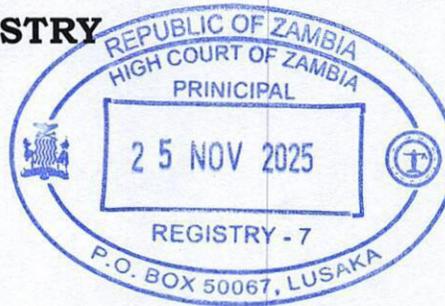


IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)

2023/HP/1726



BETWEEN:

LUKE GOTO

PLAINTIFF

AND

JUDITH KAMANGA

1ST DEFENDANT

SUSAN MUBANGA

2ND DEFENDANT

BEFORE THE HONOURABLE MR. JUSTICE I. M. MABBOLOBOLO IN CHAMBERS ON THE 25TH DAY OF NOVEMBER, 2025.

For the Plaintiff: *Mr. J. Phiri, Mr. J. Banda, Mr. S. F. Chipompela and Mr. C. Mwenge – Messrs Joseph Chirwa and Company*

For the Defendant: *Mr. M. Mununga and Mr. S. Nyirenda – Tresford Chali Legal Practitioners*

JUDGMENT

A. CASES REFERRED TO:

1. *Nawakwi v Lusaka City Council and Another Appeal No. 26 of 2001 (S.C);*
2. *Prisca Lubungu v Obby Kapango and Others and Ndola City Council Appeal No. 216 of 2016;*
3. *Anti-Corruption Commission v Barnnet Development Corporation Limited (2008) ZR 69 (SC);*

4. *Nkongolo Farms Limited v Zambia National Commercial Bank Limited and 2 Others (2005) Z.R 78 (S.C); and*
5. *Sankisha Trust International School Limited v Solwezi Municipal Council Appeal No. 135 of 2021.*

B. LEGISLATION REFERRED TO:

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

1.0. INTRODUCTION AND BACKGROUND

- 1.1. The matter was commenced by way of Writ of Summons and Statement of Claim filed on 29th September, 2023.
- 1.2. The Defendants filed into Court their Defence and Counterclaim on 31st October, 2023.
- 1.3. The Plaintiff filed his Reply and Defence to Counterclaim on 7th March, 2024.
- 1.4. The Defendants filed a Reply to Defence to Counterclaim on 25th March, 2024.

2.0. PLEADINGS.

- 2.1. The Plaintiff claimed that on 24th May, 2022, he purchased a piece of land known as Plot number 22 of 197 Lusaka West. That prior to the Contract of Sale, the Plaintiff had conducted a due diligence search at Ministry of Lands which revealed that the said property belonged to Omy Lumamba and that the land was free from any encumbrances.
- 2.2. It was stated that the Plaintiff, before he paid the purchase price, signed a Contract of Sale with the seller and owner of the

land by name of Omy Lumamba and later the purchase price was paid to the said seller. That the Plaintiff would aver at trial that, upon taking possession of the land, he commenced construction, but to his surprise, the Defendants without any legal justification started claiming ownership of the same piece of land.

- 2.3. It was also stated that the Plaintiff approached the Defendants to ascertain their position as regards the documents they had, but they failed to produce a single document to prove ownership. That the Plaintiff had on numerous occasions advised the Defendants to desist from interfering with his quiet enjoyment of the said land but to no avail.
- 2.4. It was the Plaintiff claim that in the circumstances the he had no choice but to institute the legal action.
- 2.5. The Plaintiff claims for the following:

2.5.1. An Order for declaration that he is the lawful owner of the property known as Plot number 22 of 197 Lusaka West having acquired it from Omy Lumamba.

2.5.2. An Order of Injunction to restrain the Defendants, by themselves, their agents and whomsoever from interfering with the peaceful enjoyment of the Plaintiff's land.

2.5.3. Damages

2.5.4. Costs and interest to the amount found due.

2.5.5. Further or other reliefs the Court deemed fit.

- 2.6. In their Defence the Defendants stated that they had lawful possession of the land being of Farm number 197a/S. That at no time did the Plaintiff whether before or after buying the land, engage the Defendants as to the ownership of the land they are occupying. Further that the Plaintiff is not entitled to the reliefs he is claiming.
- 2.7. The Defendants stated that they had no knowledge of the Plot being claimed by the Plaintiff herein. That the Defendants are in lawful occupation of Plot No. 197a/s and have been paying rates for the said Plot.
- 2.8. According to the Defendants, they had been inconvenienced and counterclaimed the following:

2.8.1. Damages

2.8.2. Costs

*2.8.3. Restraining Order to the Plaintiff, his agents
or whosoever from interfering with Plot No. 179a/S.*

2.8.4. Any other relief that the Court may deem fit.

- 2.9. In his Reply and Defence to Counterclaim, he Plaintiff stated that the Defendants have not been in occupation of Plot Number 22 of 197a Lusaka West. That the Plaintiff did duly engage the Defendants to find out what legal justification they had to claim ownership of the land in question.

2.10. It was stated that the Defendants were fully aware of which piece of land was the subject matter of the dispute. That the Defendants had interfered with the Plaintiff's peaceful enjoyment of the disputed property.

2.11. In their Reply to Defence and Counterclaim, the Defendants stated that at no time did they admit knowing or being on the Plaintiff's Plot.

3.0. THE HEARING

3.1. At the hearing held on 18th July, 2024, 26th September, 2024 and 24th July, 2025, the Plaintiff called three (3) Witnesses. The first being, Percy Shangonya, aged 36 years, a General Worker and resident at House No. 10A Makeni, Lusaka (hereinafter referred to as **PW1**).

3.2. For his Examination in Chief, **PW1** relied on his Witness Statement filed on 11th June, 2024.

3.3. It was **PW1**'s testimony that he knows the Plaintiff because he is the Plaintiff's General Worker at his house in Makeni. That sometime in 2023, **PW1**, Sam Ndaba, Bongani Thawe and others went to the residence of Omy Lumamba for the purpose of assisting the Plaintiff with the completion of the purchase of the land.

3.4. That on the said day, they took with them a sum of ZMW 50,000.00 which was given to Omy Lumamba. It was stated that immediately prior to the receipt of the sum of money, **PW1** witnessed a Contract of Sale being signed by Mr. Sam Ndaba on

behalf of the Plaintiff and Omy Lumamba. Reference was made to pages 1 to 5 of the Plaintiff's Bundle of Documents.

- 3.5. It was also stated that Omy Lumamba was given the aforementioned sum of money after the agreement was signed. That three (3) months after signing the contract, **PW1** received instructions from the Plaintiff to develop the said land. That **PW1** was required to supervise the builders that the Plaintiff had hired to erect a wall fence around the land.
- 3.6. **PW1** testified that on the first day of construction, he and the builders went on site to develop the said land and unknown persons trespassed on the said land with pieces of broken wood threatening them.
- 3.7. That on another day, they attempted to commence construction of the wall fence but were again interrupted by the same individuals who had threatened them earlier. That they were informed by the said individuals that they had been sent by the Defendants to stop them from developing the said land.
- 3.8. **PW1** testified that he reported the aforementioned events to the Plaintiff who then commenced this action against the Defendants and that upon commencing the action he also applied for an interim injunction which was granted.
- 3.9. During Cross Examination, **PW1** testified that he was a General Worker who had worked for the Plaintiff for 9 years. The Witness confirmed that he was paid for his work and was dependent on that employment.

- 3.10. **PW1** conceded that he had no evidence that Omy Lumamba was given ZMW 50,000.00. The Witness also stated that when unknown people trespassed on the property, he reported the same people at the farm who were disturbing them to Central Police Station. He however conceded that he did not have proof of the aforementioned before this Court.
- 3.11. It was **PW1**'s testimony that he did not know the Defendants. That the Defendants stay at the farm. The Witness was also asked if he saw the Injunction that he talked about, to which he answered in the affirmative.
- 3.12. In Re-Examination, **PW1** stated that they wanted to work but were being stopped.
- 3.13. The second Witness was Kachiza Mayondi, aged 30 years, a Lawyer, resident at Plot No. 197A Lusaka West, Mungwi Road, Lusaka (hereinafter referred to as **PW2**).
- 3.14. For his Examination-In-Chief, **PW2** relied on his Witness Statement dated 11th June, 2024. It was testified that sometime in 2022, **PW2** was engaged by Mr. Chimaza Mkandwire to process his Title for subdivision 10 of Farm 197a Lusaka West owned by Mrs. Omy Lumamba and to further assist with the processing of a new Title deed in his name.
- 3.15. That upon **PW2**'s engagement by the Plaintiff, he was instructed to investigate the Title to the said property. That **PW2** began his investigations by conducting a search at Ministry of Lands, which search revealed that the said land was the subject of a

Certificate of Title in the name of Omy Lumamba. Reference was made to page 6 of the Plaintiff's Bundle of Documents.

- 3.16. It was averred that the property in dispute was once part of a piece of a larger farm known as Farm 197a/S which was owned by a Mr. Foster Frederick Noel. That the said piece of land was sometime in the 1990's seemingly abandoned by its owner who he left caretakers and was subsequently repossessed by the government of the Republic of Zambia through the Ministry of Lands.
- 3.17. It was stated that following its repossession, the government subdivided the said piece of land into 22 subdivisions, which were sold to members of the public. That subdivision No. 22 of Farm 197a was purchased by Mrs. Omy Lumamba. Reference was made to pages 7 to 18 of the Plaintiff's Bundle of Documents
- 3.18. It was also stated that the Defendants were equally allocated certain subdivisions, but, subdivision No. 22 of Farm 197a was not one of them.
- 3.19. Further that, following the purchase of Subdivision No. 22 of Farm 197a by Mrs. Omy Lumamba, she subdivided the said property into two distinct pieces of land, one of which was sold to the Plaintiff and which property **PW2** had been giving consultancy services on and attempting to process a new Certificate of Title.
- 3.20. It was **PW2**'s testimony that at no time in his business dealings with the Plaintiff, had he come across any evidence that

suggested that the property was owned by any of the Defendants.

- 3.21. That in furtherance of **PW2**'s obligations, he engaged surveyors from the Ministry of Lands, to set beacons on the land. That this is when they first encountered the Defendants who were hostile and would throw projectiles at the surveyors who, as a result, failed to complete their job.
- 3.22. It was averred that they tried to engage the Police Officers from Bob Brooms Police Station who failed to sort out the situation. That afterwards they engaged Matero Police Station who also failed to sort out the situation. That finally the Defendants were reported to Lusaka Central Police Station, who then opened a docket regarding the Defendant's interference, which matter was active in the Subordinate Courts.
- 3.23. That from that point onwards, the Plaintiff then commenced this action.
- 3.24. During Cross Examination, it was **PW2**'s testimony that he worked at Winsgate Limited in consultancy in Real Estates and that he was not an Advocate in Zambia. Further that the aforementioned company was paid for conveyance. **PW2** stated that he was aware that it is an offence for an unqualified person to do conveyancing and that he did not have any documents he used to conduct a search at Ministry of Lands before this Court.
- 3.25. **PW2** conceded that he learnt that the property was part of a larger portion from the matter in the Subordinate Courts. That he had no access to the green file but had access to the Land

Register for the property when he was engaged to do work for Mr. Chimaza Mkandawire.

3.26. It was **PW2**'s evidence that he was born in Lusaka in 1993 and had no evidence to show that the land in question was abandoned. He also stated that he had carried out a research on the land at the time he was requested to do conveyancing for their client. That at that time, he found that 24 other subdivisions had Title and surveyors from the Surveyor's General's Office with a written report showing that the Ministry of Lands had repossessed the Mother Title. That the said report stated that it was subdivided and his client's portion was Subdivision 10.

3.27. **PW2** denied being the one who brought the surveyor. The Witness also denied that Ministry of Lands was giving out land. When referred to page 8 of the Plaintiff's Bundle of Documents, **PW2** admitted that they were names before the Report. He however stated that he was not in a position from the said Report to pin point name by name which land belonged to whom nor was he in a position to show that the Defendants were given plots.

3.28. It was **PW2**'s evidence that he had no evidence that the Defendants were claiming another person's land. He however stated that the Defendants should have Title Deeds to show that the land is theirs. He also stated that the Defendants cannot have Title if they are not the owners. That the only way one can be on a property is by having Title to it.

3.29. It was testified that the Witness did not engage the Surveyor nor was he aware of the works that they were doing. The Witness when referred to a paragraph in his Witness statement, stating the contrary, stated that he maintains what is contained in his Witness Statement. Further when referred to paragraph 11 of the same Statement, stated that it was part of his work as a consultant to engage the Police. **PW2** conceded that he did not have any proof that he reported to the Police.

3.30. Further that the people who were reported were not arrested because the Police did not have enough man power and the Defendants had machetes and stones. The Witness stated that he was not aware that one of the Police Officers was claiming a plot on the property.

3.31. **PW2** testified that he knows about the matter in the Subordinate Courts because he has been following it. He also stated that he did not know the people on the property. That when he had gone to the property with a surveyor, he saw some houses and a school. That he did not know who owned the school as that was not part of his work. Further, that he did not talk to the Defendants.

3.32. In Re-Examination, the Witness stated that when he spoke of the Land Register, he meant the Land Register Search for the farm, Subdivision 10 of 197a because at the time, that was for his client. **PW2** also stated that he grew up in the area. That after carrying out his search, **PW2** noticed an offer for a

Subdivision in the name of Mr. Chimaza Mkandawire and that the land had been repossessed by the government.

3.33. The third and last Witness the Plaintiff called was Omy Lumamba, aged 40 years, a business woman resident at Plot 72/Sub 181 A Furngroove Area, Munguwi Road, Lusaka West (hereinafter referred to as **PW3**).

3.34. **PW3** relied on her Witness Statement filed on 15th July, 2024, for her Examination-In-Chief.

3.35. It was **PW3**'s evidence that sometime in 2019, she engaged an agent to assist her in looking for land to purchase along Mungwi Road in Lusaka West. That the agent informed **PW3** of the availability of a parcel of land located along her desired area. That **PW3**'s further enquiries revealed that the parcel of land was being sold by the Ministry of Lands upon application by members of the general public.

3.36. It was stated that **PW3** duly made an application to the Ministry of Lands who after processing her application, sent her an invitation to treat, requiring her to pay a small fee to proceed to the next stage.

3.37. It was also stated that after **PW3** paid the requisite fee, the Ministry of Lands between 2019 and 2020 gave her an Offer Letter to purchase Subdivision No. 22 of Farm 197/a Lusaka, which **PW3** duly accepted and complied with all the terms of the said Offer Letter. That the Ministry of Lands then processed a Certificate of Title in **PW3**'s name which she kept safely in her

possession. Reference was made to the Plaintiff's Supplementary Bundle of Documents.

- 3.38. It was testified that following **PW3**'s purchase of the land, the Defendants approached her claiming that the said piece of land belonged to the adjacent school. That they however never pursued those claims any further. That **PW3** started to construct a workshop on the said piece of land but abandoned the project and demolished the partial structure she had erected, in order to pursue another project.
- 3.39. That sometime in 2023, **PW3** decided to sell the said piece of land because she wanted to raise some money to construct a piggery. That **PW3** decided to subdivide the said piece of land into two portions. That it was at that point that she engaged an agent to help her find a purchaser. That **PW3** was referred to the Plaintiff, who expressed interest in purchasing one of the subdivided portions of the said piece of land.
- 3.40. That after some negotiations, **PW3** and the Plaintiff came to an agreement over the said piece of land, and **PW3** sold it to the Plaintiff at the total purchase price of ZMW 90,000.00. That they then formalised their agreement with a written Contract of Sale which was signed by **PW3** and the Plaintiff's agent at her home. Reference was made to pages 1 to 5 of the Plaintiff's Bundle of documents.
- 3.41. It was **PW3**'s evidence that after she sold the remaining extent of the said piece of land to Mr. Mwiinga, **PW3** gave him possession of the Certificate of Title relating to Subdivision No.

22 of Farm 197/a Lusaka. That after completion of the sale of land with the Plaintiff, **PW3** was surprised to learn that the Defendants were claiming ownership of the said piece of land.

3.42. That **PW3** believed that the Defendants' claim to the said piece of land was misconceived as at the time of sell of the proposed subdivision to the Plaintiff, **PW3** was the sole owner of the said piece of land.

3.43. During Cross Examination, **PW3's** stated that she was aware of a matter in the Subordinate Courts. That the documents filed into Court related to Plot No. 22. The Witness when referred to the Plaintiff's Bundle of Documents, stated that the Plot number was 197a/22 Mungwi Road, Lusaka. Further when the Plaintiff was referred to the Plaintiff's Supplementary Bundle of Documents, she stated that the Certificate of Title No. 110992 was for Subdivision 22 of Farm 197a. The Witness agreed that the farm that was subdivided from Farm No. 197a.

3.44. It was also testified that Amos Chibulu witnessed **PW3's** Title. Further that she was aware that Amos was one of the People appearing in the Subordinate Courts.

3.45. The Witness was referred to the Defendant's Bundle of Documents at page 1 and was asked to compare the date with her Certificate of Title, to which she stated that her Certificate of Title was issued on 7th October, 2021 whilst the document in the Defendant's Bundle of Documents issue date was 15th August, 2022 for F/197a/S. **PW3** conceded that the date of the statement was a year after the issuance of her Title.

3.46. **PW3** was referred to page 4 of the Defendant's Bundle of Documents, which she confirmed was a treasury report showing a payment of ZMW 100.00. Further that this was two (2) years after 2021.

3.47. In further Cross Examination as regards the Certificate of Title and Statement mentioned above, the Witness stated that the two (2) properties are not the same and only had the number 179a in common. **PW3** stated that there was no poster showing Plot No. 197a. The Witness when referred to the site map in the Defendants' Supplementary Bundle stated that according to the map, 197a and S are different plots.

3.48. No questions were asked in Re-Examination.

3.49. This marked the end of the Plaintiff's case.

3.50. The Defendants called one (1) Witness who is the 1st Defendant herein, Judith Kamanga, aged 67 years, a Teacher and resident on Farm No. 197a/S, Lusaka West (hereinafter referred to as **DW**)

3.51. **DW** relied on her Witness Statement filed on 12th July, 2024 for her Examination-In-Chief.

3.52. It was **DW**'s evidence that she is the daughter of the late Jairos Kamanga. That **DW**'s father worked for and lived with Mr. Noel Foster at his farm, being Farm No. F/197/a/S from 1953 to 1976 when Mr, Foster decided to go back to Britain and left his daughter and her husband, Mr. Jeff McLean to run the farm.

3.53. It was testified that **DW**'s father worked for the McLeans until 1999. That on 4th December, 2000, Mr. McLean told **DW**'s father that he did not have any money to pay him as his pension but that the farm was given to **DW**'s father as his terminal benefits and advised him to change ownership of the farm. That **DW**'s father started paying ground rates to the Lusaka City Council from 2000 until his death in 2008. That however **DW**'s father did not undertake the process of the change of ownership. That following the demise of her father, **DW** continued to pay land rates. Reference was made to pages 3 and 4 of the Defendants Bundle of documents.

3.54. It was **DW**'s testimony that in 2017, her brother wrote a letter to the Ministry of Lands asking for change of ownership of the farm. That unfortunately, this was the beginning of the people laying claims to the said land.

3.55. That other than the house Mr. Noel Foster left, **DW** constructed a school on the farm. That the said school also had a playing field. That sometime in 2017, a group of people came and claimed to have acquired the land where the Defendants were staying. That later, the said group took the Defendants to Matero Police Station and Central Police Station. That the Defendants were later arrested and detained at Lusaka Central Police Station and that, the matter is in the Lusaka Subordinate Courts currently.

3.56. It was **DW**'s evidence that on 15th July, 2020, the DAILY NATION newspaper wrote a story titled "*Dubious Land Deal*" in

which the paper quoted a named Ministry of Lands official as saying that the land was re-entered in May 2011 because the property had deteriorated and that there were outstanding ground rates, allegations that were totally unfounded and without basis. Reference was made to pages 5 to 9 of the Defendants Bundle of Documents.

3.57. That on the Defendant's appearance in the Subordinate Courts, a named Ministry of Lands Official appeared as a Witness for the Complainants. That after the said Court heard that the official was also claiming land on Farm No. 197a/S, it ordered that the official be added to the list of complainants.

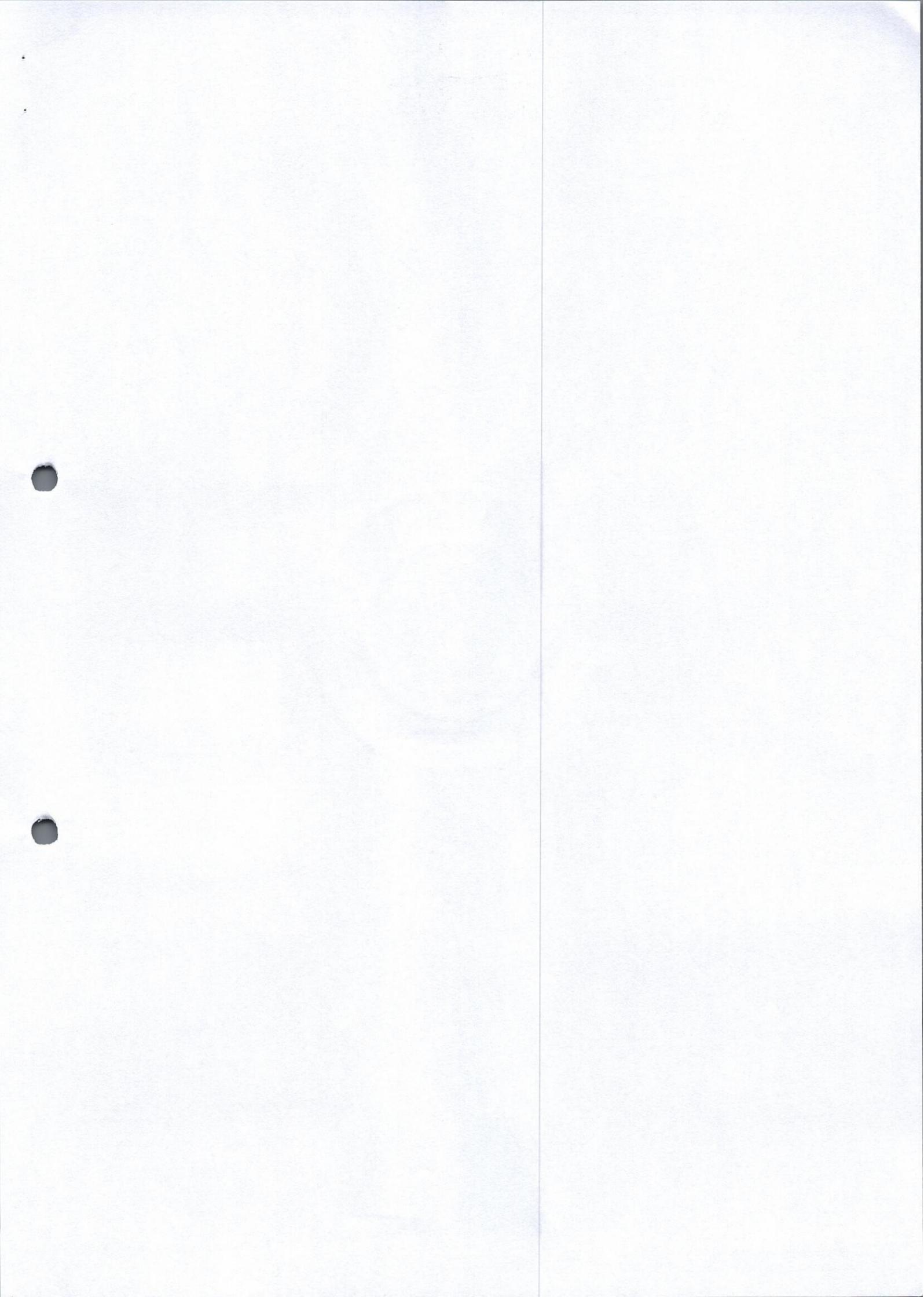
3.58. It was averred that sometime in 2023, a person brought summons from the High Court to **DW** and the 2nd Defendant from the Plaintiff. That later **DW** came to know that the Plaintiff was claiming that he had bought the land from Omy Lumamba, one of the complainants in the matter before the Lusaka Magistrates Court.

3.59. Further, that the Plaintiff after obtaining an injunction proceeded to drill a borehole on the piece of land used by the community school at the farm as a playing field and had bought building blocks and commenced construction works. That **DW** had never seen the Plaintiff apart from having a phone conversation with him. That the Plaintiff had sent one of his helpers, Mr. Zulu, to engage **DW** with the purpose that **DW** should consider selling him the land in contention.

- 3.60. Furthermore, that Mr. Zulu called the Plaintiff who then offered to give **DW** money so that she could forego her claim to the land in dispute.
- 3.61. During Cross Examination, **DW** denied being the owner of Farm No. 197a/S and Subdivision No. 22 of Farm 197a/S. The Witness also stated that she was not aware that the Ministry of Lands had advertised and sold subdivisions of Farm No. 197a/S.
- 3.62. When **DW** was referred to page 5 to 9 of the Defendant's Bundle of Documents being a newspaper article, she confirmed that her picture was on page 5 of the Defendants' Bundle of Documents. That she recalled giving an interview complaining about the manner in which Farm 197a/S was subdivided.
- 3.63. **DW** however, denied being aware that the Ministry of Lands was selling Subdivisions of the farm. The Witness stated that her complaint aforementioned related to people who encroached where she lived at Farm No, 197a/S. The Witness however, stated that she was not the owner of the said land but her father.
- 3.64. When **DW** was asked if her father had a Title Deed to Farm 197a/S, she answered in the affirmative. She also stated that the Title Deed that her Father had bore the name Fredrick Foster Noel and that **DW's** father was given the said Title by the owner. That in the process of obtaining Title, her father died. **DW** however conceded that she had not produced any document

or Title showing that Fedrick Foster Noel gave the Title to her father or that he was the owner of Farm 197a/S.

- 3.65. The Witness also conceded that she does not have a Certificate of Title for the property where she is living. The Witness confirmed knowing Jonathan Kamanga whom she claimed was her younger brother. **DW** however, denied knowing that Jonathan Kamanga had a Certificate of Title for a Subdivision of Farm No. 197a/S.
- 3.66. Responding further, **DW** stated that she was aware that the Plaintiff had constructed a wall fence on Subdivision No. 22 of Farm 197a/S and that there was no structure on the said Subdivision before the construction of the wall fence or at the time Omy Lumamba sold it to the Plaintiff.
- 3.67. **DW** denied having approached the Plaintiff's workers during the construction of the wall fence. That she had only approached people who had come earlier on the land prior to the construction of the wall fence.
- 3.68. During further Cross Examination, **DW** confirmed that she had a complaint against the Plaintiff. She however conceded that she had not informed anyone of her complaint. **DW** denied being aware that Omy Lumamba had a Certificate of Title for the land that was sold to the Plaintiff. When referred to the Plaintiff's Supplementary Bundle of Documents on page 2, she confirmed that Omy Lumamba's name was on the Certificate of Title and agreed that according to the said document, Omy Lumamba was the owner of the property.



3.69. The Witness stated that she was not aware that an owner of property could sell the same to whomever they chose.

3.70. In Re- Examination, **DW** stated that the Plaintiff is the one who called her through his worker's phone Mr. Zulu. That Mr. Zulu went to where she was staying and informed her that the Plaintiff wanted a piece of land from her.

3.71. This marked the end of the Defendant's case.

4.0. THE PARTIES FINAL SUBMISSIONS

4.1. The Plaintiff filed his Final Submissions on 13th August, 2025.

4.2. The Defendants filed into Court their Final Submissions on 29th August, 2025.

4.3. The Plaintiff filed into Court the Plaintiff's Reply to the Defendant's Final Submissions on 8th September, 2025.

4.4. The Defendant made an Application to respond to the Plaintiff's Submission as they did not have that opportunity in their submissions because they were only served with the Plaintiff's Final Submissions on 29th August, 2025, when they had already filed into Court their Final Submissions.

4.5. Taking into account, that the Defendants were not at fault for what had transpired above, I granted the Application and the Defendant's filed into Court a Reply to Plaintiff's Final Submission on 30th September, 2025.

4.6. I have duly considered all the Submissions filed into Court by the parties. I will not reproduce them but will refer to them where necessary.

5.0. CONSIDERATION AND DECISION OF THE COURT

5.1. I have considered the Pleadings by both Parties, the evidence before me and the submissions made on behalf of the Parties. I am grateful for the industry of Counsel.

5.2. The gist of the Plaintiff's case is that he bought the land in question from a registered proprietor being **PW3** who possessed a Certificate of Title for the same. It was submitted that a Certificate of Title is conclusive evidence of ownership of land in accordance to **Section 33 of the Land and Deeds Registry Act⁶**. Further that fraud or procedural impropriety was not pleaded or proved to justify the cancellation of the Certificate of Title aforementioned.

5.3. That the Contract of Sale between the Plaintiff and **PW3** met all the elements of a valid contract and that change of ownership was underway. It was also the Plaintiff's claim that the Defendants trespassed on the Plaintiff's land, as a result the Plaintiff is entitled to damages for the same in addition to the Plaintiff's claim in Paragraph 2.5 herein.

5.4. The Defendants, on the other hand, stated that the land under contention is part of a much bigger land owned by Noel Frederick Foster and that **PW3** who sold the land to the Plaintiff had acquired the same through procedural impropriety.

Reliance was placed on the case of **Nawakwi v Lusaka City Council**¹. It was also stated that the Plaintiff was not a bona fide purchaser for value as he did not conduct a thorough search before purchasing the land from **PW3**. It was the Defendant's contention that the land in question was still in the name of Noel Frederick Foster, therefore **PW3** and consequently the Plaintiff did not acquire good Title for the same.

- 5.5. It is also the Defendants contention that the Defendants cannot be considered trespassers as they are daughter and daughter-in-law to Jairus Kamanga who worked for and was permitted to be in occupation of the said land by the owner.
- 5.6. I will first deal with the status of Defendants in relation to the land in question. From the evidence before me and the 1st Defendant's own Witness Statement, it is clear that the Land was not gifted to Mr. Jairus Kamanga by Mr. Noel Fredrick Foster, the owner of the land, but was given to Mr. Jairus Kamanga by Mr. Jeff McLean who was the son-in-law to Mr. Foster.
- 5.7. From the evidence before me, it is clear that at no point did Mr. Foster convey his Title to the land in question to Mr. McLean. It goes without saying therefore that Mr. Mclean had no power to give the said land to the 1st Defendant's father as terminal benefits. Only an owner of land can pass on Title to another. This position was upheld in the case of **Prisca Lubungu v Obby Kapango and Others and Ndola City Council**² where it was stated that

“An owner of land under a Certificate of Title given under the Lands and Deeds Registry Act, has bestowed upon him/her a bundle of rights. Those rights include the right to quiet and exclusive possession, the power of control of use, enjoyment of the land and the unfettered power of disposition of the land.”

From the forgoing it is clear that the Defendants did not acquire any interest in the said land.

- 5.8. According to the Defendants some time in 1976, Mr. Foster decided to go back to Britain under unknown circumstances. I have considered page 18 of the Plaintiff's Bundle of Documents being the Site Plan for the Re-planning of Subdivision F/197a/S and the Defendants' Supplementary Bundle of Documents being a map of Lusaka. I have come to the conclusion that the Land that was owned by Mr. Noel Frederick Foster is the same land that was repossessed by the President of Zambia through the Ministry of Lands and was subdivided into 22 subdivisions. One of the said subdivisions, particularly, Subdivision 22 was offered to **PW3** who acquired a Certificate of Title for the same as evidenced in the Plaintiff's Supplementary Bundle of Documents.
- 5.9. The law as regards this Certificate of Title is clear as set out in **Section 33 of the Lands and Deeds Registry Act⁶** which provides that:

“ 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:

- (a) Except the estate or interest of a proprietor claiming the same land under a current prior Certificate of Title issued under the provisions of Parts III to VII; and***
- (b) Except so far as regards the omission or misdescription of any right of way or other easement created in or existing upon any land; and***

(c) Except so far as regards any portion of land that may be erroneously included in the Certificate of Title, evidencing the title of such Registered Proprietor by wrong description of parcels or of boundaries”.

5.10. I have also considered the case of **Anti-Corruption Commission v Barnett Development Corporation Limited**³, where in reference to **Section 33 of Lands and Deeds Registry Act** it was held that:

“We agree that under Section 33 of the Lands and Deeds Registry Act, a Certificate of Title is conclusive evidence of ownership of land by the holder of the certificate, in this case the respondent. But we also know that under the same Section or Section 34, a certificate of title can be challenged and cancelled for fraud or for reasons of impropriety in its acquisition. So the statement that a certificate of title is conclusive evidence of ownership of land is only true when there is no challenge based on fraud.”

5.10. The Supreme Court case of **Nkongolo Farm Limited v Zambia National Commercial Bank Limited and Others**⁴ and the case **Sankisha Trust International School Limited v Solwezi Municipal Council**⁵ provide that for an allegation of fraud to

succeed, it must be specifically pleaded and proved to the required standard which is slightly higher than the balance of probability.

5.11. It is clear from the pleadings that the Defendants did not plead or prove fraud against the Plaintiff or **PW3** in the manner the Certificate of Title was acquired. The Certificate of Title for the land in question cannot therefore be cancelled on account of fraud.

5.12. The Defendants have stated however, that there was procedural impropriety in the manner that **PW3** acquired the Certificate of Title. Whether or not there was procedural impropriety in the manner in which **PW3** acquired the Certificate of Title, the real question for this Court is how this would have affected the Plaintiff.

5.13. **Section 58 of the Lands and Deeds Registry Act**⁶ provides guidance on the aforementioned question as follows:

“Except in the case of fraud, no person contracting or dealing with or taking or proposing to take a transfer or mortgage from the Registered Proprietor of any estate or interest in land in respect of which a Certificate of Title has been issued shall be required or in any manner concerned to inquire into or ascertain the circumstances in or the consideration for which such Registered Proprietor or any previous Registered Proprietor of the estate or interest in question is or was registered, or to see to the

application of the purchase money or of any part thereof, or shall be affected by notice, direct or constructive, of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding, and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.”

5.14. In light of the law cited above, it is not in dispute that the Plaintiff herein bought land from **PW3** a registered proprietor and executed a valid Contract of Sale. It is clear that for as long as **PW3** possessed a valid Certificate of Title, the Plaintiff herein was not required by law to investigate into the conditions under which the said Title was acquired to have the same transferred to him.

5.15. I therefore find, from the evidence before me that the Plaintiff is a bona fide Purchaser for value of a subdivision of Subdivision No. 22 of Farm 197a/S. Therefore, the Plaintiff's case succeeds and the Defendant's Counterclaim fails.

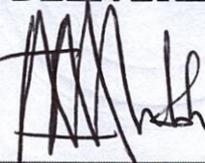
6.0. CONCLUSION

6.1. Having found that the Plaintiff is a Bona fide Purchaser for value:

- i. I declare that Plaintiff is the rightful owner of a Subdivision of Subdivision No. 22 of Farm

- 197a/S and Title should accordingly be processed for the Plaintiff in respect of the same.
- ii. I award Damages for trespass to the Plaintiff as prayed to be assessed by the Deputy Registrar.
 - iii. Interest on the amounts found due to be paid 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.
 - iv. Costs are for the Plaintiff to be agreed or taxed in default of agreement.

**SIGNED, SEALED AND DELIVERED AT LUSAKA THIS 25TH DAY
OF NOVEMBER, 2025.**



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