

IN THE HIGH COURT FOR ZAMBIA

2015/HP/1446

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(Civil Jurisdiction)

BETWEEN:

PEGGY CHIBUYE

AND

RINGWELL MUSHILUNGWA



PLAINTIFF

DEFENDANT

Before the Honourable Lady Justice S. Chocho, on the 12th day of December, 2025.

For the Plaintiff: Ms. M Banda of Messrs KBF and Partners.

For the Defendant: Mr. L Chilingala of Messrs Kalokoni and Company.

J U D G M E N T

Cases referred to:

- 1. Gospel Power Tabernacle (Pastor Inambwae Stephen Sitwala) v Salangwa Shop and Others Appeal No. 79 of 2021.***
- 2. Maybin Sikweti v Ndola Tabernacle and Others 2021 ZMCA 222.***
- 3. Ritah Chanda v Violet Ngulube and Another SCZ Appeal No. 162 of 2015.***
- 4. OTK Limited V Amanita Zambiana Limited and Others (2011) ZMHC 23.***

5. *Pesulani Banda v The People (1972) ZR 202.*

6. *Honorius Maurice Chilufya c Chrispin Haluwa Kangunda SCZ
Judgement No. 29 of 1999.*

7. *Shell and BP Zambia Limited v Conidaris and Others (1974) Z.R.
281.*

Legislation and other authorities referred to:

1. *Section 25 of the Land Survey Act Chapter 188 of the Laws of Zambia.*
2. *Halsbury's Laws of England Volume 38.*

1. **INTRODUCTION**

1.1. This Judgment is in respect of the Plaintiff's claim against the Defendant. The Plaintiff by way of Writ of Summons and Statement of Claim dated December 28th, 2015 claimed the following:

- i) An Order and declaration that the Defendant has no claim of right to the said property and that all structures erected on that particular portion of land be removed through demolition;
- ii) A declaration that the Defendant cannot construct a house and other development structures at Plot No. 14684/Mkushi, property belonging to the Plaintiff, without the Plaintiff's consent;
- iii) For an Order that the Defendant be evicted from the said property and the illegal structures built therein be demolished;
- iv) Damages;
- v) Interest at the current bank lending rate;

- vi) Any other relief the Court may deem fit; and
 - vii) Costs.
- 1.2. The Defendant entered Appearance and filed a Defence and Counter-Claim on April 6th, 2016.
- 1.3. The Defendant Counter-Claimed the following:
- i) A declaration that the Plaintiff's Plot No. 14684/Mkushi has encroached into the Defendant's Farm No.11011 Mkushi;
 - ii) An Order for the removal of beacons placed in the Defendant's land by the Plaintiff;
 - iii) An Order that Certificate of Title number 28282 granted to the Plaintiff in 2016 in respect of Lot. No14684/Mkushi and the accompanying Survey Diagram No. SD_11836/2015 be corrected and/or revoked to the extent that the piece of land described therein has encroached in Farm 11011/Mkushi;
 - iv) Damaged for trespass;
 - v) Interest on the sums due;
 - vi) Costs; and
 - vii) Any other relief the Court may deem fit.
- 1.4. The Plaintiff joined issue with the Defendant's Defence and filed a Reply and Defence to Counter-Claim on May 26th, 2016.

2. **EVIDENCE/TESTIMONY**

- 2.1. Trial was scheduled and heard on April 4th, 2025 and April 14th, 2025 respectively.
- 2.2. The Plaintiff called four witnesses in aid of her case. PW1 was one Peggy Chibuye, the Plaintiff herein who filed a witness statement dated August 26th, 2024.
- 2.3. PW1 testified in chief that Lot 14684 Mkushi Chankomo area belonged to her late father, one Ackson Chibuye who acquired the land sometime in 1974 from Chief Chitina.
- 2.4. PW1 testified that while her father was alive, he cleared a portion of the land where he built a house and other structures which were later run down as they could not be used for occupation.
- 2.5. PW1 testified that the portion of land referred to above was cleared and was being used for cultivation.
- 2.6. PW1 testified that after the death of her father, the family remained on the land and the Plaintiff is currently living on the land in the house she built after getting a certificate of title in the year 2000.
- 2.7. PW1 testified that she followed the correct procedure to obtain title to the land and she was given a 14-year lease valid from the year 2000 to 2014.
- 2.8. PW1 testified that from the year 1974, they lived in harmony with their neighbors until the year 2010 when her sister told her that one of the

neighbours informed her that there were activities ongoing on their land and that after inquiry, it was found that it was the Defendant conducting the activities.

- 2.9. PW1 testified that she located the Defendant's workplace and requested to see him but he declined and then she proceeded to write a letter to the District Council.
- 2.10. PW1 testified that after she wrote the letter to the District Council, she wrote another letter to the task force on land who advised her to take the matter to Court.
- 2.11. PW1 further testified that when customary land is being allocated, neighbours and all interested persons must be present but none of this happened.
- 2.12. PW1 testified that her land is in Chankomo area while the Defendant's land is in Nkumbi area.
- 2.13. PW1 testified that after the 14-year lease expired, she decided to apply for a 99-year lease and she was advised upon inquiry that the land needed to be re-surveyed because what was contained in the 14-year lease was a site plan and not a diagram.
- 2.14. PW1 testified that she engaged one Cosam Hambuba to survey her land and the land belonging to her sister and that before the survey, her sister had given her part of her land increasing the hectares from 115 to 176.5162.

- 2.15. PW1 testified that she was granted a 99-year lease in the year 2016 and the Defendant obtained his title in the year 2012.
- 2.16. PW2 testified under cross examination that she knew the extent of her and Mr. Chimanya's land.
- 2.17. PW1 testified under cross examination that both properties were traditional land before the year 2000.
- 2.18. PW1 testified under cross examination that there is a tree which made a boundary between the properties.
- 2.19. PW1 testified under cross examination that there is a reserve road demarcating the properties.
- 2.20. PW1 further testified under cross examination that Mr. Chimanya's land was in Nkumbi area.
- 2.21. PW1 testified under cross examination that she had site plans prepared in the year 2000 and those are the site plans were used to obtain the 14-year lease.
- 2.22. PW1 testified under cross examination that she does not have documents with the stamps of the Chief, Ministry of Land and Mkushi District Council before Court.
- 2.23. PW1 testified under cross examination that when she went to see the Defendant concerning the boundaries of the land, the Defendant was working and refused to see her.

- 2.24. PW1 testified under cross examination that her land was surveyed in May, 2015.
- 2.25. PW1 testified Under cross examination that the sister and brother in law gave her approximately 62 hectares.
- 2.26. PW1 testified under cross examination that she was aware that the Defendant conducted a boundary verification exercise in the year 2017 and the report shows that the Plaintiff's land encroached on the Defendant's land.
- 2.27. PW1 testified in re-examination that she applied for a 99-year lease in the year 2014 but Ministry of lands took long to give her the Certificate of Title.
- 2.28. PW2 was one Cosam Hambuba who filed a witness statement on August 26th, 2024.
- 2.29. PW2 testified in chief that he surveyed the Plaintiff's property in the year 2015.
- 2.30. PW2 testified that he was engaged by the Plaintiff to survey Lot 14684 and Farm 9620.
- 2.31. PW2 testified that since Lot 14684 was on a 14-year lease title, it had to be surveyed in order to have diagrams to be used to produce the final 99-year lease.

- 2.32. PW2 testified that he carried out the theoretical workings and had all value points he needed to fix on the ground and when he wanted to fix the value points, he found that there was a beacon already fixed by Ministry of Agriculture in 2015.
- 2.33. PW2 testified that the beacons were fixed by Ministry of Agriculture in the year 2000 as they were preparing the site plan and he fixed the points by placing new ones where there was none and maintained the old ones placed by Ministry of Agriculture.
- 2.34. PW2 further testified that he proceeded to prepare the general plan and Survey Diagrams which he later submitted to Ministry of Lands for examination which general plans and Survey Diagrams were approved as there was no survey done as at 2015 to hinder the approval of his work.
- 2.35. PW2 testified that the site plan used to prepare the Defendant's Survey Diagram was prepared in 2009 which came after the Plaintiff's site plan prepared in 2000.
- 2.36. PW2 testified that the persons who prepared the Defendant's site plan in 2009 overlooked the 2000 site plan when there was no Order of cancellation of the 2000 site plan.
- 2.37. PW2 testified that the encroachment arose from failure to respect the site plan of 2000 and that Farm 11011 has encroached into Lot 14684.

- 2.38. PW2 testified under cross examination that he surveyed Lot 14684 Mkushi in 2015.
- 2.39. PW2 testified that the 14-year lease had had a site plan and did not have a Survey Diagram.
- 2.40. PW2 testified under cross examination that a sketch plan does not have beacons but markings.
- 2.41. PW2 testified under cross examination that the procedure was not followed in cancelation of the date on the survey diagram relating to Lot 11011.
- 2.42. PW2 testified under cross examination that the survey diagram relating to Lot 11011 was approved by the Government Surveyor General on September 9th, 2013.
- 2.43. PW2 testified under cross examination that as at September, 2013, the survey diagrams of Lot 11011 were already sitting at the Surveyor General's office.
- 2.44. PW2 testified under cross examination that at the time the Plaintiff's land was surveyed, the Defendant's land was already surveyed.
- 2.45. PW2 further testified under cross examination that in the case of a dispute between a sketch plan and a Survey Diagram, the Survey Diagram is followed.
- 2.46. There was no re-examination.

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- 2.47. PW3 was one Chibuye Nkandu who filed a witness statement dated August 26th, 2024 and testified in chief that Lot 14684/M belonged to their father the late Ackson Chibuye who obtained the property in 1974 before his demise in 1992.
- 2.48. PW3 testified that the Plaintiff and her other siblings lived on the property and that she lived on the neighbouring farm.
- 2.49. PW3 testified that after the said Ackson Chibuye died, the family decided to get Title Deeds and it was based on that decision that the Plaintiff proceeded to apply for a 14-year lease in the year 2000.
- 2.50. PW3 testified that from the time the father lived on the property up until the year 2010, they lived peacefully with their neighbours until one of the neighbours informed her that the land was being demarcated and when she checked, she found a hut built on the land.
- 2.51. PW3 testified that in the year 2015, she managed to locate the owner of the hut who is the Defendant herein and that she called him, asking him to vacate the land and in response, the Defendant asked who was going to refund him.
- 2.52. PW3 testified that sometime in June 2015, the Defendant appeared with one Mr. Collins Chinyama who sold the property in question to the Defendant and they pleaded with PW2 stating that they would live on the land peacefully.

- 2.53. PW3 testified that in the year 2015, a surveyor named Hambuba surveyed Lot 14684/M and Farm 9620 which belonged to her and her husband.
- 2.54. PW3 testified that when the survey was done, PW2 together with her husband decided to give part of Farm 9620 to the Plaintiff and the size of Lot 14684 changed from 115 to 176.5162 Hectares.
- 2.55. PW3 testified under cross examination that she remembers Mr. Mudoiwa Chimanya and he was her fathers neighbor.
- 2.56. PW3 testified under cross examination that Mr. Chimanya knew the extent of his land but at the time he sold the land to the Defendant, he exceeded his boundaries.
- 2.57. PW3 testified under cross examination the demarcation between her father's and Mr. Chmanya's land was a tree.
- 2.58. PW3 testified under cross examination that there was also a narrow road demarcating which is now covered by grass.
- 2.59. PW3 testified under cross examination that it took 5 years for them to meet the people who were demarcating the land because the Defendant was not staying there and would only visit in certain instances.
- 2.60. PW3 further testified under cross examination that in the year 2015, the Defendant already had his land surveyed and the beacons were put.

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- 2.61. PW3 testified under cross examination that the Plaintiff's land was surveyed in August, 20215.
- 2.62. PW3 testified under cross examination that the Plaintiffs land under the 14-year lease was 115 hectares and only increased after PW3 gave her a parcel of land.
- 2.63. PW3 testified under cross examination that the Boundary Verification report reveals that the Plaintiff's land encroached on the Defendant's land.
- 2.64. There was no re-examination.
- 2.65. PW4 was one Regina Daka who filed a witness statement on August 26th, 2024 and testified in chief that she became Headwoman sometime in 2013 and sometime in 2014, the Defendant together with his wife approached him to discuss land he bought in Mkushi on whether he was to register his land in her village register or with the people he bought the land from.
- 2.66. PW4 testified that the Defendant informed him that he bought land in Nkumbi area, Fyasasa Village next to Chankomo area in Daka Village.
- 2.67. PW4 testified that she informed the Defendant that he could not be registered with her village but with the Headman from whom he bought the land.
- 2.68. PW4 testified that she knows the Plaintiff as she is her subject and has a farm in her village.

- 2.69. PW4 testified that sometime in 2015, one Mr. Nkandu, husband to PW2 informed her that a land Surveyor was to come and, in her presence, together with other persons, Lot 14684 and Farm No.9620 were surveyed.
- 2.70. PW4 testified that after going around, it was observed that there was a piece of land remaining from Farm 9620 and it was given to the Plaintiff.
- 2.71. PW4 further testified that as they approached Lot 14684, PW2 showed them the area where the father built a house and toilets and that the buildings were not there the one could tell that there had been a house previously.
- 2.72. PW4 testified that when it was reported that the Plaintiff's property had been encroached, she made inquiries and it was found that it was the Defendant who purchased the land from one Mr. Chinyama.
- 2.73. PW4 testified that she wrote a letter summoning the Headmen who sold the land to the Defendant and a meeting was scheduled at which it was found that the boundary of the Plaintiff's land had been encroached by the Defendant and that the summoned Headmen did not show up at the meeting.
- 2.74. PW4 testified that since she was not aware of the selling of the land to the Defendant, she handed over the matter to the Chief who summoned the Defendant's Surveyor and the Headmen who even at this time did not show up.

- 2.75. PW4 testified that a tree is what signified the boundary between the Plaintiff's and the Defendant's properties and according to this boundary, the Defendant built his house on the Plaintiff's land.
- 2.76. PW4 testified under re-examination that she became head woman in the year 2013 and does not know when the Defendant obtained traditional land.
- 2.77. PW4 testified under cross examination that she does not the boundary of Mr. Chimanya's land and did not know the boundaries of the Plaintiff's land.
- 2.78. PW4 testified under cross examination that everything she knew about the demarcation was what she was told.
- 2.79. There was no re-examination.
- 2.80. The Defendant called three witnesses in aid of his case, DW1 was one Rimwell Mushilingwa, the Defendant herein who filed a witness statement dated 22nd August, 2024 and testified in chief that sometime in January 2010, the Defendant bought 100 hectares of land from one Mondywa Chimanya.
- 2.81. DW1 testified that the land was situated in Nkumbi, Mkushi in the Chiefdom of Chief Chitina.
- 2.82. DW1 testified that before entering into a contact of sale, the Defendant met the village Headman, one Raphel Manyema who led them to the

Village Productivity Committee (VPC) the Committee which confirmed that indeed the land belonged to the said Mondywa Chimanya.

- 2.83. DW1 testified that the Village Headman and the VPC led the Defendant to Chief Chitina who issued the Defendant with a land permit to stay on the farm which initially belonged to Mondywa Chimanya.
- 2.84. DW1 further testified that the Defendant called an official from the department of agriculture, the official who measured the land and put beacons when it was discovered that the extent of the land was 70 hectares and not the 100 hectares subsequent to which the contract of sale was changed.
- 2.85. DW1 testified that his workmates informed him that one Mrs. Nkandu was claiming that he had encroached on her boundary.
- 2.86. DW1 testified that he then reported the matter to Chief Chitina who summoned Mr. and Mrs Nkandu and Mr. Chimanya to the palace but Mr. and Mrs. Nkandu did not show up even after being summoned for a second and third time.
- 2.87. DW1 testified that in September 2010, he obtained consent from Chief Chitina for conversion of the land from customary to leasehold tenure and submitted his application to Mkushi District Council.
- 2.88. DW1 testified that in March 2011, the application was considered and a recommendation was sent to the Commissioner of Lands that the Defendant be issued with Tile Deeds.

- 2.89. DW1 further testified that the application was considered and the Defendant was given an offer letter sometime in July 2012 and later issued with a Certificate of Title after meeting all the requirements.
- 2.90. DW1 further testified that subsequent to obtaining title, the Defendant continued developing the Farm and that sometime in 2015, the Defendant received a report from his workers that Mr. and Mrs. Nkandu and Mrs. Nkandu's brother were on the property putting beacons.
- 2.91. DW1 testified that when he asked Mrs. Nkandu about it, she said that the Surveyor made an overlap resulting into a mistake and that the matter would be resolved.
- 2.92. DW1 testified that he reported the matter to Chief Chitina again who summoned Mr. and Mrs. Nkandu, but they neglected to show up.
- 2.93. DW1 testified that the Plaintiff commenced Court process sometime in 2015 and later in 2017, the Court directed that the parties contact the Surveyor General's office for a Boundary Verification Exercise and file the same into Court.
- 2.94. DW1 testified that the Boundary Verification Exercise was done and the report reveals that the Plaintiff's property encroached on the Defendant's land.
- 2.95. DW1 testified under cross examination that he bought the land from the father, Mr. Mundiwa Chimanya.

- 2.96. DW1 testified that the land was traditional land when the Defendant bought it in the year 2010.
- 2.97. DW1 testified under cross examination that his land is in Nkumbi area while the Plaintiff's land is in Chankomo area.
- 2.98. DW1 testified under cross examination that at the time they were doing the boundary verification, they invited the now deceased Esila Daka from Chankomo area and the Plaintiff was not present.
- 2.99. DW1 testified under cross examination that the person who did the 2003 Survey Diagram followed the site plan dated March 18th, 2010.
- 2.100. DW1 conceded under cross examination that the Plaintiff's sketch plan came first.
- 2.101. DW1 testified that the Survey Diagrams on record show that the two properties overlap.
- 2.102. DW1 testified in re-examination that he proceeded to obtain a Certificate of Title Despite the complaints as he had reported the matter to Chief Chitina who summoned all the Parties but Mr. and Mrs. Nkandu did not attend.
- 2.103. DW2 was one Collins Chimanya who filed a witness statement dated August 22nd, 2024 and testified in chief that sometime in January 2012, the Defendant and his wife visited his family saying that they were looking for land to settle in.

- 2.104. DW2 testified that he agreed to sell the Farm belonging to his family to the Defendant and that the Defendant would pay the sum of K42,000,000.00 (unrebased) as compensation for the developments on the Farm.
- 2.105. DW2 testified that subsequent to the above agreement, he took the Defendant to meet the Village Headman who then led them to the VPC.
- 2.106. DW2 testified that the VPC scheduled a day to visit the Farm and confirmed that the Farm indeed belonged to DW2's family in the presence of other witnesses.
- 2.107. DW2 testified that after the inspection, they proceeded to meet Chief Chitina who issued a new land permit to the Defendant and transferred the land to him.
- 2.108. DW2 testified that the Defendant later requested officials from the Department of Agriculture to measure the land and place beacons and that they came and did so in the presence of the Chief's representatives and advised that since the land was close to the Great North Road, it needed to be 30 meters away from the road.
- 2.109. DW2 testified further to the above that it was also observed that there was a small hill on the farm which they could not include in the measurement and this caused the size of the land to be reduced from 100 to 70 hectares and the compensation was reduced from K42,000,000.00 (unrebased) to K 37,000,000.00 (unrebased).

2.110.DW2 testified that a few months later, the Defendant returned and informed them that a worker of the Defendant told him that Mr. Nkandu was claiming that the boundary of the Defendant's Farm had encroached on PW1's land.

2.111.DW2 testified that the Defendant reported the matter to Chief Chitina who summoned all the parties involved but Mr. and Mrs. Nkandu did not avail themselves.

2.112.DW2 testified that sometime in 2015, the Defendant further informed them that his worker told him that Mr. and Mrs Nkandu and Mrs. Nkandu's brother placed beacons on the Defendant's land near the farm house. Further, that he and his father Mr. Mondywa Chimanya went to investigate and confirmed that that was the position.

2.113.DW2 testified further to the above that they went to meet Mr. Nkandu and asked him why he placed beacons in the Defendant's land and in response, Mr. Nkandu stated that the Surveyors made a mistake and made an assurance that the matter would be resolved.

2.114.DW2 testified that they proceeded to report the matter to Chief Chitina who sent his representatives to inspect and confirm that indeed the beacons were placed inside the Defendant's farm.

2.115.DW2 testified that the Chief summoned the parties to the palace and while the Defendant and his wife were present, Mr. and Mrs Nkandu did not avail themselves.

2.116.DW2 testified under cross examination that his father was the initial owner of Farm 11011.

2.117.DW2 testified under cross examination that at the time the land was sold to the Defendant, it was traditional land.

2.118.DW2 testified under cross examination that when the Defendant showed interest in the land, his father stated that they needed to call representatives of the royal establishment to be there as they demarcated the land and that the witnesses present were; the late Esila Daka who was the Headman of Daka Village Chankomo area, Mr. Raphael Manyema, the late Kaposi who was Headman of Fyasasa Village, Nkumbi area, the late Mr. Chisakulo, the Late Mondoiva Chimanya and DW2 himself.

2.119.DW2 further testified under cross examination that the Plaintiff was invited to these meetings but she never came.

2.120.DW2 testified under cross examination that there is no evidence on record to show that the meeting took place and that the Plaintiff was invited but she refused to come.

2.121.DW2 testified under cross examination that when the officials from Ministry of Agriculture were measuring and Placing the Beacons, the parties present were; the late Esila Daka, the late Mondoiva Chimanya, DW2 and the Defendant.

2.122. DW2 testified under cross examination that prior to selling the land to the Defendant, there was no dispute with the Plaintiff.

2.123. DW2 testified under cross examination that the land marks between the properties are a road in between and tree.

2.124. There was no re-examination of DW2.

2.125. DW3 was one George Musonda who filed a witness statement dated August 22nd, 2024 and testified in chief that that in January 2010, the late Village Headman Rapheal Manyema, one Jonas Kaposi, one Mondwiwa Chimanya and the Defendant went to the palace.

2.126. DW3 testified that during the visit, the Village Headman handed Mr. Chimanya's land permit to the Chief and informed the Chief that Mr. Mondwiwa Chimanya wanted to relocate to another place and intended to handover the Farm to the Defendant.

2.127. DW3 testified that the Chief questioned the Village Headman about the developments on the farm and was informed that Mr. Chimanya asked that the Defendant compensates him in monetary form.

2.128. DW3 testified that in view of the above discussion, the Chief asked him to prepare a new farm permit in the name of the Defendant which he proceeded to prepare.

2.129. DW3 testified that the Defendant approached the Chief to ask if the Department of Agriculture could come and measure the land and place beacons to assist with the application for conversion from customary to

leasehold tenure. Further, that the Chief asked him to write a letter to Mkushi District Council for the Defendant to be assisted and that he also signed the consent on behalf of the Chief.

2.130.DW3 further testified that in the year 2015, the Defendant reported to the Chief that Mr. and Mrs. Nkandu together with other unknown persons placed beacons on his land.

2.131.DW3 testified that the Chief sent him, the VPC and other persons to confirm the report and that upon arrival, they sent the chief retainer to call Mr. Nkandu to come over but Mr. Nkandu refused to come.

2.132.DW3 testified that Chief Chitina summoned Mr. and Mrs. Nkandu to a meeting in an attempt to resolve the land issue but they did not avail themselves.

2.133.DW3 testified that the Chief summoned Mr. and Mrs. Nkandu again but they still did not attend.

2.134.DW3 testified under cross examination that as Secretary to the Chief, some of the records he kept on behalf of the Chief are Court case and Farm permit.

2.135.DW3 testified under cross examination that the permit appearing at page 3 of the Defendant's bundle of documents is the permit issued to the Defendant.

2.136.DW3 testified under cross examination that the extent of land given to the late Mondoowa Chimanya was 100 hectares.

- 2.137.DW3 further testified under cross examination that he participates in boundary verification exercises and was present both at the boundary verification of the Plaintiff's and Defendant's land.
- 2.138.DW3 testified under cross examination that procedurally, the Village Production Committee and the Neighbours should be present during the boundary verification exercise.
- 2.139.DW3 testified under cross examination that during the verification of the Defendants property, the Village Productivity Committee from Fyasasa Village was present represented by the late Rphel Manyema, Jonas Kaposi and other persons.
- 2.140.DW3 testified under cross examination that Daka Village Productivity Committee was represented by the late Esila Daka who was Headman and other person who he cannot remember.
- 2.141.DW3 testified under cross examination that the Plaintiff was invited by the Chief but was not present.
- 2.142.DW3 testified that the Plaintiff was not present during the 2010 verification exercise.
- 2.143.DW3 testified under cross examination that the beacons were placed on the Defendant's property based on a report made by the Defendant himself.

- 2.144. DW3 testified in re-examination that late Esila Daka attended the initial demarcation in his capacity as Headman and member of the Village Productivity Committee.
- 2.145. DW4 was one Lucas Mwambazi, subpoenaed witness who gave evidence on oath and did not file a witness statement.
- 2.146. DW4 testified that from the findings of the verification exercise, it was revealed that there was an overlap on the survey of Lot. 14684/M and Farm 11011 by 23 hectares.
- 2.147. DW4 testified that the findings were that Lot 14684/M was created in 1999 on a 14-year lease until 2014 and later surveyed for a 99-year lease in the year 2015.
- 2.148. DW4 testified that Farm 11011 was created in 2009 and surveyed in 2012.
- 2.149. DW4 testified that there indeed was an encroachment caused on Lot 16684/M by the survey of Farm 11011 and that it was recommended that the creation and subsequent survey of Farm 11011 be cancelled and property re-planned taking into account the full extent of Lot. 1468/M/
- 2.150. DW4 testified that the size of Lot 14684/M is 176.5162 Hectares and the size of Farm 11011 is 64.1377 Hectares and the encroached area is included in the 64.1377 Hectares.
- 2.151. DW4 testified that if there is already planned land around customary land, the same is indicated and shown on the land.

2.152.DW4 testified that before a survey is carried out, they check for any surveyed properties so that there is consistency in the survey data.

2.153.DW4 further testified that a site plan is a map that shows where the property is located and its surrounding features while a Survey Diagram is a geometric representation of a parcel of land as surveyed.

3. **LAW AND SUBMISSIONS.**

3.1. Both Parties filed their written submissions. The Plaintiff filed on June 20th, 2025, and Defendant filed on June 27th, 2025. I will not reproduce the submissions in full as the same are on record, suffice to state that I have read and considered the same.

3.2. The Plaintiff submits that the 2017 boundary verification report does not disclose how much the extent of the Plaintiff's encroachment on the Defendant's land and cannot be conclusively stated to be an encroachment. Reliance was placed on the case of **Gospel Power Tabernacle (Pastor Inambwae Stephen Sitwala) v Salangwa Shop and Others Appeal No. 79 of 2021**¹.

3.3. The Plaintiff submits that this Court should disregard the 2017 report because the reason the survey report was requested for was to ascertain the boundaries of the two properties and the issue was which property was surveyed earlier. The Plaintiff relied on the case of **Maybin Sikweti v Ndola Tabernacle and Others 2021 ZMCA 222**² in which the Court stated as follows:

“The consideration for the survey, in our view, was not to ascertain which of the two stands was created earlier. The purpose was to verify the boundaries between Stand 9156 and Stand 8282”.

- 3.4. The Plaintiff submits in light of the above decision that the essence of the report dated April 14th, 2025 was maintained and as such, the Court should adopt the findings of the said report.
- 3.5. The Plaintiff submits that she has discharged the burden of proof to the required standard and that there is evidence to show that the Plaintiff’s property L/14684/M has been encroached upon.
- 3.6. In response, the Defendant submits that it is a trite principle of law that that he who alleges must prove. Reliance was placed on the case of **Ritah Chanda v Violet Ngulube and Another SCZ Appeal No. 162 of 2015³** in which the Supreme Court stated as follows:

“It is trite law that in any matter before a Court, he who alleges must prove the allegations. Hence, the person initiating Court proceedings must generally speaking prove their case in order to succeed on their claim”.

- 3.7. Based on the above authority, the Defendant submits that the Plaintiff being the initiator of the Court Proceedings bears the burden to prove that Farm 11011 has encroached on Lot 14684 and that the Plaintiff has failed to prove her allegations as there is no evidence to show/prove that the Sketch Plan of Farm 11011 encroached upon the Sketch Plan of Lot 14684 as appears in the 14-year lease.

- 3.8. The Defendant submits that the Plaintiff alleges that when the Surveyor from the Ministry of Agriculture measured Farm 11011 and produced the Sketch Plan in 2010, the Sketch Plan disregarded the boundaries contained in the Sketch Plan appearing in the 14-year lease and that this allegation is not supported by evidence.
- 3.9. The Defendant submits that Lot 14684 under the 14-year lease was indeed registered land but it was unsurveyed land which needed to be surveyed as per the provisions of the **Land Survey Act** in Order to confirm its boundaries and place beacons.
- 3.10. The Defendant submits that DW4 confirmed that a 14-year lease is not surveyed and no beacons would have been placed during that time.
- 3.11. Placing reliance on the **Gospel Power Tabernacle**¹ case, the Defendant submits that there is no evidence of encroachment and that the Sketch Plan relied on to prove the encroachment is a description of a parcel of land which is not yet surveyed.
- 3.12. The Defendant further submits that the Plaintiff has not stated the extent of the encroachment of the Sketch Plan of Farm 11011 making the extent of the encroachment unknown and in the absence of such evidence, the Court cannot speculate and hold that Farm 11011 has encroached upon the unsurveyed parcel of land.
- 3.13. The Defendant submits that the claim for encroachment is based on two sketch plans and the Plaintiff should have called Mr. Mwazongo who

actually measured the two properties and produced the said sketch plans and that the said Mr. Mwazongo is a crucial witness and the Plaintiff's failure to call the said witness is fatal to the Plaintiff's case.

- 3.14. The Defendant submits that the Survey Diagram appearing at page 24 of the Defendant's bundle of documents reveals that Farm 11011 was created in December 2012 and that the Farm was surveyed in in 2012. Further, that the Certificate of Title for the 99-year lease was issued to the Defendant on September 13th, 2013.
- 3.15. The Defendant submits that the Plaintiff's evidence discloses that Lot 14684 was surveyed in May 2015 and the Certificate of Title for a 99-year lease was issued on December 13th, 2016.
- 3.16. The Defendant further submits that the survey diagram for Lot 14684/M which came later in 2015 after Farm 11011 had already been surveyed in 2012 cannot be used to prove the encroachment.
- 3.17. Placing reliance on **Section 25 of the Land Survey Act Chapter 188 of the Laws of Zambia**, the Defendant submits that the law only allows for limited circumstances under which a survey record created later can override one created earlier and that the circumstances do not exist in this case. **Section 25 (1) & (2)(b) of the Land Survey Act** provides and follows:

“(1) Notwithstanding anything contained in any written law, the position of any beacon or boundary deemed in terms of this section to have been lawfully established shall be

unimpeachable, that is to say, it shall not be capable of being brought into question in any court, and the Surveyor-General or Registrar shall not accept for filing or registration any document which shows any beacon or boundary inconsistent with such position.

(2) A beacon or boundary shall be deemed to have been lawfully established-

(b) when its position is in agreement with the position thereof adopted in an original survey and when a diagram based on such original survey has been approved in accordance with the provisions of section sixteen..."

- 3.18. The Defendant submits that there is no evidence to support the Plaintiff's claim that Farm 11011 has encroached on Stand 14684.
- 3.19. Placing reliance on the case of **OTK Limited V Amanita Zambiana Limited and Others (2011) ZMHC 23⁴**, the Defendant submits that the second report is incompetently before Court for failure to lay a foundation and therefore, cannot be relied upon.
- 3.20. The Defendant submits that since the 2nd report was not admitted into evidence, it does not matter whether the Defendant objected to it or not and that the report should be expunged from record. Reliance was placed on the case of **Pesulani Banda v The People (1972) ZR 202⁵** which I have taken note of.

4. COURTS ANALYSIS/DECISION

- 4.1. I have had occasion to consider the parties arguments and evidence for which I am grateful and hereunder is my decision. The main issue for determination is whether the Defendant's property being Farm No. 11011 has encroached on the Plaintiff's property being Lot No. 14684/M.
- 4.2. It is the Plaintiff's claim that the Defendant's property being Farm No. 11011 has encroached on her property, Lot No. 14684/M. The Plaintiff contends that the 2000 Sketch Plan established the boundaries of the Plaintiff's property and that the Defendant's subsequent site plan on which the Survey Diagram was based encroached on the Plaintiff's property.
- 4.3. The Certificate of Title appearing at page 3 to 10 of the Plaintiff's bundle of documents shows that the Plaintiff had a 14-year lease over Lot No. 14684/M up to the year 2014 and the parcel subject to the lease was in extent of 115 hectares. The parcel subject this lease is not in issue and belongs to the Plaintiff as the Supreme Court in the case of **Honorius Maurice Chilufya v Chrispin Haluwa Kangunda SCZ Judgement No. 29 of 1999**⁶ at J5 in speaking to a 14-year lease guided as follows:

"...A major drawback in the approach adopted below was that the learned trial Judge made a fundamental mistake in treating a state lease of land which conferred ownership or proprietorship and title and which obliged the lessee to develop the land as if it were an ordinary landlord and tenant lease for a term certain which then simply expires by effluxion of time. The lease here did not and could not terminate automatically and it conferred rights at expiry under the

state's covenants under the lease and, above all, by statute: To wit, the appellant had to get a 99-year lease as of right unless there was major default. It is unthinkable since most land was converted to leasehold that at the end of the various leases, owners of property who have invested and developed them can come and lose these at the mercy and whim of officials of the state"....

- 4.4. In light of the above authority, the Plaintiff was entitled to have the 115 hectares renewed under a new lease as a matter of right and therefore, the said portion of land rightful belongs to the Plaintiff and the same is not in dispute.
- 4.5. The Plaintiff's Certificate of Title appearing at pages 17 to 22 of the Plaintiff's bundle of documents granting the 99-year lease shows that the extent of the property is 176.5162 hectares. The extent of the property Plaintiff claims to have been encroached by the Defendant is approximately 24 hectares which was included after the survey conducted in the year 2015 and included and described on Survey Diagram No.SD_11836 of 2015.
- 4.6. The portion of land which was initially on the 2000 sketch plan and subject of the 14-year lease is the 115 hectares and the excess which was included in the 2015 survey is what the Plaintiff claims was gifted to her by sister, the portion of which she claims is encroached.

I am of the considered view that the procedure which the Plaintiff took to include the portion of land she purports to have been given to her by her sister is alien as the same is independent and the Plaintiff should have

gone through the process of converting it to statutory land and obtaining title in her name over the same property. The addition of the parcel of land to already planned land is not tainable at law and the lease should have been renewed to only include to parcel of land which was subject to the 14-year lease.

- 4.7. DW4 in his report states that Lot No. 14684/M was planned in 1999 and numbered in 2000 and the same is on title in the name of the Plaintiff. I must state that I find as a fact that DW4 is mistaken, as according to the evidence on record what was planned in the year 1999 and numbered in 2000 is the 115 hectares subject of the 14-year lease and not the entire 176. 5162 hectares subject of the 99-year lease. The excess was only surveyed in 2015. I am of the considered opinion that this misapprehension of facts is fatal and therefore, invalidates the Boundary Verification Report dated April 14th, 2025.
- 4.8. The Survey Diagram Appearing at Page 24 of the Defendant's bundle of documents shows that the Farm No. 11011 was surveyed in the year 2012 while the Survey Diagram appearing at page 21 of the Plaintiff's bundle of documents shows that the Plaintiff's property was surveyed in the year 2015.
- 4.9. On perusal and comparison of the two Survey Diagrams, appears that the Survey Diagram as relates to the Plaintiff's property appearing at page 22 of the Plaintiff's bundle of documents is inaccurate. It shows that the side on which Farm No. 11011 sits is unsurveyed land when infact

the property was surveyed earlier in the year 2012 as seen on the Survey Diagram appearing at page 24 of the Defendants bundle of documents.

4.10. In light of the above, I am of the considered view that the Survey Diagram annexed to Certificate of Title No. 246920 over No. Farm 11011 takes precedence and that the survey of Lot. No 14684/M did not take into account the boundaries of Farm No.11011 which was already surveyed thereby, encroaching on the Defendant's property.

As per authority under **Section 25(1) and (2) (b) of the Land Survey Act** which provides as follows:

“(1) Notwithstanding anything contained in any written law, the position of any beacon or boundary deemed in terms of this section to have been lawfully established shall be unimpeachable, that is to say, it shall not be capable of being brought into question in any court, and the Surveyor-General or Registrar shall not accept for filing or registration any document which shows any beacon or boundary inconsistent with such position.

(2) A beacon or boundary shall be deemed to have been lawfully established-

(b) when its position is in agreement with the position thereof adopted in an original survey and when a diagram based on such original survey has been approved in accordance with the provisions of section sixteen....”

4.11. The Defendant claims damages for trespass against the Plaintiff. Trespass to land can be defined as the unjustified/unlawful interference with the possession of land. **Halsbury's Laws of England Volume 38 in paragraph 1205 at page 738** states as follows:

“Every unlawful entry by one person on land in possession of another is trespass for which an action lies although no actual damage is done...A person trespasses upon land if he wrongfully sets foot on, rides or drives over it, or takes possession or pulls down or destroys anything permanently fixed.”

- 4.12. Furthermore, I am guided by the authority in the Supreme Court decision of **Shell and BP Zambia Limited v Conidaris and Others (1974) Z.R. 281**⁷ in which the Court stated that trespass to land is an unlawful entry on land in the possession of another and the violation of the right to possession.
- 4.13. Having found that the Plaintiff encroached and unlawfully entered upon the parcel of the Defendants of land, I find that the Plaintiff is liable in trespass and I award the Defendant damages in the sum of ZMW 25,000.00.
- 4.14. The Defendant has testified and shown that he complied with the procedure of converting the surveyed 70 hectares from customary leasehold to leasehold tenure. This process according to the record was between 2012-2013 when he was granted the Certificate of Title.
- 4.15. I am of the view that the Defendant has proved his Counter claims on a balance of probabilities and I therefore, grant Judgment in the Defendant's favour.

5. CONCLUSION

5.1. For the foregoing I find that the Plaintiff's action fails in its entirety and that the Defendant's Counter- Claim succeeds and I order as follows:

- i) Lot No. 14684/M belonging to the Plaintiff has encroached on Farm No. 11011 belonging to the Defendant to the extent of 24.98 hectares;
- ii) Certificate of Title number 28282 over Lot No. 14684/M be and is hereby revoked and that the Plaintiffs property be re-surveyed taking into considered the encroached parcel of land belonging to the Defendant;
- iii) The beacons placed on the Defendant's property be removed;
- iv) The Plaintiff pays the Defendant damages for trespass in the sun of ZMW 25,000.00 and that interest be paid on this amount at the average short-term bank deposit rate from the date of issue of the Writ of Summons to the date of this Judgment and thereafter, up to the date of settlement, interest shall be computed at the current lending rate as determined by the Bank of Zambia;

5.2. Each Party shall bear its own costs;

5.3. Leave to appeal is granted.

Delivered at Lusaka on December 12th 2025


S. CHOCHO
HIGH COURT JUDGE

