Cheng Wood Processing Company Limited's assertions should be regarded with skepticism.
- 6.122 It was submitted that the only evidence that was there, to show that Da-Cheng Wood Processing Company Limited conducted due diligence on the property, was the computer printout of the Lands Register, which was obtained from the Ministry of Lands.
- 6.123 A perusal of the document, which is at pages 37-44 of Da Cheng Wood Processing Company Limited's bundle of documents, shows that it is dated 22<sup>nd</sup> December 2020. However, the first loan agreement is dated 12<sup>th</sup> July 2019 and the second one and the contract of sale are dated 31<sup>st</sup> October 2019.
- 6.124 The contention was that the Lands Register is not conclusive proof of ownership of the property. In support of that position reliance was placed on the case of ***Elias Tembo v Maureen Chirwa and 4 others*** <sup>(15)</sup>, in which

reference was made to the decision by the Supreme Court in the case of ***Hildah Ngosi (suing as Administrator of the estate of Washington Ngosi) v The Attorney General*** <sup>(11)</sup>.

6.125 The holding in that case was:

***“The 1<sup>st</sup> Respondent produced a computer printout to show that title had properly passed on to the 2<sup>nd</sup> Respondent. Unlike a certificate issued by the Registrar under section 23 of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia, a computer printout is not conclusive proof of any matter concerning a property.”***

6.126 It was accordingly submitted that a Lands Register printout, which is a product of a general search, which is conducted in accordance with ***Section 22 of the Lands and Deeds Registry Act***, does not qualify as an official search because no certificate would have been issued by the Registrar of Lands in accordance with ***Section 23 of the Lands and Deeds Registry Act***.

6.127 The authority that was cited in support of this position, was the case of ***Benson Munganama v Fredah Ngoma and the Attorney General*** <sup>(13)</sup>.

6.128 Thus, it was submitted that the Lands Register, which was on record, was merely a general search, and not an official search, which one could satisfactorily state had been carried out to search on the status of the property.

6.129 The submission was further that, had Da-Cheng Wood Processing Company Limited carried out an official search, it would have established the grant of an order of appointment from the Local Court, in favour of Patricia Ruth Myepa Nyirenda, in violation of **Section 43(2) of the Intestate Succession Act.**

6.130 The case of **Gillian Kasempa Mutinta v New Future Financial Company Limited and another** <sup>(16)</sup> was relied on where it was held that:

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

6.131 It was further submitted that Chisiki Matafwali, the witness who testified on behalf of Da Cheng Wood Processing Company Limited, stated that she is a Legal Practitioner, who oversaw the conveyancing transaction from Da-Cheng Wood Processing Company Limited’s end. This is confirmed by the email, which is at page 1 of Da-Cheng Wood Processing Company Limited’s supplementary bundle of documents.

6.132 A perusal of the emails which are dated 10<sup>th</sup> December, 2020 and 19<sup>th</sup> January, 2021 show that Da Cheng Wood Processing Company Limited did not indicate what due diligence was undertaken in the transactions.

6.133 The submission was that the omission by Chisiki Matafwali to conduct due diligence fell foul of the guidance that was given by the Supreme Court in the case of ***Patrick Dickson Ngulube v Robson Malipenga*** <sup>(10)</sup> where it was held that:

***“The issue now raised is what amounts to due diligence by an advocate in a conveyancing transaction? We are of the view that as part of his due diligence, an advocate should conduct a detailed search of the Lands Register and verify the authenticity of the title deed in his possession relating to the property in issue. An advocate should also crosscheck that the physical property corresponds with the survey diagram.”***

6.134 A bona fide purchaser for value is defined in ***Black Law’s Dictionary, 8th Edition, by Bryan A. Garner Thomson Reuters, 2004 at pages 3897 and 3898*** 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.”***

6.135 In this matter, Da-Cheng Wood Processing Company Limited claims to have conducted a search on the property that it purchased from Patricia Ruth Myepa Nyirenda,

who was the beneficial owner with a certificate of title, and that there were no encumbrances on the land.

6.136 Pereka Nyirenda, on the other hand, stated that Blackmore Gadi Chafwa Nyirenda did not bequeath the property to Patricia Ruth Myepa Nyirenda, who was the Administratrix of his estate, but she pledged it as collateral for a loan, and eventually sold it to Da-Cheng Wood Processing Company Limited without authority from the Court.

6.137 A perusal of the Processing and Security Form, which is at page 22 of Pereka Nyirenda's bundle of documents, shows that it was a duty under the loan agreement between Da-Cheng Wood Processing Company Limited and Patricia Ruth Myepa Nyirenda, that Da-Cheng Wood Processing Company Limited would conduct a physical file verification of the property.

6.138 In the case of *Kayoba and another v Ngulube and another* <sup>(3)</sup> the Supreme Court held that:

***“Also, in purchasing of real properties, parties are expected to approach such transactions with much more serious inquiries to establish whether or not the property in question has no encumbrances. Buying real property is not as casual as buying household goods or other personal property.”***

- 6.139 Chisiki Matafwali testified that due diligence was conducted by Da-Cheng Wood Processing Company Limited before it purchased the property.
- 6.140 However, it has been seen that Da-Cheng Wood Processing Company Limited has not produced a certificate for the official search, which is issued pursuant to **Section 23 (2) of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia.**
- 6.141 Chisiki Matafwali only referred to the print out of the Lands Register that Da Cheng Wood Processing Company Limited filed in its' bundle of documents, which was generated on 22<sup>nd</sup> December 2020, and is at pages 37 to 44 of Da-Cheng Wood Processing Company Limited's bundle of documents.
- 6.142 As earlier pointed out, the Lands Register shows a history of the activities on the property. However, as rightly submitted by both parties, a printout of the Lands Register does not amount to an official search, as provided for in **Section 23 of the Lands and Deeds Registry Act.**
- 6.143 Further, as guided in the case of **Kayoba and another v Ngulube and another** <sup>(3)</sup>, parties are expected to approach transactions for the sale of land, with much more serious inquiries, to establish whether or not the property in question has any encumbrances.
- 6.144 In discussing the doctrine of a bona fide purchaser for value in the case of **Clementina Banda Emmanuel Njanje v Boniface Mudimba** <sup>(8)</sup>, 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:***

...

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

...”

6.145 In the case of ***Gillian Kasempa Mutinta v New Future Financial Company Limited and another*** <sup>(16)</sup>, the Supreme Court held that had the 2<sup>nd</sup> respondent conducted an official search of the property, it would have discovered the erroneous letters of administration that were issued in contravention of ***Section 43 of the Intestate Succession Act.***

6.146 Similarly, in this matter, had Da-Cheng Wood Processing Company Limited conducted an official search of the property prior to entering into the loan agreement and the contract of sale with Patricia Ruth Myepa Nyirenda, it

would have discovered that Patricia Ruth Myepa Nyirenda was granted an Order of Appointment as Administratrix of the estate of Blackmore Gadi Chafwa Nyirenda.

6.147 It is noteworthy that at entry No 14 of the Lands Register, Patricia Ruth Myepa Nyirenda on 13<sup>th</sup> May, 2016, registered the Order of appointment as Administratrix from the Local Court, although the nature of the document is just indicated as Order of Appointment of Administrator.

6.148 An official search of the Lands Register would only therefore have established that Patricia Ruth Myepa Nyirenda had registered an Order of Appointment as Administrator, but the Lands Register would not have revealed whether those letters of Administration were issued by the Local Court or the High Court.

6.149 However, the registration of the Order of Appointment as Administrator would have put Da Cheng Wood Processing Company Limited on notice that Patricia Ruth Myepa Nyirenda was an Administratrix of the estate of Blackmore Gadi Chafwa Nyirenda, and it would should have conducted further enquiry to establish whether the letters of Administration were issued by the Local Court or the High Court.

6.150 Further, had an official search of the Lands Register been undertaken, Da Cheng Wood Processing Company Limited would have also discovered that Subdivision L of

Farm 288a was registered in the name of Ahmad Al Khatib Investments Limited at one point.

6.151 It would also have discovered that rectification of the said registration was done by Ahmad Al Khatib Investments Limited conveying the property to Patricia Ruth Muyepa Nyirenda through a Vesting Assent, when it was not the Administrator of Blackmore Gadi Chafwa Nyirenda's estate.

6.152 Also, Da Cheng Wood Processing Company Limited would have, had it conducted an official search on the Lands Register, found that Patricia Ruth Myepa Nyirenda held the property previously, in her capacity as Administratrix of the estate of Blackmore Gadi Chafi Nyirenda.

6.153 Thus, it would have been put on sufficient notice to conduct further investigations as to the real ownership of the property.

6.154 I have noted that the printout of the Lands Register was only generated on 22<sup>nd</sup> December 2020, which is after the loan agreement and the contract of sale between Da-Cheng Wood Processing Company Limited and Patricia Ruth Muyepa Nyirenda were executed.

6.155 The dates, therefore, support the conclusion that Da-Cheng Wood Processing Company Limited did not conduct due diligence.

6.156 It accordingly follows that had Da-Cheng Wood Processing Company Limited conducted due diligence, it

would have discovered Patricia Ruth Myepa Nyirenda's lack of authority to initially deal with the property, as she acquired Letters of Administration from the Local Court, which is precluded from issuing the same, for estates which have a value of over ZMW50.00.

6.157 This position was stated in the case of **Charity Oparaocha v Winfridah Murumbiwa** <sup>(4)</sup> where it was held that:

*“In considering this ground of appeal, we have had to ascertain the jurisdiction of the Local Court which appointed the Appellant to be the administrator in this case. Section 43 (2) of the Act limits the jurisdiction of the Local Court in matters of succession to estates whose value do not exceed Fifty Thousand Kwacha. It is clear to us that this provision was enacted at a time when the Kwacha had more value. We say so because going by the current trends very few, if any, would an estate have the value of fifty thousand kwacha and below. It is however on record in this case that the deceased's estate had property within and outside Zambia, which included real property. Clearly, the value of the deceased's estate went beyond the jurisdiction of the Local Court. We agree with Mr. Zulu that probate, in this case, should have been obtained from the High Court.”*

- 6.158 The consequences of an Administrator acting on authority that is erroneously granted by the Local Court was as stated in the case of ***Gillian Mutinta Ksaempa v New Future Finance and Zhong Cheng Zambia Mining Materials Limited*** <sup>(16)</sup>, being that such acts are a nullity and of no legal effect.
- 6.159 Therefore, Patricia Ruth Myepa Nyirenda could not have dealt with Blackmore Gadi Chafwa Nyirenda's estate, as Administratrix, as the value of that estate was beyond the limit that is provided for in the ***Local Court Act***.
- 6.160 Further, it is also trite that in order for an Administrator of an estate to sell property, which forms part of an estate of a deceased, authority of the High Court is required to be obtained by such Administrator.
- 6.161 This is provided for in ***Section 19(2) of the Intestate Succession Act***, which states that:

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

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- 6.162 In this matter, it will be noted that no prior authority was obtained from the High Court, before selling the property to Da Cheng Wood Processing Company Limited.
- 6.163 However, as earlier noted, Patricia Ruth Myepa Nyirenda was issued with a certificate of title for the property known as Subdivision L of Farm No 288a Lusaka, in her personal capacity. That in itself, did not necessitate the adherence to the requirement to obtain the authority of the High Court, to sell the property, as Patricia Ruth Myepa Nyirenda was selling the property in her personal capacity, and not in the capacity as Administratrix of an estate.
- 6.164 However, I have already addressed the question of the irregularity of the Vesting Assent, which Ahmed Al Khatis Investments Limited executed as a donor to Patricia Ruth Myepa Nyirenda, as done which was registered on the Lands Register on 10<sup>th</sup> July, 2019, and which saw Patricia Ruth Myepa Nyirenda being issued with a certificate of title for the property in the same day in her names.
- 6.165 As Da Cheng Wood Processing Company Limited did not conduct an official search on the Lands Register in relation to the property Subdivision L of Farm 288a Lusaka prior to executing the loan agreement, and the contract of sale with Patricia Ruth Myepa Nyirenda, it does not qualify to be a bona fide purchaser for value without notice.
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- 6.166 Further perusal of the Lands Register shows that after Patricia Ruth Myepa Nyirenda registered the Letters of Administration which she obtained from the Local Court on 13<sup>th</sup> May, 2016, she entered into contracts of sale with the United Church of Zambia Registered Trustees and Ahmad Al Khatis Investments Limited as seen at entries number 15 and 16 on the Lands Register, which are at page 39 of Da Cheng Wood Processing Company Limited's bundle of documents.
- 6.167 After those transactions were registered, at entry number 17, a certificate of title was issued in the names of Blackmore Gadi Chafwa Nyirenda on 16<sup>th</sup> May, 2016 for Subdivision L of Farm No 288a Lusaka, for land in extent of 30.3120 hectares.
- 6.168 This goes to show that Patricia Ruth Myepa Nyirenda transacted in relation to the land in her capacity as Administratrix of the estate of Blackmore Gadi Chafwa Nyirenda, although wrongly so, as she was acting under the authority of the letters of Administration which she obtained from the Local Court.
- 6.169 As Patricia Ruth Myepa Nyirenda could not lawfully deal with the property Subdivision L of Farm No 288a Lusaka under the authority of the letters of Administration which she obtained from the Local Court, coupled with the fact that Ahmad Al Khatis Investments Limited could not execute a Vesting Assent in favour of Patricia Ruth Myepa Nyirenda as it was not the Administrator of the estate of

Blackmore Gadi Chafwa Nyirenda which saw Patricia Ruth Myepa Nyirenda obtain a certificate of title in her name for the property, the contract of sale for the property between Patricia Ruth Myepa Nyirenda and Da-Cheng Wood Processing Company Limited was null and void.

6.170 Further, the loan agreements as far as the property was pledged as collateral were unenforceable.

6.171 In considering those transactions, it will be noted that Da-Cheng Wood Processing Company Limited asked for alternative relief being, payment of USD93,650.00 being monies due under the loan agreement, simple interest from the date of default, to the date of the Writ of Summons at 4% per month, and damages for breach of contract.

6.172 A perusal of the documents, which are on record show that Patricia Ruth Myepa Nyirenda and Da-Cheng Wood Processing Company Limited entered into two loan agreements.

6.173 The first one was on 12<sup>th</sup> July 2019, as evidenced at pages 20 and 21 of Pereka Nyirenda's bundle of documents, while the second one which is dated 31<sup>st</sup> October, 2019 is at pages 10 to 15 of Da-Cheng Wood Processing Company Limited's bundle of documents.

6.174 What is noteworthy, is that in the first loan agreement, one of the documents that Patricia Ruth Myepa Nyirenda submitted to Da-Cheng Wood Processing Company Limited, as required, was an original title deed.

- 6.175 In that loan agreement, Da-Cheng Wood Processing Company Limited was to disburse ZMW140,000.00 to Patricia Ruth Myepa Nyirenda, of which a 5% security fee was deducted, and which was refundable upon completion of the full payment of the total loan amount as stated on the Processing and Security Form, which is at page 22 of Pereka Nyirenda's bundle of documents.
- 6.176 At pages 23 and 24 of Pereka Nyirenda's bundle of documents, is an Extension and Default Agreement document, in which Patricia Ruth Myepa Nyirenda pledged the property, Subdivision L of Farm No 288a Lusaka, as security. A buy back option was included in the document.
- 6.177 A review of the Account Statement Report, which was produced by Mbiko Moyo, in particular at page 10, shows that Da-Cheng Wood Processing Company Limited paid ZMW136,500.00 to Patricia Ruth Myepa Nyirenda on 16<sup>th</sup> July 2019.
- 6.178 What can be noted, is that the second loan agreement and the contract of sale are both dated 31<sup>st</sup> October 2019. In the second loan agreement, Da-Cheng Wood Processing Company Limited was to lend Patricia Ruth Myepa Nyirenda an amount of USD63,277.00.
- 6.179 She pledged the property as collateral for the loan and in the contract of sale, the subject of the sale was the property at the same amount of USD63,277.00.
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- 6.180 The Account Statement further shows that Da-Cheng Wood Processing Company Limited disbursed an amount of ZMW175,000.00 to Patricia Ruth Myepa Nyirenda on 6<sup>th</sup> November 2019.
- 6.181 In her testimony, Pereka Nyirenda stated that there was no evidence that USD63,277.00 was actually paid to Patricia Ruth Myepa Nyirenda. Her contention was that the amounts which were shown as paid to Patricia Ruth Myepa Nyirenda were ZMW136,500.00 and ZMW175,000.00.
- 6.182 Chisiki Matafwali testified that Patricia Ruth Myepa Nyirenda obtained a loan in the amount of USD63,277.00, but she could not confirm whether it was paid by bank transfer. It was also her testimony that the contract of sale was signed when the loan of USD63,277.00 was given.
- 6.183 In its' submissions, Da-Cheng Wood Processing Company Limited stated that Pereka Nyirenda did not challenge the authenticity of Patricia Ruth Myepa Nyirenda's signature on the loan agreement, suggesting that the amount was incorrect or that she did not consent to the terms.
- 6.184 It was also submitted that a bank statement may reflect different figures, but that did not mean Patricia Ruth Myepa Nyirenda did not receive the full loan amount.
- 6.185 Further submission was made, that in the absence of evidence to suggest coercion or fraud, the principle of

*pacta sunt servanda*, which is that agreements freely entered into, must be upheld, applied.

6.186The case of ***Colgate Palmolive (Z) Inc. v Abel Shemu Chuka and 110 others*** <sup>(2)</sup> was relied on, stating that Courts must give effect to contracts unless there are valid legal grounds for setting them aside.

6.187It is trite law, that a party that alleges must prove his claim. In the case of ***Khalid Mohammed v The Attorney General*** <sup>(1)</sup> the Supreme Court held that:

***“A plaintiff must prove his case and if he fails to do so the mere failure of the opponent's defence does not entitle him to judgment.”***

6.188In this matter, Mbiko Moyo produced Patricia Ruth Myepa Nyirenda's bank statement which shows that she only received two payments from Da-Cheng Wood Processing Company Limited in the amounts of ZMW136,500.00 and ZMW175,000.00.

6.189However, it will be noted, and as earlier stated, Da-Cheng Wood Processing Company Limited and Patricia Ruth Myepa Nyirenda entered into both a loan agreement and a contract of sale.

6.190A reading of the contract of sale, and in particular ***Clauses 10 and 22 of the special conditions*** provided as follows:

***“10. The Purchaser has, however, granted the Vendor an option to buy back the said property including, houses and appurtenant and the***

***Purchaser will accordingly reverse the said Property.***

...

***22. The Vendor authorizes the Purchaser to change the property including land, houses and the appurtenant will be fully transferred to DA CHENG WOOD PROCESSING COMPANY LIMITED.***

- ***If the Vendor does not pay back the money after the agreed date or only pays a part of the contract amount within the stipulated period, the Purchaser has the right to return the Vendors incomplete payment to the Vendor when the stipulated expiry date arrives. The ownership of the property belongs to the Purchaser, and the Purchaser will dispose the property freely, transfer the ownership of Certificate of Title to DA CHENG WOOD PROCESSING COMPANY LIMITED...”***

6.191 These clauses show that Da-Cheng Wood Processing Company Limited and Patricia Ruth Myepa Nyirenda agreed to a buy back option of the property, which shows that the initial agreement between them was a loan agreement and not a sale.

6.192 The letter that Patricia Ruth Muyepa Nyirenda wrote to Da-Cheng Wood Processing Company Limited, which is at page 26 of Da-Cheng Wood Processing Company

Limited's bundle of documents, shows that Patricia Ruth Muyepa Nyirenda committed to pay USD65,722.00 on or before 6<sup>th</sup> November 2020.

6.193 In that letter, she admitted that she had failed to pay back the sum on the agreed date, and she requested for an extension of time to pay. Patricia Ruth Myepa Nyirenda also stated in the letter, that she was aware that if she failed to pay, the property would be deemed to belong to Da-Cheng Wood Processing Company Limited.

6.194 The Deed of Settlement, which is at pages 29 to 35 of Da-Cheng Wood Processing Company Limited's bundle of documents reflects that Patricia Ruth Myepa Nyirenda failed to settle the debt that she owed to Da Cheng Wood Processing Company Limited. She opted to settle the debt through the sale of the property to Da Cheng Wood Processing Company Limited.

6.195 A consideration of all the evidence that is on record, therefore, reveals that the transaction between Patricia Ruth Muyepa Nyirenda and Da-Cheng Wood Processing Company Limited was initially a loan agreement, and not a sale. The contract of sale in Clauses 10 and 22 of the special conditions, shows that the parties agreed that Patricia Ruth Myepa Nyirenda had an option to buy back the property.

6.196 It has been seen that the second loan agreement and the contract of sale have the same date. This is evidence that the parties' intention was to enter into a loan agreement,

and only on default of payment, would the property pass to Da-Cheng Wood Processing Company Limited.

6.197 The Supreme Court in the case of ***Gillian Kasempa Mutinta v New Future Financial Company Limited and another*** <sup>(16)</sup> held that:

***“We take the view that, contrary to what the Court of Appeal held, the evidence on record in this matter does not lead to the conclusion that this was a contract with a buy back clause. When the contract is considered with all the other evidence, it all points to the conclusion that this was a loan and not a sale. The contract itself vacillates between a loan and a sale but leans more towards a loan. The ordinary and natural meaning of the contract leads to the conclusion that it was meant to be a loan and not a sale. The evidence of the appellant together with her witnesses and bank statement all show that this was a loan. The 1st respondent's own witness described it as a loan.”***

6.198 The evidence on record also shows that, Da-Cheng Wood Processing Company Limited may not have produced evidence to show that it disbursed the entire USD63,277.00 to Patricia Ruth Myepa Nyirenda as stated in the loan agreement through her account, being the party that alleges.

6.199 However, the documents which are on record, such as the letter which is at page 26 of Da Cheng Wood Processing

Company Limited, and the Deed of Settlement which is at pages 29 to 33 of the said bundle of documents, show that Patricia Ruth Myepa Nyirenda admitted having been indebted to Da-Cheng Wood Processing Company Limited in the sum of US\$63, 277 as at 5<sup>th</sup> May, 2020.

6.200 Patricia Ruth Myepa Nyirenda in the Deed of Settlement agreed that the debt would be settled through sale of the property to Da Cheng Wood Processing Company Limited.

6.201 Patricia Ruth Myepa Nyirenda's admission of her indebtedness is on the face of it proof that Da-Cheng Wood Processing Company Limited disbursed the USD63,277.00 to her.

6.202 However, it has been found that Patricia Ruth Myepa Nyirenda neither had the authority to pledge the property as security or to sell it to Da-Cheng Wood Processing Company Limited.

6.203 Therefore, Da-Cheng Wood Processing Company Limited cannot claim vacant possession of the property or mesne profits from date of change of ownership until possession is delivered up.

6.204 It consequently follows that with regard to the alternative relief, Da-Cheng Wood Processing Company Limited would have to claim it from Patricia Ruth Myepa Nyirenda's estate.

6.205 In its' submission, Da-Cheng Wood Processing Company Limited stated that if the Court decides that the transaction was a loan agreement, **Section 15 of the**

**Money Lenders Act Chapter 398 of the Laws of Zambia** should be invoked, and the Court should reopen the transaction and assess the appropriate interest and order payment.

- 6.206 In her submissions, Pereka Nyirenda stated that if the Court was inclined to order an assessment, it should be founded upon the amount of ZMW175,000.00 which was disbursed to Patricia Ruth Myepa Nyirenda, and not the USD63,277.00 which is claimed by Da-Cheng Wood Processing Company Limited.
- 6.207 In support of the submission, reliance was placed on the case of **Gillian Kasempa Mutinta v New Future Financial Company Limited and another** <sup>(16)</sup>.
- 6.208 **Sections 14 and 15 of the Money Lenders Act** provides as follows:

**“14. (1) Where proceedings are taken in any court by a money-lender for the recovery of any money lent after the commencement of this Act, or the enforcement of any agreement or security made or taken after the commencement of this Act, in respect of money lent either before or after the commencement of this Act, and there is evidence which satisfies the court that the interest charged in respect of the sum actually lent is excessive, or that the amounts charged for expenses, inquiries, fines, bonus, premium, renewals, or any other charges, are excessive,**

*and that, in either case, the transaction is harsh and unconscionable, or is otherwise such that a court of equity would give relief, the court may reopen the transaction, and take an account between the money-lender and the person sued, and may, notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, reopen any account already taken between them, and relieve the person sued from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of such principal, interest and charges, as the court, having regard to the risk and all the circumstances, may adjudge to be reasonable; and if any such excess has been paid, or allowed in account, by the debtor, may order the creditor to repay it; and may set aside, either wholly or in part, or revise, or alter, any security given or agreement made in respect of money lent by the money-lender, and if the money-lender has parted with the security may order him to indemnify the borrower or other person sued.*

*(2) Any court in which proceedings might be taken for the recovery of money lent by a money-lender shall have and may, at the instance of*

*the borrower or surety or other person liable, exercise the like powers as may be exercised under this section, where proceedings are taken for the recovery of money lent, and the court shall have power, notwithstanding any provision or agreement to the contrary, to entertain any application under this Act by the borrower or surety, or other person liable, notwithstanding that the time for repayment of the loan, or any installment thereof, may not have arrived.*

*(3) On any application relating to the admission or amount of a proof by a money-lender in any bankruptcy proceedings, the court may exercise the like powers as may be exercised under this section when proceedings are taken for the recovery of money.*

*(4) The foregoing provisions of this section shall apply to any transaction which, whatever its form may be, is substantially one of money-lending by a money-lender.*

*(5) Nothing in the foregoing provisions of this section shall affect the rights of any bona fide assignee or holder for value without notice.*

*(6) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any court.*

*15. (1) Where, in any proceedings in respect of any money lent by a money-lender after the commencement of this Act or in respect of any agreement or security made or taken after the commencement of this Act in respect of money lent either before or after the commencement of this Act, it is found that the interest charged exceeds the rate of forty-eight per centum per annum, or the corresponding rate in respect of any other period, the court shall, unless the contrary is proved, presume for the purposes of section fourteen, that the interest charged is excessive and that the transaction is harsh and unconscionable, but this provision shall be without prejudice to the powers of the court under that section where the court is satisfied that the interest charged, although not exceeding forty-eight per centum per annum, is excessive.*

*(2) Where a court reopens a transaction of a money-lender under section fourteen, the court may require the money-lender to produce any certificate granted to him in accordance with the provisions of this Act, and may cause such particulars as the court thinks desirable to be endorsed on any such certificate, and a copy of*

*the particulars to be sent to the court by whom the certificate was granted.*

*(3) The powers of a court under section fourteen with respect to the reopening of the transactions of money-lenders shall extend to any transaction effected under a special contract made in accordance with the provisions of section 24 of the Pawnbrokers Act, 1872, of the United Kingdom, and accordingly, for the purposes of section fourteen, the provisions of paragraph (a) of the definition of the term "money-lender" in section two shall not apply with respect to any such transaction.*

*(4) The powers of a court under subsection (2) of section fourteen may, in the event of the bankruptcy of the borrower, be exercised at the instance of the trustee in bankruptcy, notwithstanding that he may not be a person liable in respect of the transaction. (5) The powers of a court under subsection (2) of section fourteen may be exercised notwithstanding that the money-lender's right of action for the recovery of the money lent is barred."*

6.209 In discussing **Section 15 of the Money Lenders Act**, the Supreme Court in the case of **Neighbours City Estates Limited v Mark Mushili** <sup>(9)</sup> stated that:

***“A perusal of the provisions of Section 15 of the Act puts the ceiling on interest charged at 48% per annum. Interest above 48% per annum is described as harsh and the transaction unconscionable. In the agreement in issue, interest was up to 120% per annum which is higher than that charged by even lending institutions.”***

6.210 In this matter, Da-Cheng Wood Processing Company Limited did not dispute the allegation that was made by by Pereka Nyirenda that it is registered as a Money lender in accordance with the ***Money Lenders Act***.

6.211 As earlier stated, the Deed of Settlement which is dated 6<sup>th</sup> November 2020, which is at pages 29 to 35 of Da Cheng Wood Processing Company Limited’s bundle of documents, and the letter dated 23<sup>rd</sup> October 2020, which is at page 26 of the said bundle of documents, purport to confirm Patricia Ruth Myepa Nyirenda’s indebtedness to Da-Cheng Wood Processing Company Limited.

6.212 The Deed of Settlement shows that as at 6<sup>th</sup> November 2020, Patricia Ruth Myepa Nyirenda agreed that she was indebted to Da-Cheng Wood Processing Company Limited in the amount of USD62,260.00, and she would be charged USD3,165.00 interest per month on that sum of money.

6.213 In line with the agreement, assuming that the principal sum owed was USD62, 260.00, interest at 48% per month translated into USD2, 490.4.

6.214 Thus, the interest that was agreed to be charged under the Deed of Settlement was in excess of the provisions of **Section 15 (1) of the Money Lenders Act.**

6.215 **Paragraph 1364 of the said Halsbury's Laws of England 4<sup>th</sup> Edition Re-Issue Vol 12** provides that:

**"A person may aver in opposition to his own deed that he was induced to execute it by fraud, mistake, misrepresentation, duress or undue influence and prove that for that reason it is voidable....**

**Where the object of an agreement made by deed is unlawful because the act to be performed is illegal or contrary to public policy the agreement is no more enforceable than if it had been made by parole."**

6.216 Clause 14 of the Deed of Settlement provided as follows:

**"If any provision of this Deed is held to be illegal, invalid, and/or unenforceable, and if the rights or obligations of any party Party hereto under this Deed will not be materially and adversely affected thereby, as the case may be, then:**

- a) said provision will be fully severable;**
- b) This Deed will be construed and enforced as if the said provision had never comprised a part thereof;**

**c) The remaining provisions of this Deed will remain in full force and effect and will not be affected by the said provision or by its' severance here from; and**

**d) In lieu of the said provision, there will be added automatically as part of this Deed, a legal, valid and enforceable provision as similar in terms to the said provision as may be possible.**

6.217 My understanding of the above, is that in the event that any provision in the Deed of Settlement was found to be illegal, invalid and/or enforceable, and if the rights or obligations of the parties under the agreement would not be materially or adversely affected thereby, then the said offending provision would be fully severable and the Deed of Settlement would be construed and enforced, as if the said offending provision never comprised a part thereof and the rest of the Deed of Settlement would remain in full force and be of effect and would not be affected by the severance of the provision.

6.218 Further, where possible, a legal, valid and enforceable provision would automatically be added as part of the Deed of Settlement.

6.219 The provision of the Deed of Settlement which is illegal relates to the interest that is payable on the principal amount.

- 6.220 The recitals of the Deed of Settlement show that Patricia Ruth Myepa Nyirenda agreed that as 5<sup>th</sup> May, 2020 that she was indebted to Da Cheng Wood Processing Company Limited in the sum of USD63, 227 and that she would be charged interest on that amount at USD5, 058.00.
- 6.221 The Loan and Collateral Agreement which is at pages 10-15 of Da Cheng Wood Processing Company Limited, which is dated 31<sup>st</sup> October, 2019, shows that Patricia Ruth Myepa Nyirenda applied for a loan and she granted a loan amount of USD63, 277.00 for a period of six (6) months up to 30<sup>th</sup> April, 2020.
- 6.222 That agreement provided that Patricia Ruth Myepa Nyirenda could apply for extension Seven (7) days before the loan expiry date, which would be calculated on a monthly basis.
- 6.223 At page 15, Patricia Ruth Myepa Nyirenda made a personal statement that she had received the full sum of USD63, 277.00.
- 6.224 The loan agreement which is at page 20-21 of Pereka Nyirenda's bundle of documents shows that the principal sum of the loan was K140, 000.00 and the loan was for a period of six (6) months. Interest was chargeable on that amount at a rate of eight (8) percent per month, bringing the total interest payable to forty eight (48) percent per annum.
- 6.225 Thus, the total interest due on the loan of K140, 000.00 was K129, 231.00.

6.226 At page 22 of Pereka Nyirenda's bundle of documents is the Security and Processing Form which provided that a security fee at five (5) percent would be deducted from the loan amount which was refundable upon completion of the payment of the total loan amount.

6.227 The Account Statement for Patricia Ruth Myepa Nyirenda shows that Da Cheng Wood Processing Company Limited paid Patricia Ruth Myepa Nyirenda the sum of K136, 500.00 on 16<sup>th</sup> July, 2019.

6.228 Then on 6<sup>th</sup> November, 2019, Patricia Ruth Myepa Nyirenda was paid the sum of K175, 000.00 by Da Cheng Wood Processing Limited.

6.229 Thus, from the bank statement, Patricia Ruth Myepa Nyirenda was paid the sum of K136, 500.00 on the first loan agreement and K175, 000.00 on the second loan agreement.

6.230 Therefore Da-Cheng Wood Processing Company Limited would not be entitled to the interest as claimed.

6.231 In the counterclaim, Pereka Nyirenda sought the following reliefs:

*vii. A declaration that the property, forms part the estate of the late Blackmore Gadi Chafwa Nyirenda;*

*viii. An order directing that the contract of sale dated 31<sup>st</sup> October 2019, for the property is void and unenforceable;*

- ix. *An order directing the cancellation of the certificate of title No. 89481 for the property issued in the name of Da-Cheng Wood Processing Company Limited;*
- x. *An order directing the reversion of the property to the estate of the late Blackmore Gadi Chafwa Nyirenda;*
- xi. *Costs; and*
- xii. *Any other relief the court may deem fit.*

6.232 The evidence on record has shown that Patricia Ruth Myepa Nyirenda, as Administratrix of the estate of the late Blackmore Gadi Chafwa Nyirenda obtained an Order of appointment as administrator from the Local Court instead of the High Court, in view of the value of the estate.

6.233 The evidence has also shown that Patricia Ruth Myepa Nyirenda administered the estate whilst holding such an Order of Appointment.

6.234 As was stated in the case of ***Gillian Mutinta Ksaempa v New Future Finance and Zhong Cheng Zambia Mining Materials Limited*** <sup>(16)</sup> the actions that follow using such authority, are a nullity and of no legal effect.

6.235 Further, the Vesting Assent which enabled Patricia Ruth Myepa Nyirenda to obtain a certificate of title for the property in her names was irregular, and therefore null and void.

6.236 Pereka Nyirenda is therefore entitled to the reliefs sought in the counterclaim, as the conclusion is that the transactions that Patricia Ruth Myepa Nyirenda did with Da Cheng Wood Processing Company Limited in relation to the property were null and void.

## **7. CONCLUSION**

- 7.1 I accordingly declare that the property, Subdivision L of Farm 288a Lusaka, is still part of the estate of Blackmore Gadi Chafwa Nyirenda.
- 7.2 I further declare that the loan agreement as far as it relates to pledging of the property, Subdivision L of Farm 288a Lusaka as collateral, is unenforceable and the purported contract of sale that was entered into between Da-Cheng Wood Processing Company Limited and Patricia Ruth Myepa Nyirenda is null and void, because she did not have authority to enter into such contract.
- 7.3 Da-Cheng Wood Processing Company Limited is not entitled to the reliefs sought, save for payment of the balance that was owed by Patricia Ruth Myepa Nyirenda from the second loan agreement and interest.
- 7.4 The certificate of title, which is held by Da-Cheng Wood Processing Company Limited for the property Subdivision L of Farm No 288a Lusaka was not lawfully acquired. As such by virtue of this Judgment, the Registrar of Lands and Deeds is directed to cancel the same.
- 7.5 The matter is referred for the assessment of the interest based on the principal sums of K136, 500.00 on the first

loan agreement and K175, 000.00, should the parties fail to agree on the same. The amount found due shall carry interest thereon at the average short term-deposit rate from the date of issue of the Writ of Summons until Judgment, and thereafter, at the Bank of Zambia lending rate until payment.

7.6 Pereka Nyirenda having succeeded on the claims on the counterclaim, and Da Cheng Wood Processing Company Limited also having succeeded on the claim for payment of the amount due on the loan, each party shall bear their own costs of the proceedings. Leave to appeal is granted.

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

*S. Kaunda*

**S. KAUNDA NEWA  
HIGH COURT JUDGE**

