

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

2023/HP/560

BETWEEN:

LOVENESS MAAMBO MAYAKA**PLAINTIFF**

AND

**RODGER LUFUNDA
LINDIWE LUFUNDA****1st DEFENDANT
2nd DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 14th
DAY OF NOVEMBER, 2025**

For the Plaintiff : Mrs P. Sibanda, Messrs SCPM Legal Practitioners
For the 1st Defendant : in person
For the 2nd Defendant : No appearance

J U D G M E N T

CASES REFERRED TO:

1. *Holmes Limited v Buildwell Construction Company Limited* 1973 ZR 97
2. *Jarvis v Swan Tours* 1973 2 QB 233
3. *Birkett v James* 1978 AC 297
4. *Attorney General v Marcus Achiume* 1983 ZR 1
5. *Development Bank of Zambia and Livingstone Saw Mills Limited v Jet Cheer Development (Z) Limited* SCZ No 33 of 2000
6. *National Drug Company Limited and Zambia Privatisation Agency v Mary Katongo* SCZ Appeal No 79 of 2001
7. *Wesley Mulungushi vs Catherine Bwale Mizi Chomba* 2004 ZR 96

OTHER WORKS REFERRED TO:

1. *Chitty on Contracts: General Principles, 13th Edition*
2. *Evan McKendrick's Contract Law*
3. *Halsbury's Laws of England, 4th Edition Re-issue Vol 9*

1. INTRODUCTION

1.1 Loveness Mayaka, the Plaintiff herein, with a view to enforcing a contract for the sale of land, commenced this action on 31st March 2023 by Writ of Summons which is accompanied by a statement of claim and the other requisite documents claiming:

- i. Specific performance of the contract of sale which was entered into on 11th February, 2020 for the sale and purchase of S/D 337 of S/D A of Farm No 288A Makeni Lusaka Province;*
- ii. Damages for mental distress and anguish;*
- iii. Payment of a refund by Rodger Lufunda and Lindiwe Lufunda of the sum of K13, 324.00 being money which was paid by Loveness Maambo Mayaka on behalf of Rodger Lufunda and Lindiwe Lufunda;*
- iv. Interest;*
- v. Any other relief that the Court may deem fit;*
- vi. Costs.*

2. STATEMENT OF CLAIM

2.1 In setting out the basis for the reliefs that she claims, Loveness Maambo Mayaka stated that on 11th February, 2020, herself together with Ngoza Mayaka entered into a contract with Rodger Lufunda and Lindiwe Lufunda for the sale of the property known as Subdivision S/D 337 of S/D A of Farm No 288A Makeni in the Lusaka Province of Zambia at a price of K320, 000.00.

- 2.2 Her averment was that she paid K160, 000.00 out of the purchase price upon signing the contract, and she paid the total sum of the purchase price of K320, 000.00 on 2nd April, 2020.
- 2.3 It was also stated that Rodger Lufunda and Lindiwe Lufunda paid the sum of K18, 000.00 to a surveyor who was recommended by Loveness Maambo Mayaka. However, Rodger Lufunda was not happy with the work that the said Surveyor did, and he demanded that Loveness Maambo Mayaka refunds the money.
- 2.4 Thus, Rodger Lufunda engaged another surveyor who charged K7, 500.00 for the services and Loveness Maambo Mayaka paid for the same.
- 2.5 Loveness Maambo Mayako also averred that on 22nd December, 2020, she paid the sum of K2, 000.00 for the seal to the City Planner at the Chilanga Town Council and another K2, 400.00 for the diagrams at the Chilanga Town Council.
- 2.6 She contended that Rodger Lufunda and Lindiwe Lufunda did not have the land surveyed despite receiving the survey fees and the fees that were paid to the Chilanga Town Council. Loveness Maambo Mayaka added that Rodger Lufunda and Lindiwe Lufunda failed to submit the diagrams to the Lusaka Planning Authority.
- 2.7 It was stated that the contract of sale provided that the vendor would pay the fees for subdivision, property transfer tax and the registration fees.

- 2.8 On the funds that Loveness Maambo Mayaka paid, she stated that these were K5, 000.00 to the Lusaka Planning Authority in October 2021 and a further K834.00 to the Ministry of Lands for planning permission on 3rd March, 2022, stating that she made these payments on behalf of Rodger Lufunda and Lindiwe Lufunda in an attempt to expedite the process and thereby complete it.
- 2.9 However, Rodger Lufunda and Lindiwe Lufunda had neglected and refused to subdivide the land despite the fact that Loveness Maambo Mayaka had met the costs for the same in order to expedite the process.
- 2.10 Thus, Loveness Maambo Mayaka had suffered loss and damage due to the failure by Rodger Lufunda and Lindiwe Lufunda to complete the contract of sale.

3. DEFENCE

- 3.1 In the defence which was filed on 2nd May, 2023, agreement was made as regards the entering into the contract of sale and that Loveness Maaambo Mayaka paid the purchase price for the property as alleged.
- 3.2 The assertions relating to how Loveness Maambo Mayaka engaged a surveyor after Rodger Lufunda and Lindiwe Lufunda paid K18, 000.00 and that Rodger Lufunda was unhappy with the work that the surveyor did were admitted.
- 3.3 No admission was made to the contention that Rodger Lufunda engaged another surveyor whom Loveness Maambo Mayaka paid the sum of K7, 500.00 for, or the sums of K2, 000.00 and K2, 400.00 which Loveness Maambo Mayaka

alleged that she paid to the City Planner at Chilanga Town Council and for the diagrams.

- 3.4 It was also not admitted that Rodger Lufunda and Lindiwe Lufunda did not have the land surveyed despite receiving the survey fees and the fees to be paid at Chilanga Town Council from Loveness Maambo Mayaka, and that they failed to submit the diagrams to the Lusaka Planning Authority.
- 3.5 It was agreed that the contract of sale provided that Rodger Lufunda and Lindiwe Lufunda were to pay the fees for subdivision, property transfer tax and the registration fees.
- 3.6 Further agreement was made that Loveness Maambo Mayaka paid the sum of K5, 000.00 to the Lusaka Planning Authority in October 2021, and a further K834.00 to the Ministry of Lands for planning permission on 3rd March, 2022 on behalf of Rodger Lufunda and Lindiwe Lufunda in order to expedite the process and complete the transaction.
- 3.7 The defence was that S/D 337 was a five (5) acre plot which Rodger Lufunda and Lindiwe Lufunda divided into five (5) plots, and which they offered to five (5) purchasers who included Loveness Maambo Mayaka.
- 3.8 It was stated that the contract of sale that Rodger Lufunda and Lindiwe Lufunda executed with Loveness Maambo Mayaka on 11th February, 2020 was for the sale of 5600 square metres of land on subdivision S/D 337 of Farm 288/a Makeni at K320, 000.00.
- 3.9 Rodger Lufunda and Lindiwe Lufunda contended that there were several developments on the property which included a

caretaker's quarters and wire fence which were valued at K320, 000.00 which Loveness Maambo Mayaka did not pay for.

- 3.10 The further averment was also that Rodger Lufunda and Lindiwe Lufunda delivered possession of the property to Loveness Maambo Mayaka after she paid the purchase price.
- 3.11 Further in defence, it was stated that Rodger Lufunda and Lindiwe Lufunda had proposed that the plots at S/D 337 be surveyed by the same surveyor but Loveness Maambo Mayaka proposed to use her own surveyor who demanded payment of K22, 500.00.
- 3.12 It was alleged that the surveyor that Loveness Maambo Mayaka engaged did substandard work which Rodger Lufunda and Lindiwe Lufunda rejected. Thus, they hired a surveyor at a fee of K7, 500.00.
- 3.13 Rodger Lufunda and Lindiwe Lufunda stated that once the survey was completed, the surveyor charged each of the purchasers equally and the survey diagrams were submitted to Chilanga Town Council on 22nd December, 2020 and Loveness Maambo Mayaka paid the fees of K2, 000.00 and K2, 400.00 respectively.
- 3.14 Thus, it was denied that Rodger Lufunda and Lindiwe Lufunda did not have the land surveyed.
- 3.15 Further averment was made, that the documents were submitted to the Lusaka Province Planning Authority for approval of the subdivision, which was granted on 20th December, 2021.

- 3.16 Then from there, the documents were taken to the Ministry of Lands for numbering of the properties on 13th December, 2022. However, the numbering had not been done and as per the information that was given on 19th April, 2023, the file was missing.
- 3.17 It was accordingly denied that Rodger Lufunda and Lindiwe Lufunda had neglected and or refused to subdivide the property as the subdivision was done sometime back and all that awaited was the numbering of the properties by the Ministry of Lands.
- 3.18 The claim for a refund as alleged by Loveness Maambo Mayaka was denied, stating that the breakdown of how the K13,324.00 which was claimed had not been given.
- 3.19 It was also stated that Loveness Maambo Mayaka could not claim a refund and interest as the same was not agreed upon in the contract of sale, and Loveness Maambo Mayaka made payments without consulting or agreeing with Rodger Lufunda and Lindiwe Lufunda.
- 3.20 It was denied that Loveness Maambo Mayaka had suffered loss and damage.

4. EVIDENCE LED AT TRIAL

- 4.1 At trial, Loveness Maambo Mayaka testified and she called one witness, while Rodger Lufunda testified on behalf of himself and Lindiwe Lufunda.

PW1-LOVENESS MAAMBO MAYAKA

- 4.2 Loveness Maambo Mayaka produced her witness statement as her testimony. Her evidence in that witness statement

mirrored the averments as made in the statement of claim, save to add that Loveness Maambo Mayake identified pages 1-3 of her bundle of documents as the contract of sale that was signed.

- 4.3 She further stated that at page 3 of the said bundle of documents, was the acknowledgement of receipt of the funds that she paid to purchase the property.
- 4.4 It was further Loveness Maambo Mayaka's testimony that Rodger Lufunda and Lindiwe Lufunda gave her a copy of the proposed replanning of S/D337 of S/D A of Farm 288A and the proposed S/D on the S/D 337 of S/D A of Farm 228A which were at pages 4-5 of her bundle of documents.
- 4.5 Loveness Maambo Mayaka reiterated that Rodger Lufunda and Lindiwe Lufunda paid the sum of K18, 000.00 to the surveyor that Loveness Maambo Mayaka recommended, but Rodger Lufunda was not satisfied with the said surveyor and he demanded that Loveness Maambo Mayaka refunds the K18, 000.00.
- 4.6 Her testimony was that she refunded the K18, 000.00 as evidenced by the acknowledgment of receipt which was dated 10th March, 2020, and was at page 9 of Loveness Maambo Mayaka's bundle of documents.
- 4.7 Still in her testimony, Loveness Maambo Mayaka stated that Rodger Lufunda engaged another surveyor who charged K7, 500.00 and Loveness Mayaka paid the said fees.
- 4.8 It was stated that special condition 8 of the contract of sale provided that Rodger Lufunda and Lindiwe Lufunda were

responsible for the payment of the registration fees and for subdivision of the property.

- 4.9 Loveness Maambo Mayaka added that at pages 20 and 23 of her bundle of documents, were the receipts for the payments which she made to the Lusaka Planning Authority in the sum of K5, 000.00 and K834.00 to the Ministry of Lands.
- 4.10 She further identified page 15 of her bundle of documents as the Notification of Approval for Planning Permission which was dated 20th December, 2021.
- 4.11 Loveness Maambo Mayaka explained that the receipt for the payment of K5, 000.00 was in the names of Zamdell Farms as it was the name that was on the mother title for the property, and from whom Rodger Lufunda and Lindiwe Lufunda had bought the property prior to a portion of it being offered to Loveness Maambo Mayaka and Ngoza Mayaka.
- 4.12 In her further testimony, Loveness Maambo Mayaka stated that her legal Counsel attempted to engage AMG Global who acted in the sale transaction between Rodger Lufunda and Lindiwe Lufunda and Zamdell Farms, and she was informed by AMG Global that Rodger Lufunda and Lindiwe Lufunda paid the purchase price in full for the property.
- 4.13 However, Rodger Lufunda and Lindiwe Lufunda had opted to engage a surveyor of their choice and AMG Global was waiting for Rodger Lufunda and Lindiwe Lufunda to finalise the subdivisions as evidenced by the letter which was dated

3rd August, 2021, and was at page 22 of Loveness Maambo Mayaka's bundle of documents.

4.14 The payment of K18, 000.00 to Rodger Lufunda was testified as being at page 9 of Loveness Maambo Mayaka's bundle of documents. Loveness Maambo Mayaka added that she found it unfair for Rodger Lufunda and Lindiwe Lufunda to reject the work that the surveyor that she recommended did. Her evidence was that it was painful for her to repay the K18, 000.00, and that Rodger Lufunda told her that he would not submit the documents to the Lusaka Planning Authority unless she paid the K18, 000.00.

4.15 Pages 16-17 of Loveness Maambo Mayaka's bundle of documents was identified as the letter that her lawyers wrote to AGM Global on 15th September, 2022, informing them of the requirements at the Ministry of Lands and Natural Resources, including the need for written authorization for Rodger Lufunda to subdivide the land and clearance of the ground rent in the sum of K31, 960.00.

4.16 It was testified that page 24 of Loveness Maambo Mayaka's bundle of documents was the letter that her lawyers wrote to AGM Global following up.

**CROSS EXAMINATION OF LOVENESS MAAMBO MAYAKA
BY RODGER LUFUNDA**

4.17 In cross examination, Loveness Maambo Mayaka testified that there was no time limit in the contract of sale. She also stated that Clause 8 of the special conditions of sale provided

that Rodger Lufunda as seller, was to pay the legal fees and the charges.

- 4.18 Loveness Maambo Mayaka maintained that she had told the truth when she had stated that subdivision of the land had been neglected as Rodger Lufunda had not finalized the documents despite having submitted the documents for subdivision of the land at the Ministry of Lands. She added that the Consent to Assign had not been filed at the Ministry of Lands.
- 4.19 On being referred to the page marked as 'RL9' of Rodger Lufunda and Lindiwe Lufunda's bundle of documents, Loveness Maambo Mayaka testified that the said letter which was written by Clement Mugala to the Commissioner of Lands was dated 22nd November 2022, and that Rodger Lufunda's name did not appear on that document, but Premier Realty Consultants was stated as having been authorized to handle the numbering of the property.
- 4.20 As for the letter marked 'RL8' in the said bundle of documents, Loveness Maambo Mayaka testified that it was written to Rodger Lufunda by Clement Mugala stating that an approved surveyor would be engaged.
- 4.21 Her evidence, when she was referred to page 16 of her bundle of documents, was that Zamdell Farms Limited appeared on that statement, and was owing K31, 964.00 in rates. Loveness Maambo Mayaka denied that Rodger Lufunda facilitated the payment of the rates. She stated that she dealt

with Rodger Lufunda, and not Zamdell Farms, and he was supposed to facilitate.

- 4.22 Loveness Maambo Mayaka testified that she had been unable to complete the construction as there was uncertainty, and she was Fifty-Six (56) years at the time and she would retire in the next four (4) years.
- 4.23 It was her testimony when she was referred to the Ministry of Lands follow up slip which was at page 24 of her bundle of documents, that the consent to assign, the mother title for the property, and minutes from the Council were to be filed. However, as she did not have them, the process had stalled and she had asked Rodger Lufunda to provide them.
- 4.24 Whilst agreeing that the document stated that Loveness Maambo Mayaka paid K13, 000.00 she told the Court that this was an error, as she only paid K7, 500.00 as survey fees, K2, 000.00 for the City Planners seal, K2, 400.00 for the diagrams at Chilanga City Council, K5, 000.00 to the Lusaka Planning Authority and K834.00 at the Ministry of Lands as Rodger Lufunda said that he did not have the money to pay.
- 4.25 Loveness Maambo Mayaka testified that the amount came to K17, 334.00 and she maintained that Rodger Lufunda was supposed to pay the survey fees, and that she had reminded him to repay what she had paid.

RE-EXAMINATION OF LOVENESS MAAMBO MAYAKA

- 4.26 Loveness Maambo Mayaka in re-examination, clarified that page 22 of her bundle of documents was written to the lawyers SCPM Legal Practitioners on 3rd August, 2021

advising that Rodger Lufunda and Lindiwe Lufunda had paid for the property.

4.27 She further clarified that page 'RL5' in Rodger Lufunda and Lindiwe Lufunda's bundle of documents was the letter that Rodger Lufunda wrote to SCPM Legal Practitioners stating that he did not have money to pay to the Lusaka City Council. Thus, Loveness Maambo Mayaka paid the money, despite the fact that Rodger Lufunda and Lindiwe Lufunda were supposed to pay the fees.

4.28 It was also clarified that while there was no time limit in the contract, Loveness Maambo Mayaka told Rodger Lufunda that she needed to have the transaction completed.

PW2-MAMBULA MAYAKA

4.29 The husband to Loveness Maambo Mayaka, Mambula Mayaka was PW2. He also produced his witness statement as his testimony.

4.30 In that witness statement, he testified that Loveness Maambo Mayaka is his wife, and that Ngoza Mayaka is their daughter. Mambula Mayaka confirmed that the contract of sale for the property proposed S/D 337 of S/D A Farm 288A Makeni was entered into at a sum of K320, 000.00.

4.31 It was further his evidence, that Loveness Maambo Mayaka informed him that she made payment for the purchase of the property in full as evidenced by the acknowledgement of receipt which was at page 3 of Loveness Maambo Mayaka's bundle of documents.

4.32 In still testifying, Mambula Mayaka testified that Loveness Maambo Mayaka informed him about the number of expenses that she met in order to have transaction completed, which included payment of K18, 000.00 as fees to the first surveyor, K7, 500.00 for the second surveyor, K2, 000.00 for the seal, K2, 400.00 for the diagrams at Chilanga City Council, K5, 000.00 to the Lusaka Planning Authority and K834.00 to the Ministry of Lands and Natural Resources.

4.33 He further testified that in accordance with the contract of sale that was entered into, Rodger Lufunda and Lindiwe Lufunda were responsible for the payment of the registration fees and the fees for subdivision of the property.

**CROSS EXAMINATION OF MAMBULA MAYAKA BY
RODGER LUFUNDA**

4.34 It was his evidence in cross examination, on being referred to paragraph 5 of his witness statement, that Loveness Maambo Mayaka informed him that she had paid the monies, and not Rodger Lufunda. He testified that he had told Rodger Lufunda to pay the survey fees.

4.35 It was also testified that Loveness Maambo Mayaka suffered distress as she ran around to see to it that Rodger Lufunda completed the process adding that she wanted to get a loan to ensure that the process was completed.

RE-EXAMINATION OF MAMBULA MAYAKA

4.36 There was no re-examination.

4.37 That marked the close of the case for Loveness Maambo Mayaka.

DW1-RODGER LUFUNDA

4.38 In his defence, Rodger Lufunda also produced his witness statement as his evidence. In that statement, he agreed that himself and Lindiwe Lufunda entered into a contract of sale with Loveness Maambo Mayaka for a piece of the property known as Sub 337 of Farm A of Farm No 288A Makeni, stating that it was after the property was subdivided into five (5) Lots.

4.39 As to when the contract of sale, which was at page 'RL1' of Rodger Lufunda and Lindiwe Lufunda's bundle of documents with Loveness Maambo Mayaka was executed, Rodger Lufunda testified that this was on 11th February, 2020, and that the purchase price was K320, 000.00.

4.40 His evidence was that the purchase price was paid in full in two instalments, with K160, 000.00 being paid on 11th February, 2020 and another K160, 000.00 being paid on 2nd April, 2020. Rodger Lufunda added that the acknowledgment was in the contract of sale.

4.41 It was further his testimony, that the purchase price did not include the cost of the caretaker's quarters which was made of roofing sheets and a wire fence which were both valued at K20, 000.00.

- 4.42 He stated that himself and Lindiwe Lufunda wanted to remove them but Loveness Maambo Mayaka informed them to leave them as she would pay for them later.
- 4.43 It was also Rodger Lufunda's evidence that at the time the contract of sale was executed, the survey diagrams for sub division 337 had not been done. That was how it was agreed that the same surveyor that AMG Global Consultants had used to survey farm 288A would be used.
- 4.44 He told the Court that the Surveyor was contacted and he demanded payment of K10, 000.00 from each of the buyers. However, that was declined on the basis that it was too expensive.
- 4.45 Rodger Lufunda's evidence was that, that was how Loveness Maambo Mayaka proposed, and it was agreed that they use the surveyor that she had been using at a fee of K4, 500.00 per plot, which came to K22, 500.00 for the whole property.
- 4.46 Thus, Rodger Lufunda and Lindiwe Lufunda paid K18, 000.00 on behalf of the other buyers to Felix Mulonda whom Loveness Maambo Mayaka recommended on 1st March, 2020.
- 4.47 It was also Rodger Lufunda's testimony that the survey/site diagrams that were presented by the surveyor that Loveness Mayaka recommended were poorly done, as they did not show the dimensions of the plots. Thus, Rodger Lufunda and Lindiwe Lufunda rejected them and demanded a refund as seen on the document 'RL6' which was in his bundle of documents.

- 4.48 Rodger Lufunda testified that he was refunded the K18, 000.00 on 10th March, 2020, as shown at page 'RL9' of his bundle of documents.
- 4.49 His evidence was further that himself and Lindiwe Lufunda found a qualified surveyor, who as shown at page 'RL7' of his and Lindiwe Lufunda's bundle of documents demanded payment of K7, 500.00.
- 4.50 However, when the documents were ready, Loveness Maambo Mayaka in haste, made unilateral decisions and she proceeded to make payment for sealing and subdivision fees of K2000.00 and K2, 400.00 on 22nd December, 2020 at the Chilanga Town Council, which were at page 'RL11' as seen from Rodger Lufunda and Lindiwe Lufunda's bundle of documents, except for the receipt for K2, 000.00.
- 4.51 Acknowledgement was made, that Loveness Maambo Mayaka paid K5, 000.00 and K834.00 on 20th October, 2021 and 3rd March, 2022 to the Lusaka Planning Authority and the Ministry of Lands for approval of the subdivision and numbering, which receipts were at pages 'RL10' and 'RL12' of Rodger Lufunda's bundle of documents.
- 4.52 Rodger Lufunda denied that himself and Lindiwe Lufunda had ever met Loveness Maambo Mayaka to discuss, agree or make any follow ups on how the payments that Loveness Maambo Mayaka was making had been made without consultation, and how the funds that were owed to Rodger Lufunda and Lindiwe Lufunda were going to be paid.

- 4.53 His testimony was that himself and Lindiwe Lufunda assumed that Loveness Maambo Mayaka would offset the expenses that she was incurring against the amount that she owed Rodger Lufunda and Lindiwe Lufunda.
- 4.54 It was stated that the survey/site diagrams were later submitted to the Lusaka Planning Authority on 19th October, 2021 for approval of the subdivision, which was granted on 20th December, 2021, as evidenced at pages 12 and 15 of Loveness Maambo Mayaka's bundle of documents.
- 4.55 Then from there, those documents were submitted to the Ministry of Lands for numbering of the five (5) Lots on 13th December, 2022, with the letter which was at pages 'RL9' of Rodger Lufunda and Lindiwe Lufunda's bundle of documents, and was dated 22nd November, 2022, and which was authored by AMG Global to the Commissioner of Lands being referred to.
- 4.56 Rodger Lufunda attributed the delay in completion of the transaction to the Ministry of Lands and Natural Resources stating that the documents were submitted there on 13th December, 2022, but to date the numbering of the properties had not been done. The letter which was at page 22 of Loveness Maambo Mayaka's bundle of documents and at page 'RL8' of Rodger Lufunda and Lindiwe Lufunda's bundle of documents was referred to in that regard.
- 4.57 It was Rodger Lufunda's evidence that the Ministry of Lands had informed him that the delay in numbering the properties had been caused by the file missing and AMG Global

Consultants (Premier Reality Consultants) and Rodger Lufunda and Lindiwe Lufunda had been making follow ups to date, but little progress had been made.

4.58 He added that Loveness Maambo Mayaka had confirmed the delay in her witness statement.

4.59 It was testified that subdivision of 337 was done before Loveness Maambo Mayaka commenced this matter and the documents were submitted to the Ministry of Lands for numbering on 13th December, 2022.

4.60 Rodger Lufunda further testified that specific performance of the contract of sale relating to the issuance of title deed to Loveness Maambo Mayaka could only be done by the Ministry of Lands and not Rodger Lufunda and Lindiwe Lufunda as contended by Loveness Maambo Mayaka.

4.61 His prayer was that claim for the payment of damages should be dismissed as Loveness Maambo Mayaka had not suffered any loss or damage as she had been in possession of the land and she had made some developments on it, without being hindered by the absence of the title deed which was still in the process of being prepared.

4.62 The prayer was also that the sum of K10, 234.00 and not K13, 234.00 be offset from the sum of K20, 000.00 that Loveness Maambo Mayaka owed Rodger Lufunda and Lindiwe Lufunda.

**CROSS EXAMINATION OF RODGER LUFUNDA BY
COUNSEL FOR LOVENESS MAAMBO MAYAKA**

- 4.63 When cross examined, Rodger Lufunda's testimony was that the property had been subdivided into five (5) plots, as shown at page 'RL7' of his bundle of documents.
- 4.64 His evidence was that the said document 'RL7', read that it was proposed cancellation of sub 337 and replanning of the remaining extent of sub A of Farm 288A for Zamdell Farms.
- 4.65 Whilst testifying that the approval was subject to the conditions as set out in the approval dated 20th December, 2021, Rodger Lufunda's evidence was that he did not know the conditions of the approval.
- 4.66 Rodger Lufunda testified that he only paid a deposit to Damdell Farms, and that he was to pay the amount in full within twelve months. However, he did not finish paying.
- 4.67 It was his testimony that he sold Loveness Maambo Mayaka the amount of 5600 square metres of land, which was slightly above one acre, and that the one acre for Loveness Maambo Mayaka was not subdivided. He explained that the site plan was for five (5) acres.
- 4.68 Rodger Lufunda testified that he was not aware of the subdivision that was sold to Loveness Maambo Mayaka.
- 4.69 It was however his position that the Lusaka Planning Authority approved the drawing which was submitted. Rodger Lufunda clarified that he did not say that five (5) acres was approved, but that he was supposed to pay for five (5) acres. However, he did not pay for the five (5) cares so

Zamdell Farms stated that he should sell the properties so that he did not lose out.

- 4.70 It was further Rodger Lufunda's evidence that the shaded area 337 was what was subdivided.
- 4.71 He testified that on approval being given, AMG Global wrote the letter which as at page 'RL9' of his and Lindiwe Lufunda's bundle of documents to the Commissioner of Lands requesting that the property be numbered. However, the numbering had not been done.
- 4.72 Rodger Lufunda's testimony was that he was informed by the Ministry of Lands that the numbering of the property could not be done as there was money that was owed there.
- 4.73 It was his evidence when he was referred to the contract which was at pages 1-3 of Loveness Maambo Mayaka's bundle of documents, that it stated that Rodger Lufunda had to pay for the subdivision as Clause 8 of the special conditions of sale stated that the vendor had to pay the registration fees, while Clause 7 provided that the vendor had to pay the rates to the Government.
- 4.74 He told the Court that the letter 'RL8' at his and Lindiwe Lufunda's bundle of documents was written by AMG Global as the title was with Zamdell, and that the said letter was in relation to the transaction that he did with Zamdell Farms and not with Loveness Maambo Mayaka. Rodger Lufunda also testified that Loveness Maambo Mayaka was not part of the dealings with Zamdell Farms.

- 4.75 Still in cross examination, Rodger Lufunda testified that he was not informed that Loveness Maambo Mayaka could not push the subdivision process as she needed either the Consent to Assign by Rodger Lufunda or Zamdell Farms as she was not on record.
- 4.76 He agreed that he was informed that Loveness Maambo Mayaka went to the Ministry of Lands but she did not make any progress there.
- 4.77 In further cross examination, Rodger Lufunda testified that the Ministry of Lands was supposed to number the property after AMG Global submitted the documents, stating that AMG Global was appointed by Zamdell Farms to do the process.
- 4.78 On being referred to the statement which was at pages 16-17 of Loveness Maambo Mayaka's bundle of documents, Rodger Lufunda's testimony was that AMG Global stated that the K31, 964.00 was an error. He however testified that he was responsible for taking care of that bill so that the subdivision could be done to Loveness Maambo Mayaka. It was also his evidence, that he contacted AMG Global and informed them that the subdivision could not be done as there was that outstanding bill.
- 4.79 Rodger Lufunda still in cross examination, testified that AMG Global informed him that they went there and paid the bill so the bill was a computer error. He however went on to state that while AMG Global had taken the position that they

had cleared the bill, the Ministry of Lands had insisted that it was still due, and that the amount was being reconciled.

- 4.80 As evidence of that position, Rodger Lufunda testified that there was a recording to that effect even though it was not before Court. He could not confirm whether the bill for K31, 964.00 was still on record.
- 4.81 With respect to the letter which was at page 22 of Loveness Maambo Mayaka's bundle of documents, Rodger Lufunda's testimony was that it was dated 3rd August, 2021 and it was addressed to the lawyers SCPM Legal Practitioners. He stated that said letter stated that himself and Lindiwe Lufunda paid in full, but AMG Global had not received a response from Rodger Lufunda and Lindiwe Lufunda.
- 4.82 He explained this as being because himself and Lindiwe Lufunda were not ready, and hence they had not responded. Rodger Lufunda however denied that he had no money to complete the subdivision, testifying that it was just an assumption. He added that payments had been made to the Ministry of Lands.
- 4.83 He agreed, when he was referred to the letter, which was at page 'RL5' of his and Lindiwe Lufunda's bundle of documents, that he stated in that letter which he wrote to SCPM Legal Practitioners on 5th October, 2021, that he had financial challenges and that he would get financial assistance from a named bank.
- 4.84 His position was that he could not disclose whether the said bank gave him financial assistance. Rodger Lufunda

maintained that the delay was caused by the Ministry of Lands, as it had not yet numbered the properties so that AMG Global could subdivide.

- 4.85 Rodger Lufunda further in cross examination, testified that Loveness Maambo Mayaka paid the K5, 000.00 to the Lusaka City Council without agreeing with him, stating that this was done in a hurry.
- 4.86 He agreed that Loveness Maambo Mayaka also paid the sum of K18, 000.00 as survey fees to her surveyor, but that the diagrams that the said surveyor did had no dimensions. Therefore, as they were poor quality, Rodger Lufunda asked for a refund, and he was paid.
- 4.87 It was his evidence that thereafter, he engaged a surveyor at K7, 500.00. Rodger Lufunda told the Court that he was refunded K10, 000.00, as it was deducted from what he was to be paid.
- 4.88 In continued cross examination, Rodger Lufunda's evidence was that Loveness Maambo Mayaka tried to move the process forward, and like all the other purchasers, she was to contribute K7, 500.00 as survey fees. Rodger Lufunda denied that he was to pay the survey fees, and his testimony was that he did not sit down with Loveness Maambo Mayaka to agree.
- 4.89 Whilst denying that he did not know a driver from SCPM Legal Practitioners called Katongo, Rodger Lufunda stated that Katongo had phoned him and he was there when the payments were made.

4.90 Nevertheless, he testified that he was not consulted as Loveness Maambo Mayaka owed him for the caretaker's house so she was paying to offset that amount. He testified that the land was sold to Loveness Maambo Mayaka at K320, 000.00, which amount she paid in instalments, and that the caretaker's quarters and the wire fence were not included in that amount.

4.91 Rodger Lufunda's evidence was that he had no proof in support of that assertion.

RE-EXAMINATION OF RODGER LUFUNDA

4.92 In re-examination, Rodger Lufunda clarified that he did not owe the Ministry of Lands any money, but rather that Zamdell Farms did. He also stated that Loveness Maambo Mayaka could not ask for any damages as she was not stressed and none of the other purchasers were.

4.93 It was further his clarification, that the subdivision was done when the property was sold and that Rodger Lufunda had no power to speed up the process. Therefore, Loveness Maambo Mayaka could not claim specific performance.

4.94 He also stated that he handed over the land to Loveness Maambo Mayaka, and that AMG Global had confirmed that they would make payment.

4.95 Rodger Lufunda further clarified that the correct amount that Loveness Maambo Mayaka should claim is K10, 234.00 and not K13, 234.00.

4.96 That the marked the close of the case for Rodger Lufunda and Lindiwe Lufunda.

5. DECISION OF THIS COURT

5.1 I have considered the evidence in this matter as well as the submissions.

FACTS NOT IN DISPUTE

5.2 It is common cause that on 11th February, 2020, Rodger Lufunda and Lindiwe Lufunda entered into a written contract of sale with Loveness Maambo Mayaka and Ngoza Mayaka for the property known as Subdivision 337 of Subdivision A of Farm No 288A Makeni which land measured 5600 square metres at K320, 000.00.

5.3 It is not in contention, that Loveness Maambo Mayaka paid the purchase price of K320, 000.00 in two instalments and an acknowledge of receipt of the said funds was issued on 2nd April, 2020 by Rodger Lufunda.

5.4 The facts which are further common cause, are that Loveness Maambo Mayaka paid certain sums of money to enable subdivision of the property to be completed, and also that the sale could be completed.

FACTS IN DISPUTE

5.5 It is in contention whether Loveness Maambo Mayaka is entitled to the reliefs sought?

ANALYSIS

5.6 The first claim is for specific performance of the contract of sale which was entered into on 11th February, 2020.

5.7 The evidence on record shows that there is no dispute that the contract of sale was into entered into as pleaded by Loveness Maambo Mayaka.

- 5.8 What is in contention, is that Rodger Lufunda and Lindiwe Lufunda have not completed the process of the purchase, as the subdivision which Loveness Maambo Mayaka purchased has not been numbered as a subdivision from the mother title.
- 5.9 In the submissions, Loveness Maambo Mayaka stated that the Ministry of Lands issued a statement to the effect that K31, 964.00 must be paid.
- 5.10 Reliance was placed on the case of ***Development Bank of Zambia and Livingstone Saw Mills Limited v Jet Cheer Development (Z) Limited*** ⁽⁵⁾ stating that it held that:
“Specific performance is an equitable relief and the maxim that applies in a case of this nature is “He who comes to equity must come with clean hands.”
- 5.11 Based on the above, the submission was that Loveness Maambo Mayaka had come to Court with clean hands as she had paid the purchase price in full, and she had made payments with a view to move the transaction forward so that it could be concluded.
- 5.12 However, the transaction could not be concluded as the evidence showed that the property was still registered in the names of the previous owner, Zamdell, who required to give written authorization through Rodger Lufunda and Lindiwe Lufunda.
- 5.13 It was submitted that however, the contract of sale that was executed, required no other action to be taken by Loveness

Maambo Mayaka that she had not done, to complete the transaction, but she had gone further than required to complete the transaction.

- 5.14 Further submission was made, that the holding in the case of **Wesley Mulungushi vs Catherine Bwale Mizi Chomba** ⁽⁷⁾ was that:

“Where real property is the subject of sale, there is need for the sale to be evidenced by a contract of sale....

The court will decree specific performance only if it will do more perfect and complete justice than the award of damages.”

- 5.15 It was also submitted that the land in issue is a very valuable commodity, whose loss could not be atoned in damages.
- 5.16 Further reliance was placed on the **Birkett v James** ⁽³⁾ stating that the Court in that matter, defined inordinate delay as a period of time which is longer than the time usually regarded as acceptable.
- 5.17 In still submitting, it was stated that Rodger Lufunda in cross examination of Loveness Maambo Mayaka, asked her if the contract of sale had a time limit, and she had responded that it did not.
- 5.18 The submission was that even if the contract of sale did not have a time limit, the parties were to complete it within reasonable time. However, there had been inordinate delay on the part of Rodger Lufunda and Lindiwe Lufunda, who

had not completed the transaction with Zamdell which was unacceptable.

5.19 Submitting that this Court should take judicial notice of the fact that the Ministry of Lands can only take action when the relevant statutory fees are paid, and that Rodger Lufunda and Lindiwe Lufunda had a duty to act, and to take all the necessary actions with the said Ministry of Lands in order that the subdivision of the property was numbered by making all the necessary payments, in line with clauses 7 and 8 of the contract of sale.

5.20 In response, Rodger Lufunda submitted that ***Chitty on Contracts*** provides the following on contractual agreements:

“Where an agreement of the parties has been reduced into writing and the document containing the agreement has been signed by one or both of them, it is well established that the parties signing will be bound by the terms of the written agreement whether or not he has read them or whether or he is ignorant of their precise legal meaning.”

5.21 Also relied on, was the case of ***National Drug Company Limited and Zambia Privatisation Agency v Mary Katongo*** ⁽⁶⁾ which held that:

“it is trite that once parties have voluntarily and freely entered into a legal contract, they become bound to abide by the terms of the contract, and that the role of the Court is to give efficacy to the

contract when one party has breached it by respecting, upholding and enforcing the contract”.

5.22 Further authority was sought from ***Evan McKendrick’s Contract Law*** at page 3 which states that:

“The law of contract is perceived as a set of power conferring rules which enable individuals to enter into agreements of their own choice on their own terms. Freedom of contract and sanctity of contract are the dominant ideologies. Parties should be free as possible to make agreements on their own terms without interference of the Courts or parliament and their agreements should be respected, upheld and enforced by the Courts.”

5.23 It was submitted that Clause 8 of the special conditions of sale, provided that the vendor would pay the registration fees and fees for subdivision of the property.

5.24 However, Loveness Maambo Mayaka unilaterally decided to engage a surveyor whom Rodger Lufunda did not approve, and he took the necessary steps to take the documents that were required for numbering of the properties to the Ministry of Lands.

5.25 It was also his submission, that this notwithstanding, the properties had not been numbered, and the delay in the said numbering was not attributed to Rodger Lufunda and Lindiwe Lufunda. It was added that Rodger Lufunda was not privy to the in-house procedures at the Ministry of Lands.

5.26 A perusal of the contract of sale which is at pages 1-3 of Loveness Maambo Mayaka's bundle of documents in clause 6, provided that the vendors Rodger Lufunda and Lindiwe Lufunda would pay the property transfer tax to the Zambia Revenue Authority (ZRA).

5.27 Then in clause 7, it was provided that the vendors would pay rates to the Government of the Republic of Zambia. Clause 8 provided that registration fees and fees for subdivision of the property would be paid by the vendors.

5.28 From this, it can be seen that Rodger Lufunda and Lindiwe Lufunda were to meet the costs of registration of the sale and to pay the fees for subdivision of the property.

5.29 The contract as agreed by both parties was silent on when subdivision of the property and completion of transaction was to be done.

5.30 ***Halsbury's Laws of England, 4th Edition Re-issue Vol 9 in paragraph 479*** at page 336 states that:

"Where no time for performance is fixed by contract the law implies an undertaking by each party to perform his part of the contract within a time that is reasonable having regard to the circumstances of the case."

5.31 ***Further, paragraph 481 of the said Halsbury's Laws of England*** provides that:

"At common law stipulations as to time in a contract were as a general rule and particularly in the case of contracts for the sale of land

considered to be of the essence of the contract even if they were not expressed to be so and were construed as conditions precedent. Therefore, one party could not insist on performance by the other unless he could show that he had performed or was ready or willing to perform his part of the contract within the stipulated time.

However, in the exercise of its' jurisdiction to decree specific performance the Court of Chancery adopted the rule, especially in the case of contracts for the sale of land that stipulations as to time were not be regarded as of the essence of the contract unless either they were made so by the express terms or it appeared so from the nature of the contract or the surrounding circumstances that such was the intention of the parties, and unless there was express stipulation, or clear indication that time should be of the essence of the contract or take the various steps towards completion by the date specified.

By statute whenever stipulations as to time are not according to the rules of equity deemed to be or have become of the essence of the contract the same rule prevails.

The modern law in the case of contracts of all types may be summarized as follows:

Time will not be considered to be of the essence unless:

(1) the parties expressly stipulate that conditions as to time must be strictly complied with; or

(2) the nature of the subject matter of the contract or surrounding circumstances show that time should be of the essence; or

(3) a party who has been subjected to unreasonable delay gives notice to the party in default making time of the essence.

Even if time is not of the essence a party who fails to perform within the stipulated time will be liable in damages.”

5.32 In this matter, Loveness Maambo Mayaka paid the full purchase price for the property by 2nd April, 2020 after the contract was executed on 11th February, 2020. Thereafter a surveyor was engaged to survey the property and on 10th March 2020, as seen at page 9 of Loveness Maambo Mayaka’s bundle of documents, the K18, 000.00 that was paid by Rodger Lufunda and Lindiwe Lufunda to the Surveyor that Loveness Maambo Mayaka used was refunded by Loveness Maambo Mayaka to Rodger Lufunda.

5.33 The receipt for K2, 400.00 that Loveness Maambo Mayaka paid to the Chilanga Town Council for the subdivision of the property is dated 22nd December, 2020, and at page 12 of the said bundle of documents, the application to subdivide

the property was filed on 20th October, 2021 and it was approved on 20th December, 2021.

- 5.34 It will also be seen that the receipt for K834.00 which was paid to the Ministry of Lands is dated 3rd March 2022.
- 5.35 From the time that Loveness Maambo Mayaka paid the purchase price in full, the subdivision of the property had commenced and the payment for subdivision at Chilanga Town Council was made in December 2020.
- 5.36 The delay was at the Ministry of Lands. Rodger Lufunda contended that he could not be attributed to the delay in numbering at the Ministry of Lands, as he did not control the procedures there.
- 5.37 Indeed, that is the position. However, the evidence on record shows that there is a bill in the sum of K31, 964 which is due to be paid at the said Ministry of Lands, and which has been attributed to the delay in numbering the property.
- 5.38 Rodger Lufunda stated that the said bill is for Zamdell Farms the original owner of the property that himself and Lindiwe Lufunda bought.
- 5.39 It is trite that contracts only confer rights and liabilities on the parties to it. As such, the contract between Rodger Lufunda and Lindiwe Lufunda and Zamdell Farms cannot confer any rights and liabilities on Loveness Maambo Mayaka as purchaser of a subdivision of the property from Rodger Lufunda and Lindiwe Lufunda.
- 5.40 It is incumbent upon Rodger Lufunda to clear the bill of K31, 964.00 with Zamdell Farms in order to facilitate the

numbering of the subdivisions, including the property that Loveness Maambo Mayaka purchased from them as Loveness Maambo Mayaka paid the purchase price in full and the process of subdivision of the property commenced which has delayed at the Ministry of Lands, due to the unpaid bill.

5.41 When it comes to specific performance, **Chitty on Contracts: General Principles, 13th Edition at page 1718** states that:

“The jurisdiction to order specific performance is based on the existence of a valid and enforceable contract....It will not be Ordered if the contract suffers from some defect, such as the failure to comply with formal requirements or mistake or illegality which makes the contract invalid or unenforceable.”

5.42 Loveness Mayaka having paid the purchase price in full and subdivision of the property having commenced, Loveness Maambo Mayaka is entitled to an order for specific performance of the contract as there is nothing illegal about the contract that she entered into with Rodger Lufunda and Lindiwe Lufunda.

5.43 I accordingly direct that Rodger Lufunda and Lindiwe Lufunda shall within six months from today, do all such acts as are necessary to facilitate the numbering of the subdivision that Loveness Maambo Mayaka bought and to complete the sale of the property.

5.44 Failure to do so, shall entitle Loveness Maambo Mayaka to commence contempt proceedings against Rodger Lufunda and Lindiwe Lufunda.

CLAIM FOR A REFUND OF THE SUM K13, 324.00

5.45 In support of this claim, Loveness Maambo Mayaka submitted that she paid K18, 000.00 to Rodger Lufunda for the surveyor, as seen from the receipt which is at page 9 of her bundle of documents. Then she paid the sum of K7, 500.00 to the second surveyor, K2, 000.00 for the seal at Chilanga Town Council, K2, 400.00 for the subdivision at Chilanga Town Council, K5, 000.00 to the Lusaka Planning Authority and K834.00 at the Ministry of Lands bringing the total to K28, 234.00.

5.46 In response, Rodger Lufunda submitted that Loveness Maambo Mayaka could not claim a refund without providing a breakdown of how she arrived at the amount.

5.47 It has been seen from clauses 7 and 8 of the contract of sale, that Rodger Lufunda and Lindiwe Lufunda as vendors of the property were the parties to pay for the subdivision and registration of the property.

5.48 From the authorities that even Rodger Lufunda cited, he as a contracting party was bound by the terms of the contract. Therefore, any fees that Loveness Maambo Mayaka paid for subdivision of the property and registration of the property which it was conceded was done to expedite the process were due to be refunded to her.

- 5.49 The only thing is that Rodger Lufunda contended that the surveyor that Loveness Maambo Mayaka engaged, who was paid K18, 000.00 did a bad job as the subdivision did not include the dimensions of the property, and that was why Rodger Lufunda demanded a refund, was not challenged by Loveness Maambo Mayaka in any way.
- 5.50 Thus, with the exception of that amount of money, the K7, 500, K2,400.00, K2, 000.00, K5, 000.00 and K834.00 totalling K17, 734.00. However, Loveness Maambo Mayaka in the Writ of Summons and statement of claim only claims K13, 324.00 as the amount of the refund. She did not amend her pleadings and therefore, only K13, 324.00 shall be refunded to Loveness Maambo Mayaka.
- 5.51 Rodger Lufunda contended that the property was sold to Loveness Maambo Mayaka with the exception of the caretaker's quarters and wire fence which was valued at K20, 000.00. Therefore, any payments made by Loveness Maambo Mayaka should be offset from the same.
- 5.52 The case of ***Holmes Limited v Buildwell Construction Company Limited*** ⁽¹⁾ held that:

“Where the parties have embodied the terms of their contract in a written document, extrinsic evidence is not generally admissible to add to, vary, subtract from or contradict the terms of the written contract.

By way of exception to the above rule, extrinsic evidence may be admitted to show that the written

instrument was not intended to express the whole agreement between the parties.”

5.53 Rodger Lufunda by his pleadings did not claim offset of the sum of K20, 000.00 for the caretakers quarters and the wire fence, and he did not show this Court that the written contract of sale was not intended to express the whole agreement by the parties, as it was further orally agreed that Loveness Maambo Mayaka would pay K20, 000.00 for the caretaker's quarters and the wire fence.

5.54 There being no such evidence, Rodger Lufunda's claim fails.

5.55 Himself and Lindiwe Lufunda shall refund Loveness Maambo Mayaka the sum of K13, 324.00, which carry interest at the average short-term deposit rate from the date of issue of the Writ of Summons until Judgment and thereafter at the Bank of Zambia lending rate until payment.

CLAIM FOR DAMAGES FOR MENTAL ANGUISH

5.56 Loveness Maambo Mayaka submitted that Rodger Lufunda caused her stress by failing to complete the transaction and he had blamed it on the Ministry of Lands for the delay in numbering the property.

5.57 However, the evidence on record shows that there is a bill of K31, 964.00 and Rodger Lufunda and Lindiwe Lufunda did not complete the transaction between themselves and Zamdell Farms. Thus, Zamdell Farms is still appearing as the owner of the property.

5.58 Rodger Lufunda in response, denied that Loveness Maambo Mayaka relied on the case of ***Attorney General v Marcus***

Achiume ⁽⁴⁾ stating that it held that damages may be awarded for distress and anguish where the conduct of the Defendant is oppressive and humiliating.

5.59 However, Loveness Maambo Mayaka had not shown any evidence of oppression and humiliation on his and Lindiwe Lufunda's part. Thus, the damages should not be awarded.

5.60 In this matter, Loveness Maambo Mayaka seeks damages as Rodger Lufunda has delayed completion of the sale transaction which has caused her mental distress.

5.61 In contract the general rule is that damages for inconvenience and mental anguish arising out of a purely commercial contract will not be recovered unless the object of the contract includes provision for peace of mind and freedom from distress. The case of **Jarvis v Swan Tours** ⁽²⁾ refers.

5.62 Loveness Mayaka has not shown that the contract of sale was intended to give her peace of mind and freedom from distress especially that she is in possession of the property without any interference.

5.63 The claim fails.

6. CONCLUSION

6.1 Loveness Maambo Mayaka has succeeded on the claim for specific performance and a refund of the monies that she paid on behalf of Rodger Lufunda and Lindiwe Lufunda in the sum of K13, 324.00. That amount shall carry interest at the average short-term deposit rate from the date of the issue

of the Writ of summons until Judgment and thereafter, at the bank of Zambia lending rate until payment.

- 6.2 Loveness Maambo Mayaka is accordingly awarded costs of the action which shall be taxed in default of agreement.
- 6.3 Leave to appeal is granted.

DATED AT LUSAKA THE 14th DAY OF NOVEMBER, 2025

S. Kaunda
S. KAUNDA NEWA
HIGH COURT JUDGE

