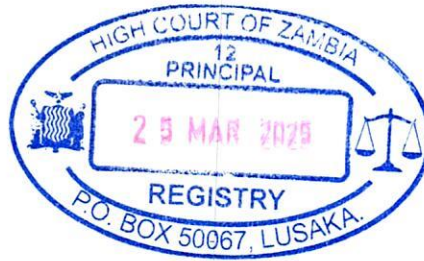


IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
 (CIVIL JURISDICTION)

2020/HP/0514

**BETWEEN:****HENRY CHILUFYA NONDO****PLAINTIFF****AND****AGRIPPA PHIRI MUPWAYA****1ST DEFENDANT****ABEL MKANDAWIRE****2ND DEFENDANT****GOODSON NYAMUSUKU****3RD DEFENDANT****SINOVEST FARM INVESTMENT LIMITED****4TH DEFENDANT****CHIBOMBO DISTRICT COUNCIL****5TH DEFENDANT****ATTORNEY GENERAL****6TH DEFENDANT****NTHEMBA FARMS LIMITED****7TH DEFENDANT****JOSEPH PHIRI****8TH DEFENDANT****BEFORE HON. JUSTICE E. P. MWIKISA**

FOR THE PLAINTIFF: MRS. S. KALIMA BANDA OF MESSRS J & M ADVOCATES
FOR THE 1ST TO 3RD DEFENDANTS: MR. K. NDLOVU & J. MUSUKWA OF NGOSA
ASSOCIATES

FOR THE 4TH & 8TH DEFENDANTS: MR M.C. HAMACHILA WITH MS. C. SIMWANZA
OF MESSRS M.C. HAMACHILA LEGAL PRACTITIONERS

JUDGMENT

Cases Referred to;

1) *Makwati vs. Senior Chieftainess Nkomesha- LAT/60/97*

- 2) *Sailas Ngowani and Others vs. Flamingo Farms Limited SCZ Appeal No. 15 of 2019*
- 3) *Still Waters Limited vs. Mpongwe District Council and Others SCZ Appeal No. 90 of 2001*
- 4) *Henry Mpanjilwa Siwale and Others vs. Ntapalila Siwale 1999*
- 5) *Nawakwi vs. Lusaka City Council and Another Appeal No. 26 of 2001*
- 6) *Banda and another vs. Mudimba 2010/HP/A39*
- 7) *Mafulande Stoneworks and Construction Limited vs. Commissioner of Lands and others*
- 8) *Mupwaya v. Mbaumbi SCZ Appeal No. 41 of 1999*
- 9) *Siwale v. Siwale SCZ Appeal No. 24 of 1999*
- 10) *Ison Sichimata v. Amonson Siame and 2 Others Appeal No. 146/2002*
- 11) *Anti-Corruption Commission vs. Bannet Development Corporation Limited (2008) 1 ZR 69.*
- 12) *EXP. WATSON 21 QBD 31*
- 13) *Davy vs. Garret (1878) Ch. 273*
- 14) *Sablehand Zambia Limited vs. Zambia Revenue Authority [SCZ APPEAL NO. 56 OF 2003]*

Legislation referred to;

- 1) *Lands Act, Chapter 184 of the Laws of Zambia*
- 2) *Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia.*
- 3) *The Rules of the Supreme of England, 1999 edition, Vol 1*

1. Introduction.

1.1 On 20th May 2020, the Plaintiff issued a Writ of Summons against the Defendants, accompanied by a Statement of Claim. The Plaintiff was claiming the following reliefs,

- A) That the Plaintiff has the primary and sole interest in Lot L/231969 and Lot L/202409, situated in Chibombo District in the Central Province of Zambia;**
- B) The purported Certificate of Title No CT_67523 vested in the 4th Defendant is defective at law as it was obtained fraudulently, and the same is therefore null and void;**

- C) An order of interim injunction restraining the 4th Defendants from continuing any development on the subject property and prohibiting the 5th Defendant from granting the 4th Defendant's application for change of use of the subject premises until the full and final determination of the matter;**
- D) A vesting order in favor of the Plaintiff;**
- E) Any other relief the Court may deem fit; and**
- F) Costs of and incidental to this action.**

1.1 The 4th, 7th and 8th Defendants contested the action by filing their defence on 30th June 2020. The 1st, 2nd, 3rd, 5th, and 6th Defendants did not file in their defence.

1.2 The Plaintiff filed his reply on 3rd March 2022.

2. The Plaintiff's Statement of Claim.

2.1 The Plaintiff averred that in or about 2011, desiring to purchase farmland in Chibombo District, he approached a friend called Mr. Joe Simalonda to assist him in finding farmland that was up for sale.

2.2 That Mr. Joe Simalonda introduced the Plaintiff to the 2nd and 3rd Defendant, who advised that there was land for sale along Kabwe Road in the extent of 17 hectares next to the ZESCO substation. That the property was sold to the Plaintiff at the sum of One Hundred and Sixty Million Kwach unrebased (ZMW160,000,000.00). The land in

question was traditional land under the jurisdiction of Chieftainess Mungule's Village.

2.3 That the 1st Defendant, being the Headman Mupwaya in Mupwaya village under the Chieftainship of Chieftainess Mungule proceeded to prepare documentation. That the documents were duly submitted to Chieftainess Mungule and thereafter taken to the 5th Defendant for approval by law.

2.4 It was averred that the 1st Defendant informed the Plaintiff of people's interest in the said land, the 1st Defendant assured the Plaintiff of an alternative land being Lot L/231969 and Lot L/202409, which was available for the Plaintiff.

2.5 That upon viewing the new land, the 1st defendant advised the Plaintiff to make a top-up of Fifty Million Kwacha unrebased (ZMW50,000,000.00) on the purchase price. The Plaintiff agreed and made a total payment of Two Hundred and Ten Million Kwacha unrebased (ZMW210,000,000.00), and a contract of sale was drawn up for Lot L/231969 and Lot L/202409.

- 2.6 The Plaintiff stated that the necessary documents were prepared by Kakoma Palace and submitted to the 5th Defendant for approval to convert the said land from customary land to a leasehold tenure, and the approval was granted. The Plaintiff proceeded to cultivate on the land and erected a three (3) roomed structure.
- 2.7 The Plaintiff stated that the 5th Defendant wrote to the Ministry of Lands recommending that the Plaintiff's application for the acquisition of title deeds be approved.
- 2.8 Furthermore, the Plaintiff states that his neighbor, Sav Steel Mines Limited, appeared to be encroaching on his land, so he commenced an action against it under cause number 2015/HP/1420. However, the judgment was in favor of Sav Steel Mines Limited.
- 2.9 It was further his contention that while trying to obtain the Title for the said Piece of land, the Plaintiff was informed of the 7th and 8th Defendants claiming rights over the said land. That the Plaintiff pursued the matter with the 1st defendant, who wrote to the Chief Lands Officer at Ministry of Lands on 16th April 2016, informing him of the

Plaintiff being the sole owner of the land. That the Chief Lands Officer instructed that the Surveyor General should investigate the matter and enable a verification of the boundaries to be conducted. That the Plaintiff incurred the cost for the verification exercise.

- 2.10 The verification report was issued, and it revealed that the land in question, L/231969, L/202409, and L/CHIBO/1185842/M, overlaps three villages. There was no further action taken; thus, the Plaintiff wrote a follow-up letter to the Commissioner of Lands on 15th August 2016, to which he never got a response.
- 2.11 The Plaintiff stated that he continued to cultivate the land in question and hired the 3rd Defendant as Manager to oversee the farming activities.
- 2.12 That in or about 2019, the Plaintiff was informed by Joe Simalonda that the 8th Defendant was willing to have a meeting so as to resolve the underlying issues regarding ownership of the land. This proved futile.
- 2.13 That in March 2020, the Plaintiff was informed that some people had erected a wall fence on his land. Further

investigations revealed that the land was sold to a third party, and that the 3rd Defendant had taken part in the sharing of the proceeds of the sale. That he was later informed by the 2nd Defendant that the land was sold by the 8th and 1st Defendant to the 4th Defendant. On 2nd May 2020, the Plaintiff was informed that the 4th Defendant was requesting a change of use of the land as it had title to the land.

2.14 The Plaintiff further stated that the title held by the 4th Defendant is defective as it was obtained fraudulently.

Particulars of fraud;

- a) **The 1st, 2nd and 3rd Defendants proceeded to sale the land to the 4th Defendant without having the right to do so as the Plaintiff is and was the beneficial owner of the land;**
- b) **Having been the author of the letter to the Chief of Lands, the 1st defendant acted fraudulently in colluding with the 2nd and 3rd Defendants in the selling of the land to the 4th Defendant.**
- c) **Having been aware of all transactions which was happening as far back as 2011, the 5th Defendant ought to have alerted the Plaintiff when issuing any documentation for change of use of the land.**
- d) **Having been aware of the verification report above-mentioned, the 6th Defendant shouldn't have issued a Certificate of Title without informing the Plaintiff as the Plaintiff was waiting for the way forward after the verification report.**

e) Having been aware of the controversies on the land, the 7th and 8th Defendants should have not proceeded with the sale of the land to the 4th Defendant.

2.15 The Plaintiff will assert at trial that the demolishing of his three (3) roomed structure suffered irreparable damage as he always had an interest in the land as far back as 2011

3. The 4th Defendants' Defence.

3.1 The 4th Defendant traversed that it legally purchased the property from the 7th Defendant. That ownership of land was duly transferred to the 4th Defendant on 21st November 2019, as evidenced by the Certificate of Title No. 67523, which was in extent 18.9254 hectares and not 15 to 16 hectares as claimed by the Plaintiff.

3.2 It further traversed that it denies all allegations and will put the Plaintiff to strict proof as the Title Deed is not defective and was not obtained through fraudulent means.

4. The 7th and 8th Defendant's defence

4.1 The 7th Defendant traversed that it obtained approval from Kakoma Place by letter dated 2nd July 2007, addressed to the 5th Defendant for the allocation of 24 hectares of land

in Mupwaya village in Chieftainess Mungule area in Chibombo.

4.2 That by a letter dated 21st August 2007, the 5th Defendant wrote to the 6th Defendant indicating that they had approved the application for Title Deeds in favor of the 7th Defendant.

4.3 The 7th and 8th Defendant traversed that the Title held by the 4th Defendant is not defective and was not obtained through fraudulent means as the Title was obtained lawfully from the Ministry of Lands.

5. The Plaintiff's Reply to the 4th, 7th and 8th Defendants' defence

5.1 That the Plaintiff joins issue with the 4th, 7th and 8th Defendants on their defence.

6. Trial.

6.1 The matter was called for trial on 24th November 2023. Counsel for the Plaintiff and 4th, 7th, and 8th Defendants were in attendance. There was no appearance from the 1st, 2nd, 3rd, 5th and 6th Defendants.

7. The Plaintiff's Case.

7.1 The Plaintiff, Mr. Henry Chilufya Nondo, testified as PW1 the Plaintiff herein.

7.2 He testified that around 2011, he was introduced to the 2nd and 3rd Defendants by a friend called Joe Simalonda. The 2nd and 3rd Defendant were selling a 17-hectares piece of land at K180,000,000.00 unrebased. They mentioned to him that they were working in conjunction with the 1st Defendant. After payment, the 2nd and 3rd Defendant informed PW1 that the land in question is customary land that requires conversion to statutory land, which requires approval from the Kakoma Palace of Chieftainess Mungule. PW1 stated that the necessary documentation was taken to the Chibombo District Council, and the land was surveyed.

7.3 That PW1 was later informed by 1st, 2nd, and 3rd Defendant that an issue arose on the land in question as there were third parties claiming an interest in the said land. That they suggested to PW1 to purchase another piece of land, for which he was supposed to top up an extra

K50,000,000.00 unrebased. That at contract of sale and conditions of sale were prepared as depicted on page 1 of PW1's bundle of documents.

7.4 It was PW1's testimony that the application for conversion of customary land to leasehold was made to the Ministry of Lands as depicted on pages 5 and 6 of PW1's bundle of documents. That he carried out some farming activities from 2011-2015 and we put up a three (3) roomed structure plus a wall fence.

7.5 He further testified that in 2015, an issue arose as his neighbor sold his land to Sav Steel Mines Limited Company who started putting beacons and PW1 felt that the new owners were encroaching on his land to which he took an injunction against them. The Court under cause No. 2015/HP/1420 found in favor of Sav Steel Mines Limited.

7.6 PW1 testified that in 2016, he wrote to the Ministry of Lands, which informed him that another person was claiming interest in the land in question. PW1 testified that he went to the 1st defendant to enquire as to why there

were issues on the said land. The 1st Defendant wrote to the Ministry of Lands, as depicted on page 13 of PW1's bundle of documents, informing them that they only knew PW1 as the beneficial owner of the land. That in order to sort out the issues pertaining to the said land, a surveyor was appointed, and a survey was done on the land, to which a report was issued. The report revealed that L/231969, L/202409, and L/Chibo/1185842/M were overlapping.

7.7 The Chief Lands Officer told PW1 that the overlapping of the lands can only be resolved by the Chieftainess, to which inquiry the Chieftainess never responded.

7.8 It was PW1's testimony that in 2019, he received reports that there were people cutting down trees on his farm and that his workers were chased by the 8th Defendant on the basis that the land in question was bought by the 4th Defendant.

7.9 That he was informed that the 4th Defendant submitted title deeds to Chibombo District Council for purposes of changing the usage of the land.

Cross-Examination

- 7.10 PW1 was referred to page 2 of his Plaintiff's bundle of documents, and he affirmed that the 1st Defendant did not sign on the contract of sale of the land in question.
- 7.11 He was referred to page 13 of his bundle of documents and confirmed that the land was given to him in 2011, and that the defendants did not show him the power of attorney that would give them the power to sell the land to PW1. PW1 testified that he paid the money to the 2nd and 3rd Defendant and he was issued with receipts.
- 7.12 He testified further that he did not pay K160,000,000.00 unrebased to the wrong people as the land was owned by the village headman through the 2nd and 3rd Defendants. That the headman presented himself as the owner of the land. He was referred to paragraph 33 of his statement of claim, he stated that he was not paid any money and that he reported the matter to the Ngwerere police, who advised him to seek legal representation.
- 7.13 It was PW1's testimony that he did not conduct a search at the Ministry of Lands and did not sue the 8th Defendant

as he did not know that the land had a title. He stated that he has an interest in the land in question, and that he submitted the documents to the Chibombo District Council, the 1st Defendant herein. That there were minutes which showed that the land was given to him. He also stated that he did not know the village register where one enters their name. PW1 stated that he has no title to the said property.

- 7.14 He testified that the size of his land is 15.9 hectares, while the size of the land as depicted on page 4 of his bundle of documents shows that the land is 19.7 hectares.
- 7.15 PW1 was referred to page 25 of the plaintiff's bundle of documents. He affirmed that it is an official document from the Ministry of Lands, and that he agreed to the insertion of 8 hectares in L/Chibo/1185842/M. He was referred to paragraph 24 of his bundle of pleadings, he affirmed that he did not know that the report had two numbers, which are different from L/Chibo/1185842/M.
- 7.16 It was PW1's testimony that he did not receive any money from the transaction, as he was not there.

Re-Examination

7.17 PW1 clarified that the documents he filed into Court indicate that the 1st Defendant confirmed that PW1 is the rightful owner of the land when he wrote to the Ministry of Lands.

7.18 PW1 clarified that the land was not on title in 2015, as it was still customary land. With regards to the size of the land, PW1 clarified that since it was a contract of sale, the initial offer was for 17 hectares, and on page 5 of the bundle of documents, the size of the land was 15.9 hectares, made up of 8.2 and 7.7 of the other part of the land.

8. The Defendants' case

8.1 The Defendants called two witnesses to prove their case.

The testimony of Joseph Phiri, the 8th Defendant herein (DW1)

8.2 He testified that he is the Director of the 7th Defendant. That in 2001, he went to Mungule Village looking for a piece of land to purchase and he was directed to the headman, Kapopo. He said that he managed to purchase

the 2-hectare piece of land, but he wanted a bigger piece of land with a road frontage along Great North Road. He testified that his friend Japhet Zulu's cousin advised the 1st Defendant that there was a bigger piece of land to his satisfaction.

8.3 It was his testimony that he acquired the land in question in 2021, through Headman Mupwaya under a contract to renovate the Headman's house. That he paid Five Million Kwacha unrebased (K5,000,000.000) for the purchase of the land, and he put a caretaker to oversee the land. That in 2006, the said caretaker connived with the headman and sold the land to a third person without DW1's knowledge. It was his testimony that he approached Chieftainess Mungule to complain about the transaction that his caretaker and headman made. That the headman and caretaker were found guilty, as per page 1 of the defendant's bundle of documents. That after what had transpired, DW1 was prompted to apply for a certificate of title. That he obtained a recommendation from Chieftainess Mungule, who issued him a recommendation

letter to the council for title deeds application form, as shown on page 16 of the defendant's bundle of documents.

8.4 It was DW1's further testimony that his application for title deed was approved and recommended to the commissioner of lands. That the minutes from Chibombo District Council were also sent as shown on pages 3-15 of the defendant's bundle of documents.

8.5 That the Council advised DW1 to go to the Ministry of Lands to get an offer letter. DW1 testified that as the letter depicted on page 21 of the bundle of the defendant's documents, the Ministry of Lands could not proceed with issuing the title as there was a stream running through the land. That after further investigations with the Kabwe Local Authority, the land was numbered and approved as L/Chibo/ 1185842, and an invitation to treat was issued as depicted on page 27 of the bundle of documents. DW1 testified that he accepted the offer letter and engaged a surveyor in 2019. That when he went to the land with the surveyor, he found that his land had been encroached upon. That Plot No.19972/M immensely encroached with

his piece of land and that this reduced the land from 24 to 18.9254 hectares.

- 8.6 He testified that as evidenced on page 35 of the defendant's bundle of documents, he sold the land to the 4th Defendant at K950,000.00. The transfer of land to the 4th Defendant was done and the title deed was issued in the 4th Defendant's name, as depicted on pages 40-47 of the defendant's bundle of documents.

Cross-Examination

- 8.7 DW1 was referred to page 1 of the defendant's bundle of documents. He confirmed that it consisted of a ruling from Kakoma Palace between himself and one Mr. Dennis Sikazwe; the ruling in question does not mention that the 7th Defendant bought the said land.
- 8.8 DW1 was referred to page 34 of the defendant's bundle of documents. He confirmed that he paid property transfer tax, and the contract is dated 5th November 2019. He told the court that the process of transferring the land to the 4th Defendant from the 7th Defendant, was done within 16 days.

8.9 He was referred to page 13 of the Plaintiff's bundle documents, which contained a letter to the chief lands officer for the encroachment of Lot No. L/231969 and Lot No. L/202409, he testified that he bought the said land from Headman Mupwaya. DW1 referred to page 15 of the Plaintiff's bundle of documents, which he confirmed contained the verification report of L/231969, L/202409, and L/Chibo/1185842, which was on letterhead of the Ministry of Lands.

8.10 DW1 testified that he was aware of the Plaintiff's claims from the Defendants, but that there was no request for a meeting with him.

Re-Examination

8.11 DW1 stated that the ruling shown on page 1 of the Defendant's bundle of documents relates to Headman Mupwaya, who is different from Headman Agrippa Phiri, who happens to be the current headman.

The testimony of Wu Cheng, the Manager of the 4th Defendant herein (DW2)

8.12 He testified that he is working for the 4th Defendant, who bought the land in question from the 7th Defendant in 2019. That due diligence was done at the Ministry of Lands as shown on page 36 of the Defendants' bundle of documents, which revealed that there were no encumbrances on the land as depicted on page 21 of the Plaintiff's bundle of documents. That the land was purchased at K950,000.00 and a certificate of title was issued in the 4th Defendant's name as the new owner of the land in question.

Cross-Examination

8.13 DW2 testified that the printout on page 19 of Plaintiff's bundle of documents was done after the 4th Defendant had already purchased the land in question. That the search for the due diligence was done on 21st October 2019. That the only encumbrance was the caveat entered by New Financial Company Limited, but that the caveat was withdrawn as per entry No.6 on page 20 of the Plaintiff's bundle of documents.

8.14 He told the court that the 4th Defendant went to the land in question where they found a small house, and they established that the house in question belonged to the 7th Defendant.

Re-Examination.

8.15 There was no Re-examination

9. The Plaintiff's written submission

9.1 The learned Counsel for the plaintiff submitted that Section 8(2) of the Lands Act, Chapter 184 of the laws of Zambia was unambiguous in that once a party has obtained the necessary consent from the Local Authority and Chief in the area where the piece of land is located, the said land in the eyes of the law has been converted to a leasehold tenure in favor of the party who obtained the consent. **(See Makwati v. Senior Chieftainess Nkomesha)** Supra.

9.2 That it is not in dispute that the Plaintiff had duly obtained the consent of the Chieftainess Mungule on 31st February 2012, and that it is not in dispute that Plaintiff obtained the necessary consent of the relevant authority being the

5th Defendant on 29th September 2014. This was evidenced on pages 6, 10 and 11 of the Plaintiff's bundle of documents.

9.3 It was submitted that once the Plaintiff obtained consent from both the local authority and Chief of the said area, the Plaintiff's tenure in the land was converted from customary tenure to a leasehold tenure, thus, no further interest could legally be created in the piece of land and as such, the 1st, 7th and 8th Defendant's interest in the land is null and void. To reinforce this position, the case of **Makwati vs. Senior Chieftainess Nkomesha¹** was relied upon where the Lands Tribunal was of the view that, once the land ceased to be traditional land, senior Chieftainess Nakomesha ceased to have any control over the said land.

9.4 It was further submitted that any documentation asserting title of the 4th or 7th Defendant were erroneously issued as the said title is inconsistent with the provisions of the law as the 4th, 7th, and 8th Defendants have not produced evidence of the establishment of their interest in the said

land before the Plaintiff established his interest in the land. To reinforce this position, the cases of **Sailas Ngowani and Others vs. Flamingo Farms Limited²** and **Still Waters Limited vs. Mpongwe District Council and Others³** were cited were the Supreme Court held that;

“Land held under customary tenure can only be alienated if consent is obtained by the traditional chief from those whose interests may be affected by such allocation.”

9.5 Counsel submitted that any documentation asserting the title of the 4th or 7th Defendant was erroneously issued as the said title is inconsistent with the provisions of the law. Counsel relied on Section 3 (4) (c) of the Lands Act. Counsel argued that the Plaintiff, being a party with an interest in the land, was not consulted when the 4th and 7th Defendants acquired the said land, and that the title of the 4th and 7th Defendants ought to be cancelled. This guidance was adopted from the case of **Henry Mpanjilwa Siwale and Others vs. Ntapalila Siwale⁴** where the Supreme Court was of the view that;

“Persons who would be affected by a grant of title deeds should be consulted”

9.6 Furthermore, it was submitted that the 4th Defendant ought to have done due diligence before purchasing the land in question as this was going to reveal the Plaintiff’s interest in the said land. The case of **Nawakwi vs. Lusaka City Council and Another**⁵ Supra, was cited to reinforce this position.

10. The 4th Defendants’ Final Written Submissions.

10.1 It was submitted that the 4th Defendant is a Bonafide purchaser who acted in good faith by conducting due diligence at the Ministry of Lands and paying for the said land. In fortifying this submission, counsel relied on the case of **Banda and another vs. Mudimba**⁶.

10.2 It was further submitted that a Certificate of Title is conclusive evidence of ownership, and the 4th Defendant meets that threshold. Section 33 of the Lands and Deeds Registry Act and the case of **Mafulande Stoneworks and Construction Limited vs. Commissioner of Lands and**

others⁷ were relied upon to reinforce the position that a certificate of title is conclusive evidence of ownership.

10.3 Furthermore, Counsel submitted that the Plaintiff has not produced any registered document that could support his interest in the said land as required by law under Section 4 of the Lands and Deeds Registry Act.

10.4 In conclusion, counsel argued that the 4th Defendant is a bona fide purchaser for value without notice, has a clean Certificate of Title, and has the land.

11. The 7th and 8th Defendants' Final Written Submissions.

11.1 It was submitted that as per evidence on record, the 7th and 8th Defendants properly acquired the land in question. That page 1 of the Defendant's bundle of documents shows that the 8th Defendant obtained the land from Chieftainess Mungule. That the 8th Defendant proceeded to convert the said land to state land in favor of the 7th Defendant as per pages 12,16,17,18,19,21,23,24,25,26,27,28 and 29 of the defendant's bundle of documents.

- 11.2 Furthermore, it was submitted that the 7th Defendant obtained a Certificate of Title in its name as evidenced on page 30 of the defendant's bundle of documents.
- 11.3 Counsel argued that the 8th Defendant properly obtained title to the land in question and relied on Section 33 of the Lands and Deeds Registry Act, Chapter 185 of the laws of Zambia.
- 11.4 Furthermore, that the land was later sold to the 4th Defendant who obtained a Certificate of Title in its favor as evidenced on page 30 of the defendant's bundle of documents.

12. Consideration and Determination.

- 12.1 I have considered the evidence, submissions, and arguments on record. The issues for determination are whether the Plaintiff has an interest in Lot L/231969 and Lot L/202409, situated in Chibombo District. Secondly, whether the Plaintiff has proved the elements of fraud.
- 12.2 The Plaintiff asserts that he is the rightful owner of Lot L/231969 and Lot L/202409, located in Chibombo District. In support of his claim, the Plaintiff filed a bundle

of documents on 6th April 2022, which included a contract of sale drawn up following his purchase of the said land, as shown at pages 1 to 4.

12.3 A review of the contract of sale reveals the signatures of the 2nd and 3rd Defendants, despite the Plaintiff's assertion that he purchased the land from the 1st Defendant, who serves as Headman under the Chieftainship of Chieftainess Mungule.

12.4 Furthermore, an examination of the Plaintiff's documents details all transactions undertaken to obtain a Certificate of Title, a fact that remains unchallenged by the Defendants.

12.5 The record also indicates that the Plaintiff had cultivated the land and constructed a three-roomed structure, which has since been demolished.

12.6 During cross-examination, DW1 testified that he was aware of the Plaintiff's claims; however, no meeting was convened between the two parties to address them. Additionally, DW2 testified that he discovered a small

house on the disputed land, which he determined belonged to DW1.

12.7 It is common ground that the land in question was traditional land held under customary tenure and, as such, could only be alienated under Section 3(4) of the Lands Act, Chapter 184 of the laws of Zambia. This section provides as follows;

“(4) Notwithstanding subsection (3), the President shall not alienate any land situated in a district or an area where land is held under customary tenure;

a) without taking into consideration the local customary law on land tenure which is not in conflict with this Act;

b) without consulting the Chief and the local authority in the land area in which the land to be alienated is situated, and in the case of a game management area, the Director of National Parks and Wildlife Service, who shall identify the piece of land to be alienated;

c) without consulting any other person or body whose interest might be affected by the grant; and

d) if an applicant for a leasehold title has not obtained the prior approval of the chief and the local authority within whose area the land is situated

12.8 From the foregoing, it is an unchallenged fact that the Defendants were aware of the Plaintiff's claim over the land in dispute, thus, the provisions of Section 3 (4) of the Lands Act above comes into play as according to that

Section, the Plaintiff is a person whose interest was going to be affected by the allocating of land to the 7th Defendant.

12.9 Thus, the 1st Defendant should have consulted the Plaintiff before alienating the land in question to the 7th Defendant. The fact that the 7th Defendant knew about the Plaintiff's claim, he should have conducted due diligence before obtaining a Certificate of Title. I am thus of the considered view that the allocation of Lot L/231969 and Lot L/202409, situated in Chibombo District to the 7th Defendant, is null and void.

12.10 I am fortified by the case of **Still Water Farms Ltd v Mpongwe District Council and Ors**³ where the Supreme Court guided that;

“Although we agreed with Dr. Sakala's forceful argument that the Chiefs enjoy autochthonic powers over land held under customary tenure and especially undeveloped land nonetheless section 3(4) of the Lands Act is couched in such a way that it is mandatory for the third and fourth respondents to have been consulted before allocating the land to the appellant company. Failure to do so results in the purported allocation to be null and void ... In Siwale v. Siwale, the deceased, who had been given land by the colonial authorities with the approval of the local Chief sometime in 1929, died intestate. The appellants, who were his siblings, objected to their last

brother obtaining 'title' deeds to the land without their consent. This court agreed with them that under section 3(4) it was obligatory on the part of the traditional Chief to seek their consent, as according to that section, their interest would have been affected by one of their brothers, obtaining title deeds to the land. This court pointed out to the fact that land held under customary tenure can only be alienated if consent is obtained by the traditional Chief from those whose interest may be affected by such allocation. In the Siwale case the core contention was exactly the same contention as in the case before us. In this case before us, the core question is whether or not the procedure adopted by the current Chief in allocating to the appellant company without consulting the third and fourth respondents was a proper procedure. Our view is that the procedure adopted by the current Chief was wrong and as such the allocation of the land to the appellant is null and void”

12.11 The Supreme Court in also held in a similar manner in the case of **Mupwaya v. Mbaumbi SCZ Appeal No. 41 of 1999⁸** and **Siwale v. Siwale SCZ Appeal No. 24 of 1999⁹** as well as in the case of **Ison Sichimata v. Amonson Siame and 2 Others Appeal No. 146/2002¹⁰**.

12.12 In addressing the second issue, The Plaintiff contends that the title held by the 4th Defendant is defective as it was obtained fraudulently. The Plaintiff pleaded fraud in his statement of claim as follows;

- a) The 1st, 2nd and 3rd Defendants proceeded to sale the land to the 4th Defendant without having the right to do so as the Plaintiff is and was the beneficial owner of the land;**
- b) Having been the author of the letter to the Chief of Lands, the 1st Defendant acted fraudulently in colluding with the 2nd and 3rd Defendant in the selling of the land to the 4th Defendant.**
- c) Having been aware of all transactions which was happening as far back as 2011, the 5th Defendant ought to have alerted the Plaintiff when issuing any documentation for change of use of the land.**
- d) Having been aware of the verification report above-mentioned, the 6th Defendant shouldn't have issued a Certificate of Title without informing the Plaintiff as the Plaintiff was waiting for the way forward after the verification report.**
- e) Having been aware of the controversies on the land, the 7th and 8th Defendants should have not proceeded with the sale of the land to the 4th Defendant.**

12.13 The 4th Defendant on the other hand is of the view that it legally purchased the property from the 7th Defendant. That ownership of land was duly transferred to the 4th Defendant on 21st November 2019, as evidenced by the Certificate of Title No. 67523. That the title is not defective and was not obtained through fraudulent means as the Title was obtained lawfully from the Ministry of Lands.

12.14 Section 33 of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia, provides as follows;

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

12.15 The legal position cited above has been reaffirmed in numerous cases, including the case of **Anti-Corruption Commission vs. Bannet Development Corporation Limited**¹¹. Thus, a Certificate of Title can be challenged if there are allegations of fraud.

12.16 It is evident from Order 18/8/16 of the Rules of the Supreme Court of England, 1999 edition which states that;

“Any charge of fraud or misrepresentation must be pleaded with the utmost particularity...”

Order 18/12/18 of the Rules of the Supreme Court

of England, 1999 edition, is also couched similarly. It provides that;

“Fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts”

12.17 The case of **Exp. Watson**¹², the Court quoted the

following portion;

“Fraud’ in my opinion, is a term that should be reserved for something dishonest and morally wrong, and much mischief is, I think, done as well as much pain inflicted by its use where illegality and illegal are really the appropriate expressions.”

12.18 Thesiger, LJ in the case **Davy vs. Garret**¹³ established the

following principles;

- 1) a plaintiff is bound to show distinctly that he means to allege fraud on the part of the defendant;**
- 2) fraud must be distinctly alleged in the pleadings and should not be left to be inferred from facts; and**
- 3) fraud can only be inferred from facts where the facts disclose or impute a state of mind/ intent on the part of the defendant to act in a fraudulent or dishonest manner in the defendant’s dealings with the plaintiff.**

12.19 From the foregoing, the Plaintiff has distinctly alleged fraud in his pleadings and the Supreme Court in the case of **Sablehand Zambia Limited vs. Zambia Revenue Authority**¹⁴ held that;

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

12.20 I find that the Plaintiff has discharged his burden as he has adduced evidence in support of his allegations of fraud on the part of the 7th, 8th and 4th Defendants as indicated above.

13 Conclusion.

13.1 In the circumstances, judgment is entered for the Plaintiff. I declare that the Plaintiff is entitled to ownership and possession of Lot L/231969 and Lot L/202409, situated in Chibombo District in the Central Province of Zambia.

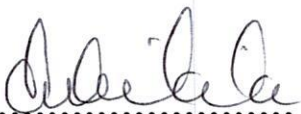
13.2 I further order that Certificate of Title No. 67523 dated 21st November 2019, issued to the 4th Defendant be cancelled forthwith, by the Commissioner of Lands.

13.3 I permanently restrain the 4th Defendant, whether by himself, servants, and or agents, from continuing any development on Lot L/231969 and Lot L/202409, situated in Chibombo District in the Central Province of Zambia;

13.4 The Plaintiff shall have the costs of the action, to be taxed if not agreed.

Leave to appeal is granted.

Dated and delivered at Lusaka this ^{25th}..... day of ^{March}....., 2025


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ELITA P. MWIKISA
HIGH COURT JUDGE