

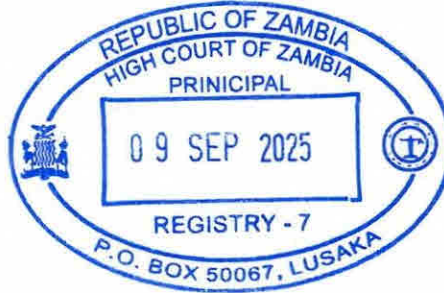
IN THE HIGH COURT FOR ZAMBIA

2023/HP/1192

THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(CIVIL JURISDICTION)



BETWEEN:

JOSEPHINE KAMALONI

PLAINTIFF

AND

CEPHAS MULENGA

1ST DEFENDANT

FRED SINDAZA

2ND DEFENDANT

MUTINTA NCHEEMBE CHUUNGA

3RD DEFENDANT

BEFORE THE HONOURABLE MR. JUSTICE I. M. MABBOLOBOLO IN CHAMBERS ON THE 9th DAY OF SEPTEMBER, 2025.

For the Plaintiff : *Mr. R. Musamali – Messrs SLM Legal Practitioners*

For the 1ST Defendant : *Mr. S. Muchimba – Messrs Tembo Ngulube and Associates*

For the 2nd & 3rd Defendant: *Mr. M. Phiri – Messrs M. C Phiri and Associates*

JUDGMENT

A. CASES REFERRED TO:

1. *Atlantic Bakery Limited v ZESCO Limited, SCZ Appeal No. 8 of 2015 (Selected Judgment No. 61 of 2018);*
2. *Chazya Silwamba v Lamba Simpito (2010) 1 ZR 475 (SC);*
3. *Gideon Mundanda v Timothy Mulwani & The Agricultural Finance Company Limited & S.S.S. Mwiinga (1987) ZR 29 (S.C);*
4. *Mwenya & Randee v Kapinga (1998) S. J. 12 (S.C);*
5. *Galanunia Farms Milling Company Limited (2004) ZR 1 (SC);*

6. *Zambia Railways Limited v Pauline S. Mundia and Brain Sialumba* (2008) ZR 278 Vol;
7. *Miller v Minister of Pensions* (1974) 2 ALL ER 372;
8. *Khalid Mohamed v The Attorney General* (1982) ZR 49;
9. *Anti Corruption Commission v Barnet Development Corporation Limited* (2008) ZR 69 Volume 1;
10. *Kajimanga v Chilemya – SCZ Appeal No. 50 of 2014*;
11. *Clementina Banda, Emmanuel Njanje v Boniface Mudima* (2011) Vol 3 ZR 162; and
12. *Mutwale v Professional Services* 1984 ZR 72.

B. LEGISLATION REFERRED TO:

13. *The Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia*

C. OTHER WORKS REFERRED TO:

14. *Halsbury's Law of England, 4th Edition (Re-issued), 2008, Vol. 44(1) paragraph 801*;
15. *John Mc Ghess QC, Shell Equity, London, Thomson Reuters (Legal) Limited, 2008*; and
16. *Black's Law Dictionary, 8th Edition.*

1.0. INTRODUCTION AND BACKGROUND

- 1.1. This is a Judgment on the Plaintiff's action commenced by way of Writ of Summons and Statement of Claim filed on 12th July, 2023. The Plaintiff stated that in 2015 she through a land agent became aware of an advertisement by the 1st Defendant whereby the 1st Defendant was inviting members of the public to purchase his proposed subdivisions of Plots in Chalala, Lusaka.
- 1.2. The Plaintiff stated that the 1st Defendant was approached expressing interest in purchasing a proposed Subdivision of Lot No. 11271/M Lusaka whereupon the 1st Defendant offered the Plaintiff 30 meters (900 square meters) portion of Lot No. 11271/M, Lusaka, at the sum of K35,000.00, which the Plaintiff accepted. A formal Contract of Sale settled and executed by the 1st Defendant as Vendor

and the Plaintiff as Purchaser. A survey diagram for the mother Title for Lot No. 11271/M, Lusaka was annexed to the Contract of Sale by the Plaintiff and the 1st Defendant. That in addition, the Contract of Sale was annexed with a proposed site plan which was generated from or based on the survey aforesaid on which it was marked "Plot 30" for purposes of identification of the portion that was sold to the Plaintiff.

- 1.3. It was stated that following the execution of the Contract of Sale, the Plaintiff paid the full purchase price of ZMW 35,000.00 and took immediate possession of a portion of Lot No. 11271/M, Lusaka, which was marked as "Plot 30" for purposes of physical identification. The Plaintiff undertook bush clearance and assigned a caretaker for the property in 2015.
- 1.4. It also stated that despite having paid the full purchase price to the 1st Defendant and having taken possession of the property, the 1st Defendant failed to complete the transaction by transferring 900 square meters which was marked as "Plot 30" for purposes of identification. That the Plaintiff engaged the 1st Defendant on several occasions following which the 1st Defendant made promises and commitments to process the Certificate of Title but to no avail. The 1st Defendant assured that the matter would be resolved amicably between the 1st Defendant and that the Plaintiff especially that the Plaintiff was already in physical possession of the property.
- 1.5. It was averred that the Plaintiff was taken aback when she found construction activities on her property in May, 2023, at the instance of the 2nd Defendant. That Plaintiff engaged the 2nd Defendant's

agents or workers who explained that the property has been sold to the 2nd Defendant by the 1st Defendant. That the sale of the property by the 1st Defendant to the 2nd Defendant was illegal, null and void because the property was purchased by the Plaintiff from the 1st Defendant in 2015 aforesaid and she had physical possession. Further that, the Plaintiff would explain that had the 2nd Defendant enquired from the caretaker and neighbours the 2nd Defendant would have been aware that the property belongs to the Plaintiff and she was awaiting issuance of the Certificate of Title by the 1st Defendant.

- 1.6. The Plaintiff stated that despite being fully aware of her claim to the property, the 2nd Defendant failed to adhere to the Plaintiff's demand to abate further development or construction activities on the property. That Defendants claim that the 2nd Defendant has a Certificate of Title relating to the Plaintiff's parcel of land.
- 1.7. An averment was made that the 2nd Defendant had continued to undertake construction activities on the property despite being fully aware of the Plaintiff's claim and demand by the Plaintiff's advocates to cease interfering with the property. That despite demands by the Plaintiff, the 1st Defendant had failed, neglected and refused to complete the Contract of Sale of the Subdivision to Lot No. 11271/M, Lusaka which is identified as "Plot 30".
- 1.8. It was also stated that the 1st Defendant by his failure, neglect and refusal to complete the transfer of the Subdivision to Plaintiff since 2015, had caused the Plaintiff to suffer damage, inconvenience and had denied quiet possession of her property.

1.9. The Plaintiff therefor claims for: -

- 1.9.1. *A declaration that the Plaintiff is a purchaser of a portion of Lot No. 11271/M, Lusaka, from the 1st Defendant in extent of 900 square meters which for purpose of identification is marked as "Plot 30" on the sketch site plan annexed to the Contract of Sale;*
- 1.9.2. *An Order against the 1st Defendant for specific performance of the conveyance to the Plaintiff of a portion of Lot No. 11271/M, Lusaka, which for purpose of identification is marked as "Plot 30" on the sketch site plan annexed to the contract of sale;*
- 1.9.3. *An Order for cancellation of the Certificate of Title, if any issued to the 2nd Defendant in respect of a portion of Lot No. 11271/M, Lusaka, which for purpose of identification is marked as "Plot 30" on the sketch site plan annexed to the Contract of Sale.*
- 1.9.4. *An Order of Interim Injunction restraining the 1st and 2nd Defendant by themselves, their agents or servants from further developments on portion of Lot No. 11271/M, Lusaka, which for purpose of identification is marked as "Plot 30" on the sketch site plan annexed to the Contract of Sale, or any further dealings whatsoever relating to the property until the determination of this matter;*
- 1.9.5. *Any other or further relief as the Court may deem fit to award to the Plaintiff; and*

1.9.6. *Legal costs.*

1.10. The 1st Defendant filed into Court his Memorandum of Appearance and Defence on 30th August, 2023, and stated that the 1st Defendant did not fail to complete the transaction but was simply delayed due to the fact that the property in question was subject of the land dispute. That Touch of Eden school commenced legal action against the 1st Defendant under cause No. 2017/HP/59. That the 1st Defendant did inform the Plaintiff of this and informed her that he could complete the conveyance process once the dispute had been resolved. That the Plaintiff was uncomfortable with the situation and proceeded to ask for a refund.

1.11. It was averred that the 1st Defendant did not have funds readily available and so he asked the Plaintiff if he could sell the property to another person in order to raise the money to refund her. The Plaintiff agreed to this and the 1st Defendant proceeded to sell the property to a third party.

1.12. It was stated that the third Party is not the 2nd Defendant cited in this matter. That third Party to whom the property was sold was to pay the purchase price in two (2) instalments and the first instalment was ZMW 20,000.00. That the 1st Defendant offered this ZMW 20,000.00 to the Plaintiff and informed her that he would pay the balance of ZMW 15,000.00 once the third Party pays off the last instalment. That the Plaintiff refused to accept the ZMW 20,000.00 and stated that she wanted to be paid in full and not instalments.

1.13. An averment was made that the property in question is Plot 30 and was sold to a third Party who is not a party to these proceedings. That the 2nd Defendant purchased Plot 29 and 28 which properties are not subject of these proceedings. That the dispute under cause number 2017/HP/59 was resolved and Judgment was entered in favour of the 1st Defendant who was pronounced as the legal and beneficial owner of the property. That upon hearing that, the Plaintiff claimed that she still wanted the property in question. That however, the 1st Defendant informed the Plaintiff that it was not possible as the 1st Defendant had already sold the property to a third party who now had Title over the property and who is the legal and beneficial owner of the property. Further, that the Plaintiff was informed that the 1st Defendant was still willing to give her a refund but that unfortunately the Plaintiff refused.

1.14. The 1st Defendant stated that the sale of the property to the third party was legal as the Plaintiff had agreed to the same in order for her to get a refund. It was also stated that the 1st Defendant has not failed or neglected to complete the process. That the Plaintiff cancelled the contract when she requested for a refund and allowed the 1st Defendant to sell the property to a third party who is not a party to these proceedings in order to raise money to refund her. Further, that the 1st Defendant is still willing to refund the Plaintiff to this date.

1.15. The 2nd Defendant filed into Court his Memorandum of Appearance and Defence on 28th July, 2023. He stated that he is the registered and legal owner of Lot 11271/A2 purchased from the 1st Defendant

thus, he is not just an occupier of a portion of Lot No. 11271/M as alleged. That the contents of the Statement of Claim are a total misrepresentation of the facts as are obtained on the ground in that the 2nd Defendant is in physical possession of Lot No. 11271/M/A2 which is known as Plot 29 on the site plan and not Plot 30 as alleged.

1.16. It was stated that the land purchased from the 1st Defendant by the 2nd Defendant is Lot No. 11271/M/A2 also known as Plot 29 on the site plan. It was also stated that the 2nd Defendant did not find any caretaker on Plot 29 now on Title as L/11271/M/A2 in the names of Fred Kaongela Sindazi and Mutinta Ncheembe Chuunga, the 2nd and 3rd Defendants herein who also bought Plot 28 also known as L/11271/M/A3.

1.17. It was averred that the 2nd Defendant did not buy Plot 30 on L/11272/M but purchased Plot 29 known as L/11271/M/A2 and obtained Certificate of Title No. 132506. Further, that construction activities being carried out by the 2nd Defendant are restricted to Plot 29 known as L/11271/M/A2 for which the 2nd Defendant holds a Title Deed. Furthermore, that the 2nd Defendant bought L/11271/M/A2 at the purchase price of ZMW 235,000.00 sometime in May, 2022, which Plot is different from Plot 30 which is occupied by a different person. That the Contract of Sale with the 1st Defendant was executed on 26th May, 2022 for L/11271/M/A2 known as Plot 29 and not Plot 30.

1.18. The 2nd Defendant denied being in occupation of Plot 30 as alleged by the Plaintiff which Plot is occupied by someone else, that the 2nd Defendant is a wrong party to these proceedings. That the 2nd

Defendant obtained the Title Deed to L/11271/M/A2 and had no knowledge of any adverse claim by anyone at the time of purchase.

1.19. The Plaintiff filed its Reply to the Defendants Defences joining issue with the Defendants Defences' on 29th October, 2024.

2.0. THE HEARING

- 2.1. At the hearing held on 16th of April, 2025 the Plaintiff called two (2) Witnesses in addition to her own testimony. The Plaintiff Ms Josephine Kamaloni, aged 52, a Teacher who resides at 16-14 Mbiya Road, Kabwata Estates, Kabwata Lusaka (hereinafter called **PW1**), for her Examination in chief relied on her Witness Statement filed on 11th December, 2024 wherein she stated that in 2015 she became aware of an advertisement by the 1st Defendant through an Agent, where he was inviting members of the Public to purchase his Plots in the Chalala area of Lusaka. The agent who was acting on behalf of the 1st Defendant was Mr. Cephas Sichinsambwe.
- 2.2. That the Plaintiff expressed interest in purchasing one of the proposed Subdivisions and offered to buy 30 metres by 30 metres (900 square meters) portion of Lot No. 11271/M, Lusaka from the 1st Defendant at the sum of ZMW 35,000.00. That the 1st Defendant accepted the Plaintiff's offer and was shown the portion of land which was subject of the contract in the presence of the 1st Defendant's agent and the Plaintiff's young brother Vincent Kamaloni,

- 2.3. It was the Plaintiff's testimony that after accepting the offer, the 1st Defendant and the Plaintiff went on to execute a formal Contract of Sale in which the Plaintiff was the Purchaser and the 1st Defendant was the Vendor. That the Contract of Sale was duly signed by the Parties on 26th January, 2015. The Contract of Sale was Witnessed by Mr. Gostavo Mulopoto and Mr. Vincent Kamaloni. Reference was made to page 1 of the Plaintiff's Bundle of Documents.
- 2.4. It was testified that the 1st Defendant and the Plaintiff annexed to the Contract of Sale a survey diagram of the mother Certificate of Title for Lot No.11272/M, Lusaka which is shown on page 16 of the Plaintiff's Bundle of Documents. Further, that the Plaintiff and the 1st Defendant also annexed a proposed site plan which was generated from or based on the Survey diagram on which it was marked "Plot 30" for purposes of identification of the portion that was sold to the Plaintiff. Reference was made to page 17 of the Plaintiff's Bundle of Documents. That this was done in 2015, because the mother Certificate of Title had not yet been Subdivided by the Vendor as the same was in the process.
- 2.5. It was the Plaintiff's testimony that after the execution of the Contract of Sale, she Paid the full purchase price of ZMW 35,000.00 and took immediate possession of a portion of Lot No. 11271/M, Lusaka which was marked as Plot 30 for purposes of identification. Further that the Plaintiff undertook

bush clearance and assigned a caretaker for the property in 2015.

- 2.6. It was stated that despite having paid the purchase price in full, the 1st Defendant failed to complete his part of the transaction by transferring 900 square metres which was marked as Plot 30. That the Plaintiff tried to engage the 1st Defendant on several occasions seeing that she already had physical possession of the property and the 1st Defendant continuously made promises and commitments to process the Certificate of Title but that the same was not fulfilled.
- 2.7. it was testified that in May 2023, the Plaintiff was taken aback when she found construction activities on her property, which she learnt were at the instance of the 2nd Defendant. That when she engaged the workers of the 2nd Defendant and her neighbour Mr. Chilambu, it was explained to the Plaintiff that they bought the property which had been sold to the Plaintiff by the 1st Defendant. Reference was made to pages 4 to 6 of the Plaintiff's Bundle of Documents being photographs of the constructions.
- 2.8. Further that, the sale of the Plaintiff's Property to the 2nd Defendant was illegal, null and void and that if the 2nd Defendant had inquired from the Plaintiff's caretaker, he would have been aware that the property belonged to the Plaintiff and that she was only waiting for the issuance of the Certificate of Title by the 1st Defendant.

- 2.9. Furthermore, that on 23rd May, 2023, the 2nd Defendant's spouse, Mutinta Chuunga Sindaza (the 3rd Defendant) reached out to the Plaintiff through WhatsApp and in their conversations, she claimed that as a couple they had a Certificate of Title relating to the Plaintiff's parcel of Land. That the Plaintiff relayed her claim to the property and that the Title they were holding was not genuine as the 1st Defendant had sold the Property to the Plaintiff in 2015. Reference was made to pages 7 to 12 of the Plaintiff's Bundle of Documents, showing the correspondence between the Plaintiff and the 2nd Defendant.
- 2.10. It was also testified that despite being aware of the Plaintiff's claim to the property, the 2nd Defendant and his Spouse failed to adhere to the Plaintiff's demand to abate further development or construction activities on the Property and continued to undertake construction on the property.
- 2.11. Further, that despite the Plaintiff's Demands, the 1st Defendant has still failed, neglected and refused to complete the Contract of Sale of the Subdivision of Lot No. 11271/M, which is identified as Plot 30. That due to the Defendants' actions, the Plaintiff has suffered damage and inconvenience and has been denied quiet possession of her property. That the 2nd Defendant and his spouse are not bona fide purchasers as they had notice of the fact that the Plaintiff was the owner of the Property prior to their purported purchase from the 1st Defendant. That the 2nd Defendant and his spouse only came to the Plaintiff's property in 2023 when they started their construction activities.

2.12. During Cross-Examination, **PW1** stated that she had entered into a Contract of Sale with the 1st Defendant for the value of ZMW 35,000.00 but that Title was not given. **PW1** denied being aware of any Court proceedings between the 1st Defendant and Touch of Eden for the period between the year 2015 and 2023. The Plaintiff also denied that at some point she asked for a refund.

2.13. It was **PW1**'s testimony that she made a call to one of her neighbours in the area, who informed her that there was a structure coming up and that it was a Sunday so she rushed there. **PW1** stated that it was the neighbour who informed her and not the caretaker because, the caretaker never lived on the property. That the said caretaker was living in the neighbourhood.

2.14. **PW1** also stated that she took physical possession of the Land and cleared it. That there was no structure on the said Land. That at no point did the 1st Defendant ask to refund the money that she had paid. The Plaintiff averred that she is sure that the land occupied by the 2nd and 3rd Defendants is the one that was sold to her. That her proof of the same is the documents that she has submitted before the Court. The Plaintiff however conceded that she could not say the exact number of the Plot because at the time it was sold to her, it was delineated as Plot 30. That on paper, it is showing Plot 30. That the Physical Plot that **PW1** was shown by the agents for the 1st Defendant is the one in the documents that she has. Further that the Plaintiff

had been clearing the land from the time it was sold to her and only took a break when her car developed a fault between 2021 to 2025.

2.15. When the Plaintiff was asked if there were any physical properties, she stated that there were some houses built and at that time the 2nd Defendant was building some flats on the next Plot and that his caretaker, Nevers, is the one who even used to take care or keep an eye on the Plaintiff's Plot each time she went there. That to visit the Plot after her car broke down, **PW1** would even board a bus and saw the property on the land in late 2022. That the Plaintiff visited the land then and she got in touch with her neighbour who said there was a structure on her Plot. It was the Plaintiff's Testimony that the 1st Defendant did not make any attempts to pay her back the money for the Plot.

2.16. The Plaintiff when referred to page 17 of the Plaintiff's Bundle of Documents stated that it showed a Plan relating to the Plot given to her by the 1st Defendant. That according to that Plan, the number of the Plot is 30. That the Plan was also what was attached to the Contract of Sale that the Plaintiff signed with the 1st Defendant. The Plaintiff conceded that the Plan was not an approved Site Plan and that she did not know who drew it.

2.17. The Plaintiff when referred to page 16 of the Plaintiff's Bundle of Documents stated that, that page was showing Lot No. 11271/M and that Counsel would not be wrong if he said that page 16 represents the entire land for the 1st Defendant because the 1st Defendant owned a big portion of land. That the

document on page 16 aforementioned were brought to Court because they were given by the 1st Defendant whom the Plaintiff bought the Plot from and considered them to be valid documents.

2.18. The Plaintiff when referred to page 2 of the Plaintiff's Bundle of Documents, explained that the extent of the land she bought was 30 metres by 30 metres (900m²) and known as Subdivision 30 of Lot No. 11271/M. Further that the Plaintiff could not produce Title because when the 1st Defendant gave her the documents before Court, he told her that he would process the Title and that the 1st Defendant asked Mr. Cephas Sichinsambwe in his company to go with the Plaintiff to the site where she was shown the Plot that she presented before Court. The Plaintiff conceded that she had no documents for subdivision 30

2.19. The Plaintiff confirmed that she paid ZMW 35,000.00 for the Plot to the 1st Defendant on 26th January, 2015. The Plaintiff also stated that from 2015 to 2025, there has been no discussion that she would be refunded. The Plaintiff also stated that the 1st Defendant offered her an alternative place about a week or two ago. The Plaintiff conceded that she was not aware of the discussions between the Sindaza's (the 2nd and 3rd Defendant) when they were buying the Plot. The Plaintiff also conceded that she was not aware that the 1st Defendant offered the 2nd and 3rd Defendant's Plot 28 and 29 in the same area of Lot No. 11271/M.

- 2.20. The Plaintiff stated that she was told by the 2nd and 3rd Defendants that they bought the land from the 1st Defendant in May 2022. That they however, did not tell **PW1** that they bought Subdivision 28 and 29. The Plaintiff stated that she could not confirm if the 2nd and 3rd Defendants had Title as she had not seen the Title. **PW1** averred that she was aware of the 2nd and 3rd Defendants wrongdoing as they knew that it was her Plot and went ahead and processed the Title and that the 2nd and 3rd Defendants have built a structure.
- 2.21. The Plaintiff when referred to page 9 to 24 of the Plaintiff's Bundle of Documents stated that it was a Land Register print out and conceded that she did not make an official search and that it did not have a stamp.
- 2.22. During Re-Examination the Plaintiff was asked to clarify if she had taken possession of the property and confirmed that she did.
- 2.23. The Plaintiff called Vincent Kamaloni, aged 39, a Civil Servant, residing at Plot No. 100/75/4, Kabwata Estates, Kabwata, Lusaka (hereinafter referred to as **PW2**).
- 2.24. **PW2** for his Examination in Chief relied on his Witness Statement filed on 11th December, 2024, wherein he stated that he was called at the instance of the Plaintiff in this matter as he had witnessed the transaction between the Plaintiff and the 1st Defendant. That it was in that capacity he testified on what

transpired in the matter involving Subdivisions of Lot No. 11271/M, Lusaka.

- 2.25. It was testified that sometime in 2015, the Plaintiff informed him that she had agreed to purchase a proposed Subdivision from the 1st Defendant who had offered her 30 metres by 30 metres (900 square metres) portion of Lot No. 11271/M, Lusaka at the sum of ZMW 35,000.00. That **PW2** accompanied the Plaintiff to meet the 1st Defendant and see the physical location of the property after the signing of the Contract of Sale.
- 2.26. It was **PW2**'s testimony that after the property was shown to the Plaintiff and all formalities concluded, the 1st Defendant and the Plaintiff went on to execute a formal Contract of Sale which is appearing at page 1 of the Plaintiff's Bundle of Documents. That **PW2** witnessed the execution of the Contract of Sale on behalf of the Plaintiff whilst the 1st Defendant's witness was Mr. Gostavo Mulopoto. Further, that the Plaintiff and 1st Defendant annexed a survey diagram of the mother Certificate of Title of Lot No. 11271/M, Lusaka which is shown on page 16 of the Plaintiff's Bundle of Documents.
- 2.27. Furthermore, that they also annexed a proposed site plan which was based on the survey diagram on which Plot 30 was marked for purposes of identification as shown on page 17 of the Plaintiff's Bundle of Documents. That the physical location of the property was shown to the Plaintiff in the presence of the 1st Defendant's estate agent Mr. Cephas Sichinsambwe and **PW2**.

2.28. It was also testified that the Plaintiff paid the full purchase price of ZMW 35,000.00 and took immediate possession of the portion of land of Lot No, 11271/M, Lusaka in 2016. That **PW2** is aware that the Plaintiff undertook bush clearance and assigned a caretaker for the property who was assisting in maintaining the property. That however, the 1st Defendant did not process the Certificate of Title and as the 1st Defendant assured that the Title would be processed in the name of the Plaintiff.

2.29. During Cross-Examination **PW2** stated that he witnessed the Contract of Sale on behalf of the Plaintiff on 26th January, 2015, for a piece of land in Chalala but that he was not aware of the number of the Plot. That there was no Certificate of Title and that it was not issued because the seller said he was going to process the Title later on. That the documents have been submitted to Ministry of Lands and that the seller was waiting for a response.

2.30. **PW2** testified that the land in question is the same land possessed by the 2nd and 3rd Defendant, that the basis of his statement is that he physically went to the site and that after signing the Contract of Sale, the Plaintiff took possession of the land. That the proof that he has is that the Plaintiff undertook land clearing and that there was a caretaker who was engaged to look after the land. **PW2** averred that he was not aware that at some point the land was undergoing legal proceedings after the Plaintiff bought the property. That **PW2** realised that the 2nd

and 3rd Defendants took possession last year when he was told by the Plaintiff. That **PW2** was aware that Title was issued to the 2nd and 3rd Defendants after he was told by the Plaintiff who is his sister.

2.31. When **PW2** was asked if he was aware of any discussion of his sister being refunded the ZMW 35,000.00, he answered in the affirmative. That he was told about the refund at the end of last year, though he was not sure of the specific date. Further that the Plaintiff rejected the offer for a refund. **PW2** stated that he was not aware that from the period 2015 to 2024 or 2025, the 1st Defendant was sued over the entire piece of land. Furthermore, that as a close relative to the Plaintiff the delay (in processing Title) is only attributable to the 1st Defendant. That he did not know when the 2nd and 3rd Defendant started building on the Plot.

2.32. There was no Re-Examination.

2.33. Lastly the Plaintiff called Mr. Cephas Sichinsambwe, aged 45, a businessman and resident at House No. 211/8137, off Alick Nkhata Road, Hellen Kaunda, Lusaka (hereinafter referred to as **PW3**)

2.34. **PW3** relied on his Witness Statement filed into Court on 11th December, 2024 wherein he testified that he knew the 1st Defendant whom he had represented in marketing his Plots in Chalala area of Lusaka. That he recalled that in 2015, the 1st Defendant tasked him to assist with marketing his Plots in

Chalala. That the 1st Defendant mandated **PW3** to introduce potential buyers and they would negotiate and agree on the sale of the property.

2.35. **PW3** testified that in executing his mandate on behalf on the 1st Defendant, he met and introduced the Plaintiff to the 1st Defendant as she expressed interest in purchasing a Plot from the 1st Defendant. That **PW3** started with taking the Plaintiff to the site to view the property physically and later **PW3**, the Plaintiff, the 1st Defendant and one Sydney Phiri proceeded to show and confirm the location of the Plot which the Plaintiff agreed to buy. That the 1st Defendant is the person that confirmed the availability and location of the Plot. Further, that the Plot was the second to the corner Plot and it was measuring 30 metres by 30 metres (900 square metres) and it is a portion of Lot No. 11271/M, Lusaka.

2.36. It was **PW3**'s testimony that after visiting the site, the Plaintiff, the 1st Defendant, Mr. Sydney Phiri, Mr Gastovo Mulopoto and Mr. Vincent Kamaloni met at the 1st Defendant's office in Northmead area of Lusaka at which point the Contract was signed. That **PW3** was present when signing the Contract of Sale appearing at page 1 of the Plaintiff's Bundle of Documents at the purchase price of ZMW 35,000.00.

2.37. It was stated by **PW3** that he remembered very well that after the signing of the contract and payment of the money, the Plaintiff, himself and Vincent Kamaloni proceeded to the site for the Plaintiff to take vacant possession. That **PW3** witnessed

when the Plaintiff started to bush clear the Plot and planted some flowers on the property.

2.38. During Cross-Examination, **PW3** stated that the Plaintiff went to him indicating that she was looking for a Plot. That he and the Plaintiff went to view the property in Chalala which the 1st Defendant was selling and that his friend Mr. Phiri Stanley was present that time. That he is able to identify the land because it was a 5 Acres that was Subdivided.

2.39. **PW3** was referred to paragraph 8 of the Witness Statement and Bundle of Documents at page 17 and asked if it was the one stated as Plot 30. The witness took a very long time to answer the question on whether the statement in Paragraph 8 agrees with what is in the Bundle, (almost 7 minutes) and stated that they are not the same. That the one in dispute is the one marked X.

2.40. The Witness stated that he was the agent of the Plaintiff but conceded that according to paragraph 7 of his Witness Statement, it stated that he was the agent for the 1st Defendant. The witness maintained that the Plaintiff was sold Plot X, even though the Plaintiff identified Plot 30 as the one she was sold. **PW3** conceded that he has never met the person who is occupying Plot X and that he was just told that somebody had built on the Plaintiff's Plot. That he was not aware who was occupying Plot 30. It was also **PW3** evidence that he took the Plaintiff to Plot X after she had bought it. That as an agent of the 1st Defendant he was familiar with the land.

2.41. There were no questions asked in Re-Examination.

2.42. This marked the close of the Plaintiff's case.

2.43. The 1st Defendant who is Cephas Mulenga, aged 48 years old, a businessman and resident at Plot No. 48 A, Kaumbwe Street, Emmasdale, Lusaka (hereinafter called **DW1**) testified on his own behalf and did not call any other witnesses.

2.44. **DW1** testified that he is a Zambian citizen and the registered proprietor of Lot No. 11271/M in Lusaka, which has been Subdivided into multiple separate Plots (Subdivisions). That the Plaintiff expressed interest in purchasing Subdivision No. 30 of Lot No. 11271/M, measuring 900 square metres in total. **DW1** stated that he offered to sell the property to the Plaintiff at ZMW 35,000.00.

2.45. It was **DW1**'s testimony that the Plaintiff accepted the offer. That consequently, a formal Contract of Sale was settled and executed by both the Plaintiff and **DW1**. Reference was made to pages 2 to 4 of the 1st Defendant's Bundle of Documents. That following the successful execution of the Contract of Sale, the Plaintiff paid the full consideration of ZMW 35,000.00.

2.46. It was stated that upon receiving the full consideration from the Plaintiff, **DW1** proceeded to working on the transfer formalities as required by the law. That however, **DW1** was delayed due to the fact that the property in question, that is Lot No. 11271/M, was subject of a land dispute. That the said land dispute was commenced by Touch of Eden School against **DW1** under Cause

number 2017/HP/59. Reference was made to page 1 of the 1st Defendant's Bundle of Documents.

2.47. **DW1** testified that upon being served with the Originating Process documents, he informed the Plaintiff of the legal suit and that he further informed the Plaintiff that he could only complete the conveyancing process once the dispute had been resolved. It was stated that the Plaintiff was uncomfortable with the situation and requested for a refund. Further that unfortunately, at the time the Plaintiff requested for a refund, **DW1** did not have the funds readily available. Consequently, **DW1** asked the Plaintiff if he could sell the property to another person in order to raise the money to refund her and the Plaintiff agreed to this.

2.48. It was stated that accordingly, **DW1** proceeded to sell the property to a third party. That this third party is not the 2nd Defendant cited in this matter. That nonetheless the third party to whom the property was sold was to pay the purchase price in two (2) instalments and the first instalment was ZMW 20,000.00 which was paid. That upon receiving the said ZMW 20,000.00, **DW1** offered the same to the Plaintiff and further informed the Plaintiff that he would pay the balance of ZMW 15,000.00 once the third party pays off the last instalment. That however, the Plaintiff refused to accept the ZMW 20,000.00 and stated that she wanted to be paid in full with interest and not in instalments.

- 2.49. It was **DW1**'s testimony that the Plaintiff and himself continued communicating over the property and pending refund and alongside those discussions, the dispute under Cause No. 2017/HP/59, which had been preventing the completion of the conveyancing process, was resolved. That the Court ruled in favour of **DW1**, legally confirming that he is the beneficial owner of Lot No. 11271/M.
- 2.50. In his testimony, the Witness stated that the Plaintiff then claimed that she still wanted the property in question, that is Subdivision 30 of Lot No. 11271/M. That **DW1** informed the Plaintiff that it was not possible as he had already sold the property to a third party who now has Title over the property and is the legal and beneficial owner of the property.
- 2.51. It was averred that **DW1** informed the Plaintiff that he was willing to provide a full refund as she had previously requested. That however, the Plaintiff refused to accept it and rather demanded that all developments or construction activities on the property should be stopped. Further, that **DW1** could not stop any development and construction activities on Subdivision 30, reason being that, the said property legally belonged to a third party who has Title. Further that, **DW1** did not fail, neglect or refuse to complete the transfer of Subdivision 30 to the Plaintiff. That apart from ZMW 35,000.00 refund, the Plaintiff is not truly and justly entitled to the relief sought.
- 2.52. During Cross-Examination, **DW1** confirmed that he has a completed house at the same property where the land in dispute

is, on one of the Subdivisions. He also confirmed that the property on which the Plaintiff was offered and the 2nd and 3rd Defendants were offered is at the same location on the 5 Acres land. That the Plot that was sold to the Plaintiff was a bare piece of land on the same 5 Acres land. The Witness also confirmed that he was in the position to show the Court the site, however, that the land is not available because he had sold Subdivision 30 to someone whose full name he could not remember but goes by the name Sydney. **DW1** confirmed that today there is no subdivision 30.

2.53. Further that he did not disclose the full name of Sydney in his Witness Statement because he was not cited in this case but only the 2nd and 3rd Defendants were cited. He went on to state that Sydney was not the initial buyer. That there was someone who had bought it from Sydney by the name of Tayali to whom he sold to refund the Plaintiff. When referred to page 17 of the Plaintiff's Bundle of Documents, **DW1** stated that the Plot that was sold to the Plaintiff was the unmarked corner Plot. That he not only informed the Plaintiff that she was on the wrong Plot in 2022 but that he also had informed her between 2015 to 2021. The Witness confirmed that the 2nd and 3rd Defendants have another Plot apart from the one in issue which is a neighbouring Plot and was acquired in 2019. The witness denied that the reason he did not sell the Plot in dispute was because he was aware that the Plaintiff was the owner.

2.54. **DW1** also testified that the property in dispute belonged to another person between 2015 to 2022. The Witness was referred to the Defendant's Bundle of Documents on page 8 and stated that the document on page 8 being a Contract of Sale was signed on 22nd May, 2022 wherein he was the seller but claimed that the Plot between 2015 to 2022 belonged to someone named Dismus Sakala. **DW1** conceded that the said Dismus Sakala was not mentioned either in his Defence or Witness Statement. When referred to page 10 to 13 of the 2nd Defendants' Bundle of Documents, **DW1** conceded that he was receiving money and no where was it stated that he was doing it on behalf of Dismus Sakala. Further that he had no documents to show before Court that he was selling on behalf of Dismus Sakala.

2.55. It was also **DW1**'s testimony that when the Plaintiff bought the land, she was shown the land and that one of the witnesses was Mr. Cephas Sichinsambwe who affirms that the land in dispute is what she was shown. **DW1** also stated that when the Plaintiff was clearing her Plot sometime in May 2015, she informed him that someone came to disturb her claiming the entire extent of where she had gone to clear. That the said Plot was Plot 30 and it was very rocky. That he had informed the Plaintiff that the Plot was the wrong one through a conversation. He stated that at that time he was trying to sell the Plot to Sydney it was so that he could refund her. **DW1** however conceded that he neither sent a text message to her nor was there any document

showing that he was going to refund the Plaintiff. **DW1** also conceded that the Contract of Sale he signed with the Plaintiff did not provide for a refund.

2.56. **DW1** agreed that the property in question has appreciated in value. That he got Title for the whole land on 5th January, 2015 and the Plaintiff was sold her portion on 26th January 2015 which was earlier than the 2nd and 3rd Defendants. That at the time the Plaintiff bought the land he had already sold many Plots as a lot of People turned up, **DW1** could however not remember the year he sold all the subdivisions.

2.57. **DW1** testified that he had done a proposed Sketch Plan for the Subdivisions that he was selling. That he eventually engaged a surveyor that did the Subdivisions which he later submitted to the authorities in 2015. The Witness was referred to page 4 and 5 of the 2nd Defendant's Bundle of Documents and stated that the date appearing was 3rd March, 2017 and that by that date he had already sold the land to the Plaintiff. **DW1** also confirmed that on the approved sketch plan Plot 30 could not be found. **DW1** conceded that the Plaintiff was sold the land in 2015 and stated that the land she had bought was A1 on the Plan. He however denied being aware of the fact that someone had been building on the said Plot for a long time. The Witness however stated that he had sold A1 to another person when the Plaintiff wanted a refund.

2.58. **DW1** in his evidence denied that A1 has had structures for over ten (10) years and that it was sold as a common lease to

different individuals. **DW1** however conceded that the numbering changed when it was renumbered. **DW1** stated that apart from the Plaintiff he was also asked to refund Mr. Raphael Kafula because of the Court case with Touch of Eden. When referred to page 19 of the Plaintiff's Bundle of Documents, the Witness conceded that there was no mention of a Court case.

2.59. When referred to page 24 of the Plaintiff's Bundle of Documents, the Witness refused having processed Title for Mr. Kafula but stated that Mr. Kafula had placed a caveat as the intended purchaser in 2023. **DW1** insisted that he refunded Mr. Kafula for a case they had before the Subordinate Court and that he has the receipt but not before Court. **DW1** denied knowing Nevers as the caretaker and that a woman called "Chabigma" was the caretaker for the whole extent. **DW1** also denied that the Plaintiff was responsible for the removal of the rocks on Plot 30. The Witness also stated that he had not refunded the Plaintiff because she had rejected the refund but that the Plaintiff had given him verbal permission to sell the Plot some time in November, 2015. **DW1** stated that a meeting was taking place sometime in 2015 at his house at the site (the one own by the 1st Defendant on Lot No. 11271/M). Further that he called everyone and informed that they had a court case which required them to raise funds and that others agreed but the Plaintiff refused. Furthermore, that the Plaintiff came alone and that there were no witnesses.

2.60. There was an application to move to the site by Counsel for the Plaintiff which I accordingly granted and the Court moved to the site on 20th May, 2025 for continued Cross- Examination of **DW1**.

2.61. The witness when asked to point at the land in dispute, stated that the disputed property was the one next to the corner Plot on the road where there is a close. That the Plot is No. 29 or A2 and the next Plot is 28 or A3 and that this is not in dispute. He agreed that the land in dispute was bare land, but that he did not agree that the disputed property is the one bought by the Plaintiff. **DW1** stated that the land initially bought by the 2nd and 3rd Defendants is the one next to the disputed property being Plot 28 (A3). He agreed that the Plaintiff treated the 2nd and 3rd Defendants as neighbours.

2.62. It was averred that Plot 30 (A1) was developed earlier as compared to Plot 28 and Plot 29. The Witness went on to show the Court where he stayed being the other side of the road, off the main road turning right. **DW1** admitted being familiar with the area as all the Plots were sitting on the same Title. The witness did not agree that there was no bare land as there is one at the corner to the right as you drive into the close, A6. I confirmed that, that particular portion is bare indeed.

2.63. **DW1** however conceded that the Plaintiff never bought A6 and confirmed that she bought a Plot on the same road (where the site visit was conducted). The Witness also agreed that the numbering had changed. That the proposed numbers which

were earlier done were numbered 1 up to 40. That when they were submitted at Town and Country Planning, they were changed from numbers to letters. But that the position on the ground remained the same as Subdivisions of Lot No. 11271/M.

2.64. During continued Cross- Examination **DW1** confirmed that the 1st corner Plot was designated as Plot No. 30 and that the one next to it is Plot 29. He also reiterated that the Contract of Sale he entered into with the Plaintiff was for Plot 30 and that Plot 30 is now A1. That the one that belongs to the 2nd and 3rd Defendants is A2. **DW1** also stated that there was no Plot X

2.65. There was no Re-Examination.

2.66. This marked the end of the 1st Defendant's case.

2.67. The 2nd and 3rd Defendants called their sole witness, Mutinta Ncheembe Chuunga, the 3rd Defendant aged 34 years old, a Civil Servant and resident House No. 15, Sulphur Street, Kamwala South, Lusaka (hereinafter called **DW2**)

2.68. It was stated that **DW2** and her husband, Mr. Fred Kaongela Sindazi are registered owners of Subdivision A2 of Lot No. 11271/M of Chalala Lusaka Province as per pages 7 and 23 of the 2nd Defendants' Bundle of Documents, which are the Contract of Sale and Certificate of Title. That **DW2** and her husband bought a Plot in May, 2022 from Cephas Mulenga through an agent Mr. Highton Chilela as per receipt exhibited at page 10 of the 2nd Defendant's Bundle of Documents.

- 2.69. It was averred that in August, 2022, they started developing the Plot. That the structure consists of four (4) flats, 3 being 2 bedroomed flats with a sitting room and kitchen, pantry and toilet. That one (1) flat being a 2 bedroomed flat with toilets, pantry, a sitting room, kitchen, dining room and a all the four (4) flats have a self-contained master bedroom. Reference was made to page 15 of the 2nd Defendants Bundle of Documents being photographs of the flats.
- 2.70. It was stated that the flats had reached 90% completion around March 2023. That the Plaintiff went to Subdivision A2 of Lot 11271/M and found Mr. Kapata, their bricklayer, and his team working. That the Plaintiff asked the 2nd and 3rd Defendants what they were doing on the alleged Plot. That **DW2** has cleared ground rent from 2022 to date as per exhibit 33 of the 2nd Defendant's Bundle of Documents.
- 2.71. That the Plaintiff told the 2nd and 3rd Defendants' bricklayer to stop constructing on her alleged Plot threatening to demolish the structure if they continued building. That Mr. Kapata, the bricklayer advised the Plaintiff to contact the 2nd and 3rd Defendants, the owners of the Plot over the alleged claim that she had made. It was stated that Mr. Kapata assisted the Plaintiff with the Witnesses phone number. After getting the number, the Plaintiff called **DW2** claiming that they were building on her Plot. That **DW2** informed her that they had bought the Plot from the 1st Defendant in May, 2022. Further that, the Plaintiff claimed to have documents which were given

to her by 1st Defendant and that her Plot was Plot 30 according to survey diagram. That **DW2** explained to the Plaintiff that their Plot was 29 and not Plot 30 on the survey diagram as per exhibit marked 5 in the 2nd Defendant's Bundle of Documents.

2.72. It was also stated that **DW2** informed her husband, Mr. Fred Kaongela Sindazi (the 2nd Defendant) about the ownership claim made by the Plaintiff on their Plot Subdivision A2 of Lot No. 11271/M. That her husband advised contacting the 1st Defendant of the alleged claims made by the Plaintiff on their Plot Subdivision A2 of Lot No. 11271/M. That **DW2** contacted the 1st Defendant and informed him that the Plaintiff was claiming ownership of Plot Subdivision A2 of Lot No. 11271/M which they had bought from him.

2.73. An averment was made that the 1st Defendant assured **DW2** that Plot Subdivision A2 of Lot 11271/M was his before he sold it to her husband and herself. Further, that **DW2** was advised by 1st Defendant not to worry about the claims of the Plaintiff. That the 1st Defendant requested **DW2** to tell the Plaintiff to contact him regarding her claims of ownership of the land.

2.74. Lastly that **DW2** contacted the Plaintiff and provided her with the 1st Defendant's mobile number. That what followed was an Injunction served on the 2nd and 3rd Defendant's through their lawyers by the Plaintiff's lawyers, that as the case processed they were given an injunction to stop developing Subdivision A2 of Lot No. 11271/M and that they complied with the Court Order.

2.75. During Cross-Examination, **DW2** confirmed that she bought another property from the 1st Defendant before she bought the land in dispute. That the property that they bought earlier is neighbouring the land in dispute. The Witness when referred to page 21 of the Plaintiff's Bundle Documents confirmed that she bought the Plot at entry 19 and agreed that the property entry number 21 is neighbouring the Plot in dispute before this Court. **DW2** also stated that they did not know that the land in dispute belonged to the Plaintiff. The witness also stated that she was not aware of a common caretaker appointed by the 1st Defendant.

2.76. It was **DW2**'s testimony that the land was not cleared when they bought it and they had to clear out the stones. That it was not the only undeveloped Plot because even the next one was bare land. That they started negotiating to buy the 2nd Property which is in dispute in May, 2022.

2.77. **DW2** confirmed that she had a conversation with the Plaintiff over the phone but denied that it was heated. It was stated that in that conversation the Plaintiff was saying that she visited the property in dispute and found people building so she inquired why they were building. That the people building explained to her that they were engaged by the 2nd and 3rd Defendants and proceeded to provide the Plaintiff with **DW2**'s number.

2.78. Further that, the Plaintiff told the 2nd and 3rd Defendants that they were building on her property at which point **DW2** explained to the Plaintiff that they had bought the property from

the 1st Defendant. That after the conversation, **DW2** called her husband (2nd Defendant) and informed him about the development.

2.79. It was also stated by **DW2** that there was a structure right opposite the Plot and for the second Plot where there was a complete house and that she knows the owner of the complete house by sight only because she had not spoken to him the time she went to visit the site. The Witness also confirmed that she bought the first property in the year 2021 and that even at that time, they had neighbours. **DW2** however stated that when buying the land in dispute there was no mention that the said land belonged to the Plaintiff. She also confirmed that by the time they had bought the 2nd Property, the first one was already completed. **DW2** however denied that the corner Plot was already developed. That development of the corner Plot started at almost the same time though it was started earlier.

2.80. **DW2** informed Court that when she called the 1st Defendant regarding the phone call she received from the Plaintiff, she was told not to worry and that if she received another call from the Plaintiff, **DW2** was to inform the Plaintiff to contact the 1st Defendant instead. That the 1st Defendant informed her that the Plaintiff was not the owner. The Witness denied knowing a gentleman by the name of Nevers

2.81. **DW2** stated that she had known the 1st Defendant since 2021 when she bought the property and denied that there was any structure on the disputed property. That they (2nd and 3rd

Defendant checked at Ministry of Lands and their finding was that the property was under the 1st Defendant's name. That the first contact **DW2** had with the Plaintiff was in March, 2023 after the 2nd and 3rd Defendant had started developing the property. **DW2** reiterated that in the conversation on the phone, the Plaintiff claimed ownership of the property but that she did not send any documents to show proof of ownership.

2.82. The Witness when referred to the Plaintiff's Bundle of Documents at page 17, did not agree that the Plot marked 30 was the one in dispute because the disputed property is not sitting at the corner but that it is the second one. That according to her knowledge they are sitting on Plot 29. It was also stated that the physical location disputed was Plot 29 but with the documents the Plaintiff claims Plot 30 as her property. **DW2** stated that she visited the earlier Plot she bought on uncountable times because she was the one running the project and that at no time did she see the Plaintiff on the disputed land.

2.83. There were no questions asked in Re-Examination.

2.84. This Marked the end of the 2nd and 3rd Defendant's case.

3.0. THE PARTIES FINAL SUBMISSIONS

3.1. The Plaintiff caused to be filed into Court Final Submissions on 11th June, 2023.

3.2. It was submitted that as the record will show, the Plaintiff commenced this action on 12th July, 2023, by Writ of Summons

supported by a Statement of Claim and other accompanying documents. That according to the Pleadings, the Plaintiff is claiming the relief as contained in paragraph 1.9 herein.

- 3.3. It was stated that Pleadings play an essential role of determining the issue in contention and matters that the Court ought to decide upon as claimed by the Plaintiff. Reference was made to the case of **Atlantic Bakery Limited v ZESCO Limited**¹ and it was submitted that the question for determination is whether or not the Plaintiff is entitled to the reliefs above which she is seeking. It was also submitted that from the evidence on record and testimony of all the witnesses, the Plaintiff is entitled to the 1st claim in Paragraph 1.9 herein because she tendered in evidence, a Contract of Sale dated 26th January, 2015, which is appearing at pages 1 to 3 of the Plaintiff's Bundle of Documents. That in terms of the Contract for Sale, the Plaintiff purchased 900 square metres of Lot No. 11271/M, Lusaka, from the 1st Defendant which for purposes of identification was marked as Plot 30. Further, that the 1st Defendant in the Defendant's Defence appearing at page 7 of Plaintiff's Bundle of Documents has admitted that the Plaintiff purchased 900 square meters of Lot No. 11271/M, Lusaka.
- 3.4. Furthermore, that with the unequivocal and undisputed fact, this Court is legally entitled to grant the first relief in favour of the Plaintiff. Reliance for this submission was placed on the Supreme Court decision in the case of **Chazya Silwamba v Lamba Simpito**².

- 3.5. The Plaintiff submitted that the 1st Defendant having admitted and having not disputed that the Plaintiff purchased 900 square metres of Lot No. 11271/M, Lusaka, from the 1st Defendant, the first relief may be granted in favour of the Plaintiff against the 1st Defendant.
- 3.6. A submission was made that as regards the Plaintiff's second claim in Paragraph 1.9 herein, the Plaintiff having proved that she purchased 900 square meters of Lot No. 11271/M, Lusaka, it is invariable that the Defendant should be ordered to specifically perform the Contract of Sale of 900 meters of Lot No. 11271/M, Lusaka. Further that, the Plaintiff has proved all the ingredients for the Court to make an Order for Specific Performance. Reference was made to the learned authors of **Halsbury's Laws of England**¹⁴ on the relief of Specific Performance. Reliance was also placed on the case of **Gideon Mundanda v Timothy Mulwani and Others**³ and it was stated that in that case damages might be inadequate because the Plaintiff risks losing a parcel of land which she acquired in 2015.
- 3.7. It was also stated that Specific Performance should be granted especially that the 2nd Defendant and the 3rd Defendant are not bona fide purchasers for value without notice of the property. That the Plaintiff testified that she cleared the parcel of land and had a caretaker at the premises. Further, that the Plaintiff explained to the 2nd and 3rd Defendant who were neighbours to the Plaintiff in light of the neighbouring parcel of land they

acquired from the 1st Defendant as confirmed by the Lands Register Printout appearing at page 22 of the Plaintiff's Bundle of Documents.

- 3.8. Furthermore, that from the evidence on record, the 2nd and 3rd Defendants had constructive notice that the property was owned by a third party prior to their contract with the 1st Defendant to purchase the Plaintiff's property. Referring to the case of **Mwenya and Randee v Kapinga**⁴ it was submitted that the case explained that Notice may be actual or constructive and where the said notice is imputed on the subsequent purchaser, then the plea of purchaser for value without notice is defeated.
- 3.9. It was submitted that in this case, the 2nd and 3rd Defendants had constructive notice that the property was owned by the Plaintiff. That **DW2** explained that the only search that was conducted prior to the purchase of the property was at the Ministry of Lands. The Plaintiff however contends that the presence of the caretaker at the premises and the clearing of the land should have placed the 2nd and 3rd Defendants on notice of an encumbrance on the land.
- 3.10. It was also submitted that as revealed by the Pleadings and evidence during trial, the 2nd and 3rd Defendants acquired the Plaintiff's property in 2022 and have since obtained a Certificate of Title being Subdivision No. A2 of Lot No. 11271/M, Lusaka appearing at page 24 of the Defendant's Bundle of Documents.

That the same is liable to being cancelled because it was improperly issued to the 2nd and 3rd Defendants.

3.11. Reliance was placed on **Section 34 of the Lands and Deeds Registry Act**¹³, which provides that Certificate of Title may be cancelled if it is deprived from the owner through fraud or in circumstances where the registered proprietor is not a bona fide purchaser for value of the property. Further, that because 2nd and 3rd Defendants are not bona fide purchasers, the Certificate of Title may be cancelled at law in favour of the Plaintiff.

3.12. A submission was made as regards number five of the Plaintiff's claim in Paragraph 1.9 that this Court has discretion to make an award that the Plaintiff may be entitled to at law in addition to or in substitution of the claims contained in the Writ of Summons. That as such the Plaintiff leaves the same to the discretion of this Court to ensure that justice prevails in this matter. The Plaintiff also prayed for costs against the Defendants.

3.13. The 1st Defendant filed his Final Submissions on 25th June, 2025.

3.14. It was submitted that it is trite law that in civil proceedings, the burden lies upon the Plaintiff to prove their case on a balance of probability as restated in the Supreme Court case of **Zambia Railways Limited v Pauline S. Mundia and Brian Simumba**⁶. That according to the 1st Defendant, the Plaintiff had failed to discharge this burden.

3.15. A submission was made that the first and second reliefs cannot be granted for the following reasons: -

- i. It is the 1st Defendant's position that prior to the full conveyance of the said Plot 30, the Plaintiff was informed that the said property was under litigation, as pleaded in paragraph 5 of the 1st Defendant's Defence. This disclosure caused the Plaintiff considerable unease, leading to a mutual agreement to refund the purchase price. Although the Plaintiff denied this arrangement during Cross-Examination, her own witness, **PW2**, Vincent Kamaloni confirmed that such agreement was reached. This understanding effectively superseded the original agreement for sale of land.
- ii. The Plaintiff's case is marred by material inconsistencies. Notably; the Sketch Plan at page 17 of the Plaintiff's Bundle of Documents, identifies Plot 30 as a corner Plot. The **PW3**, Cephas Sichinsambwe, in both his Witness Statement and Cross-Examination, identified Plot 30 as the Plot marked 'X' on the Plan. During the site visit conducted by this Court, the Plaintiff identified Plot 29, now known as Subdivision A2 of Lot 11272/M, Lusaka, rather than Plot 30, as the land she purported to have acquired.

3.16. It was also submitted that in relation to the third claim by the Plaintiff, cancellation of Title cannot be granted because of **Section 34 of the Lands and Deeds Act**¹³ and the case of **Anti-**

Corruption Commission v Barnet Development Corporation Limited⁹. That from these authorities it can be deduced that Plot 30 was sold to a third party who is not part to these proceedings and no grounds of fraud or reason of impropriety were pleaded. That this is so because the 1st Defendant informed the Plaintiff before full conveyance of the said Plot 30, the former informed the latter that the said Plot 30 was under litigation as stated above. That this created unease for the Plaintiff and prompted the parties to enter into an agreement to refund her. Further that even though this was denied by the Plaintiff at Cross-Examination, **PW2**, Vincent Kamaloni confirmed that the Plaintiff agreed to such. That this countered the agreement for sale of land putting in place another agreement.

3.17. As regards the fourth (4) relief claimed in Paragraph 1.9 herein by the Plaintiff, it was submitted that this Court has already addressed the issue of interim relief and declined to grant the Injunction sought. That there is therefore, nothing further to be deliberated in that regard.

3.18. Lastly it was submitted that the Plaintiff had failed to establish her claims to the requisite standard of proof. That accordingly, this Court should dismiss the action with costs in favour of the 1st Defendant.

3.19. The 2nd and 3rd Defendants filed into Court their final submissions on 17th July, 2025.

- 3.20. It was submitted that this Court had already dealt with the relief for Interim Injunction when it dismissed the Application.
- 3.21. It was also submitted that the 2nd and 3rd Defendants filed a Defence into Court on 28th July, 2023 in which they denied the allegations made in the Statement of Claim. That the Plaintiff called three witnesses while the 2nd and 3rd Defendants called one witness.
- 3.22. It was stated that the issues that affect the 2nd and 3rd Defendants is the relief which relates to the Order for cancellation of Certificate of Title issued to the 2nd and 3rd Defendants. That one of the issues for determination by this Court is whether the Plaintiff, the 2nd and 3rd Defendants were sold one and same Plot. Additionally whether the Plaintiff has laid before Court any justifiable reasons for cancellation of the 2nd and 3rd Defendants Certificate of Title.
- 3.23. It was the 2nd and 3rd Defendants' submission that the Plaintiff was sold 'Plot 30' as per the Contract of Sale executed between the 1st Defendant and the Plaintiff. That in the Plaintiff's evidence, the Plaintiff clearly stated that she was sold Plot 30 of L/11271/M, Lusaka. Further, that following the numbering of the various subdivisions, Plot 30 was numbered as Subdivision 'A1' of Lot No. 11271/M Lusaka. That this is a corner Plot or the first Plot as shown on the Sketch Site Plan presented by the Plaintiff.
- 3.24. A Submission was made that the 2nd and 3rd Defendants bought 'Plot 29' which after the numbering is now Subdivision 'A2' of

L/11271/M Lusaka, which is distinct from Subdivision 'A1' of L/11271/M Lusaka. That a site visit by this Court provided insight concerning 'Plot 30' bought by the Plaintiff. That it was the corner (first) Plot and not the second (A2) Plot. Thus, the Plaintiff ought not to have sued the 2nd and 3rd Defendants, who did not buy 'Plot 30'

3.25. It was stated that '**PW3**' Cephas Sichinsambwe who presented himself as the agent who took the Plaintiff to the Plot, stated 'Plot X' as the Plot sold to the Plaintiff, which is shown on page 17 of the Plaintiff's Bundle of Documents. That the said Plot X is far from Plot 30, therefore there is no certainty as to which Plot the Plaintiff bought but that what is clear is that the Plaintiff did not buy Plot 29 or Subdivision A2 of Lot No. 11271/M Lusaka. Further that the Plaintiff has failed to her allegations on a balance of probability.

3.26. It was also stated that page 5 of the 2nd and 3rd Defendants' Bundle of Documents shows proposed subdivisions 'A1' and 'A2' and showing 'A1' as the corner Plot while A2 is shown as the second Plot. That the two Plots are different Plots and the Plaintiff's evidence was to the effect that she bought Plot 30 which translates to Subdivision 'A1' of L/11271/M, Lusaka. That the Plaintiff failed to prove that she bought 'Plot 29' which translates to Subdivision 'A2' of L/1127/M Lusaka

3.27. Reference was made to the case of **Galaunia Farms Milling Company Limited**⁵ for the Position that the burden of proving the case rested on the Plaintiff on a balance of probability.

Making further reference to the case of **Zambia Railways Limited v Pauline S. Mundia and Brain Sialumba**⁶, **Miller v Minister of Pensions**⁷ and **Khalid Mohamed v The Attorney General**⁸, it was submitted that on the evidence adduced by the Plaintiff, she had lamentably failed to prove her case on a balance of probability as against the 2nd and 3rd Defendants.

3.28. Further, that during Cross-Examination of the Plaintiff (**PW1**), she denied ever being engaged to get a refund for plot 30 from the 1st Defendant, however, **PW2** Vincent Kamaloni confirmed that in fact the 1st Defendant did engage the Plaintiff over a refund of the purchase price she paid for Plot 30. Furthermore, that the Plaintiff was deliberately avoiding telling the Court the truth regarding the issue of the refund.

3.29. It was submitted that regarding the second issue affecting the 2nd and 3rd Defendants, that of cancellation of the Certificate of Title, the relief was a misplaced and misconceived one. It was stated that the Plaintiff did not lay before this Court any good or convincing reasons as to why the Certificate of Title in the names of the 2nd and 3rd Defendants should be cancelled. That in any case the said Certificate of Title relates to a different Plot that is 'Plot 29' and not 'Plot 30'.

3.30. Further, that the Plaintiff did not in her evidence state that she bought Plot 29 of L/11272/M/A2, Lusaka to which the 1st and 2nd Defendants hold Title. That when **PW1** was on the stand she did not move the Court to the site to show or point to the Court that she had bought 'Plot 29' which rightfully and legally

belongs to the 2nd and 3rd Defendants. That according to the Documents presented by the Plaintiff, her Plot is 'Plot 30' which was identified by 'DW1' Cephas Mulenga when the Court visited the Site as the corner or first Plot.

3.31. Referring to the case of **Anti-Corruption v Barnett Development Corporation Limited**⁹ and the case of **Kajimanga v Chilemya**¹⁰. It was submitted that the Plaintiff did not allege fraud or mistake in the issuance of the Certificate of Title to the 2nd and 3rd Defendants. That based on the forgoing authorities, and there being no evidence of fraud, Mistake or impropriety in the acquisition of the Certificate of Title led by the Plaintiff, the Certificate of Title in the names of the 2nd and 3rd Defendants is not liable for cancellation. That the Plaintiff did not give any plausible reason why the said Certificate of Title should be cancelled. Further that the Plaintiff did not plead any fraud, Mistake or error in the issuance of the Certificate of Title.

3.32. The 2nd and 3rd Defendants also referred to **Sections 33 and 34 of the Lands and Deeds Registry Act**¹³ and submitted that the relief sought by the Plaintiff to have the 2nd and 3rd Defendants' Certificate of Title cancelled lacks any legal basis and must be dismissed. That in any case the said Certificate of Title relates to Plot 29 which is L/11271/M/A2 which is not the property bought by the Plaintiff. It was also stated that the entire case against the 2nd and 3rd Defendants lacks merit and should be dismissed with costs to the 2nd and 3rd Defendants.

4.0. CONSIDERATION AND DECISION OF THE COURT

- 4.1. I have considered the Pleadings by both Parties, the evidence before me and the respective final submissions by the Parties. I am grateful for the industry of Counsel on behalf of the Parties.
- 4.2. In a nutshell the Plaintiff is claiming that she bought a Sudvision of Lot No. 11271/M from the 1st Defendant at the purchase price of ZMW 35,000.00 on 26th January, 2015. That the said portion of land or Subdivision was known as Plot 30 according to the Sketch Plan that was given to the Plaintiff by the 1st Defendant, together with her copy of the Contract of Sale. That the Plaintiff had taken vacant possession of the land and began clearing it. That however sometime in 2023, the Plaintiff discovered that the 2nd and 3rd Defendants from the neighbouring Plot were building on her piece of land despite being aware that it belonged to her.
- 4.3. The 1st Defendant on the other hand whilst agreeing that he had entered into a Contract of Sale with the Plaintiff on 26th January, 2015, stated that the Plaintiff had rescinded the Contract of Sale when she learnt that the Lot No. 11271/M was subject of a legal dispute sometime in November of 2015. That the Plaintiff had given verbal permission to the 1st Defendant to sell the land to someone else and refund her. That however, the Plaintiff refused the refund when she learnt that the 1st Defendant had won the legal battle in which Lot No. 11271/M the subject and that the 1st Defendant was declared the legal and beneficial owner. The 1st Defendant's position is that the

land could not be given to Plaintiff as he had sold it to someone else. That the person to whom the Plaintiff's land was sold is not a party to these proceedings.

- 4.4. Further that, the 2nd and 3rd Defendant who have been cited in this matter are not the ones on the land that was sold to the Plaintiff and occupy a different portion of land all together that was known as Plot 29 and not 30 that was sold to the Plaintiff.
- 4.5. The 2nd and 3rd Defendants on the other hand are claiming that they did not buy the land that belonged to the Plaintiff being Plot 30 but bought Plot 29 which is an adjacent Plot to the one that was bought by the Plaintiff. Further that at the time of purchasing the same, they were not aware that it belonged to the Plaintiff and a search at Ministry of Lands had revealed that the 1st Defendant was the beneficial owner. It was also stated that currently they possess a Certificate of Title in their names of the for Plot 29 also known as L/11271/M/A2 whose Certificate of Title number is 132506.
- 4.6. Further that, the said Land was bought at the purchase price of ZMW 235,000.00 sometime in May of 2022.
- 4.7. To start with, it is trite that the Plaintiff bears the burden to prove her case on a balance of probability as was stated in the case of **Zambia Railway Limited v Pauline S. Mundia, Brian Simumba** that;

“the old adage is true that he who asserts a claim in a civil trial must prove on a balance of probability that the other party is liable.”

4.8. As I see it what falls to be determined is whether the Plaintiff has proved her case to the required standard against the 1st Defendant and the 2nd and 3rd Defendants respectively.

4.9. It is not in dispute that the Plaintiff executed a Contract of Sale with the 1st Defendant on 26th January, 2015. I note that the said Contract of Sale was not registered with the Ministry of Lands. The Supreme Court in the case of **Mutwale v Professional Services**¹² guided that a Contract of Sale need not be registered for it to be valid at law. It was stated in that case that:

“prior to the passing of the Land Conversion of Titles Act legal contracts could be entered into, but if they were not registered within a specific time limit, they were statutory held void. The same situation does not arise with contracts relating to land which are entered into without the prior consent of the President”

4.10. It is therefore clear from the forgoing that a Contract of Sale valid at law existed between the Plaintiff and the 1st Defendant. It is also on record that the 1st Defendant has not denied his liability under the Contract of Sale that was executed between him and the Plaintiff on 26th January, 2015.

4.11. The 1st Defendant however, stated in his evidence that the Plaintiff had agreed to have the land sold to someone else in order to refund her because, according to the 1st Defendant, the Plaintiff was uncomfortable with the land dispute that was prevailing over Lot No. 11271/M. The Defendant did not however provide any evidence that the dispute under Cause number 2017/HP/59 affected the Title he held for Lot No. 11271/M that prevented him from transferring Title to the Plaintiff for the piece of Land that was bought. I also note, that from 1st Defendant's evidence during Cross-Examination, he had stated that the Plaintiff had given him permission to sell her piece of land to another person sometime in November, 2015 when she became aware of the Court case. However, from a perusal of the 1st Defendant's Bundle of Documents on the first page, it is clear to me that the Court matter earlier referred to based on the Cause number was commenced in the year 2017 and the Defendant only entered appearance on 30th January, 2018. It is also clear from the record that the 1st Defendant had a Certificate of Title on 5th January, 2015 and he sold a portion of the Land to the Plaintiff in the same month. It can therefore be stated from the forgoing that the 1st Defendant neglected to comply with the special conditions stipulated between him and the Plaintiff as evidenced on page 3 of the Plaintiff's Bundle of Documents.

4.12. Further, there is no evidence of the supposed agreement to have the Plaintiff's land resold to another person. I therefore

find the Plaintiff's position on the matter that no such agreement existed, to be more believable than the 1st Defendant's assertions.

- 4.13. The Plaintiff stated in her evidence that the land she bought is the same one that the 2nd and 3rd Defendants are now occupying. From the evidence before me there is no doubt that the Plaintiff bought a Plot within the road where the site visit took place as affirmed by the 1st Defendant and the Plaintiff. It is also clear to me from the **PW3**'s evidence in chief that the Plaintiff had bought a Plot that was second to the corner Plot and when given an opportunity he pointed to a Plot that was second to the corner Plot on the Sketch Plan, he pointed to a Plot marked Plot X and insisted that it was the one sold to the Plaintiff. The Plaintiff however, stated that it was the Plot marked 30 on the Sketch Plan found at page 17 of the Plaintiff's Bundle of Documents. However as to the physical location of the same, she insisted that it was the property now known as L/11271/M/A2 currently owned by the 2nd and 3rd Defendants.
- 4.14. Further it is clear to me that the numbering of the Plots was changed when the Plan of Subdivisions of Lot No. 11271/M was approved on 3rd March, 2017 according to page 4 of the 2nd Defendant's Bundle of Documents. Additionally, even comparing the two Plans (one exhibited by the Plaintiff and one exhibited by 2nd and 3rd Defendants) it is not easy to decipher as to which Plot would now be what was then considered Plot 30 weighed against the testimonies of the Parties and their

Witnesses .From the Plaintiff's evidence and that of her witness, it is clear that she visited the Plot on at least more than one occasion and I therefore find that it is unlikely that she would be confused about the physical location of the same.

4.15. From the evidence it is clear that the plot sold to the Plaintiff was bare land. There is also evidence that the 2nd and 3rd Defendants bought from the 1st Defendant was also bare land. The 1st Defendant stated during his evidence in Cross-Examination that when the Plaintiff went to clear the Plot, he had informed her that, the land she had cleared did not belong to her. It is hard to believe that the Plaintiff would have continued to claim land that was not hers after being forewarned by the 1st Defendant at that early stage when she had just taken possession of the land.

4.16. I am therefore of the view that the land that was sold to the Plaintiff is the one that is currently owned by the 2nd and 3rd Defendants. I find that it was sold to the 2nd and 3rd Defendants by the 1st Defendant without any consent from the Plaintiff at the purchase price of ZMW 235,000.00. The Plaintiff has proven her case against the 1st Defendant on a balance of probability.

4.17. I will now determine whether the Plaintiff has proven her case against 2nd and 3rd Defendants. Having found that L/11271/M/A2 owned by the 2nd and 3rd Defendants is the same Plot or Land that was sold to the Plaintiff, it becomes necessary to determine whether the 2nd and 3rd Defendants are bona fide purchasers for value.

4.18. **Black's Law Dictionary**¹⁶ defines bona fide purchaser for value as:

“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 had good faith paid valuable consideration for property without notice of prior adverse claims.”

4.19. The doctrine of bona fide purchaser for value without notice was also considered in the case of **Clementina Banda, Emmanuel Njanje v Boniface Mudima**¹¹, by Dr, Matibini SC J, as he then was, where he quoted the learned author of **Shells Equity**¹⁵ and summarized his conclusion of the elements to be satisfied in considering the doctrine in the manner stated below:

“The learned author of Shell Equity, states in paragraph 4-21, at page 65, that an important qualification to the basic rule of first in time priority of interests is the doctrine of bona fide purchaser for value without notice, which demonstrates a fundamental distinction between legal and equitable interests in some kinds of property (see Macmillan v Bishopsgate Trust (No. 3) at 1001). The learned author of snells Equity (Supra) goes on to state in paragraph 4-22 at page 65-66 that:

‘The doctrine is most easily understood by an example taken from a disposition of unregistered land. A legal estate, or interest was generally enforceable against any person who took the property, whether, or not he had notice of it. This followed from the basic rule of priority that interests in property rank in the order in which they were created. If V sold to P land over which W had a legal right of way. P took the land subject to W’s right even if he was ignorant of it. But historically, it was different for equitable rights: a bona fide purchaser for valuable consideration who obtained a legal estate at the time of his purchase without notice of a prior equitable right was entitled to priority in equity as well as at law. He took free of the equitable interest. In such a case equity followed the law. The purchaser’s conscience was in no way affected by the equitable right. So, there was no justification for invoking the jurisdiction of equity against him where there was equal equity the law prevailed. The onus lay on the purchaser to prove that he was a bona fide purchaser for value, and also that he took without notice of the equitable interest.’

4.20. Dr. Matibini SC J went on to conclude that:

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

a) A purchaser must act in good faith;

- b) A purchaser is a person who acquires an interest in the property by grant rather than operation of law. The purchaser must also have given value for the property;**
- c) The purchaser must generally have obtained the legal interest in the property; and**
- d) The purchaser must have had no notice of the equitable interest at the time he gave his consideration for the conveyance. A purchaser is affected by notice of an equity in three cases;**
- i. Actual notice; where the equity is within his own knowledge;**
 - ii. Constructive notice; where the equity would have come to his own knowledge if proper inquiries had been made; and**
 - iii. Imputed notice; where his agent as such in the course of the transaction has actual, or constructive notice of the equity.”**

4.21. It is clear from the evidence that the Plaintiff does not have Certificate of Title for the land and had not visited her property regularly between the years 2021 and May 2023 when she found structures built on her property. The structures that she found as exhibited on page 4 to 6 of the Plaintiff's Bundle of Documents are nearly finished buildings, entailing that she

clearly had not visited the Plot in a really long time. In fact, it is the Plaintiff's evidence that she only discovered the buildings on her land in May of 2023. Although the Plaintiff in her evidence claimed that she had left a caretaker on the land in dispute, however, it is ironical that she was not informed of the developments by her caretaker but a neighbour. This confirms that the caretaker does not live on the land. The 2nd and 3rd Defendants also do not live at their Plots on Lot No. 11271/M but during their building visited it from time to time. The Plaintiff also does not live on any Property near Lot No. 11271/M. Further, there is no evidence from the Plaintiff that she had known or met the 2nd and 3rd Defendants at any point before May, 2023.

4.22. In light of the forgoing, I am of the view that the 2nd and 3rd Defendant are bona fide purchasers for value without notice as they had no way of knowing of the Plaintiff's interest in the land at the time they purchased L/11271/M/A2. At the time of the purchase, the land was bare and a search they had carried out at Ministry of Lands revealed that the 1st Defendant was the legal owner of the Property.

4.23. I am also of the view that the 2nd and 3rd Defendants have satisfied the necessary elements to be called bona fide purchasers for value without notice of the Plaintiff's interest. I am therefore not inclined to cancel their Certificate of Title that they currently possess for L/11271/M/A2. I find that the

Plaintiff has not successfully proved her case against the 2nd and 3rd Defendants.

5.0. CONCLUSION


5.1. Having found that the Plaintiff has proved her case against the 1st Defendant I Order that:

- i. The 1st Defendant refunds the sum of ZMW 235,000.00 being the purchase price that he received for selling the Plaintiff's piece of land without her consent.
- ii. Interest on the Judgment Sum under (i) shall be at the short-term deposit rate from date of writ to date of Judgment and thereafter at the current lending rate as determined by the Bank of Zambia until full payment.

5.2. Further I have found that the 2nd and 3rd Defendants are bona fide purchasers for value without notice. The Certificate of Title they now possess for L/11271/M/A2 shall therefore not be cancelled.

5.3. Costs to be borne by the 1st Defendant herein to be taxed in default of agreement.

SIGNED, SEALED AND DELIVERED AT LUSAKA THIS 9TH DAY OF SEPTEMBER, 2025.



**I. M. MABBOLOBOLO
HIGH COURT JUDGE**