

**IN THE HIGH COURT FOR ZAMBIA**

**2024/HP/A/008**

**AT THE PRINCIPAL REGISTRY**

**HOLDEN AT LUSAKA**

*(Civil Jurisdiction)*

**BETWEEN:**

**EMISON MUNYAMA**

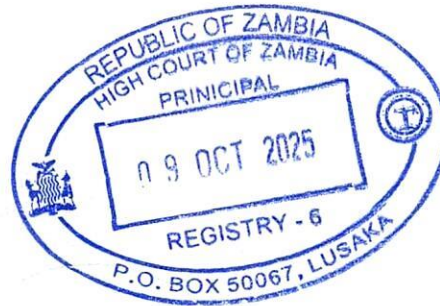
**AGENT MUNYAMA**

**ORICE MUNYAMA**

**EUGENE MUNYAMA**

**AND**

**TOM HAMBWALUKA**



**1<sup>ST</sup> APPELLANT**

**2<sup>ND</sup> APPELLANT**

**3<sup>RD</sup> APPELLANT**

**4<sup>TH</sup> APPELLANT**

**RESPONDENT**

**BEFORE HON. JUSTICE E. P. MWIKISA**

*For the Appellants: Mr. B. Mweemba of Keith Mweemba Advocates*

*For the Respondent: In Person.*

# JUDGMENT

**Cases referred to:**

1. *Vengelatos and Another vs. Metro Investments Limited and Others SCZ selected Judgment No. 35 of 2016.*
2. *Bashir Seedat vs. Donovan Chipande Appeal No. 4 of 2016 selected Judgment No. 53 of 2018.*
3. *Godfrey Miyanda v The High Court (1984) ZR 62*
4. *Zyambo vs Ntharzy Appeal No. 154/2011 SCZ Judgment No. 16 of 2014.*
5. *Nkhata and Others vs. Attorney General 19966 ZR 124.*
6. *Wilson Masauso Zulu vs. Avondale Housing Projects Limited 1982 ZR 172.*
7. *Attorney General vs Marcus Chiume 1983 ZR 1.*

**Legislation referred to:**

1. *The Subordinate Court Act, Chapter 28 of the laws of Zambia.*

**Other works referred to:**

1. *Phipson on Evidence, 17th edition.*

**1.Introduction and Background.**

1.1 This is an appeal against the judgment of the Subordinate Court of the first class, sitting in Lusaka District, advancing 5 grounds of appeal as follows:

- 1) That the Court below erred in both law and fact when it entertained the Plaintiff's claims despite the Court's lack of territorial jurisdiction as the piece of land in question is situate in Chibombo District of Central Province;**
- 2) That the learned trial Magistrate misdirected herself in law and in fact when she held that the Plaintiff had proved his case on a balance of probability without ascertaining the hectares of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants, thereby affecting the 1<sup>st</sup> Defendant's huge portion of land;**
- 3) That the learned trial Magistrate misdirected herself in law and in fact when she ordered for specific performance despite acknowledging that the 1<sup>st</sup> Defendant was no part of the sale agreement to his retirement;**
- 4) That the learned trial Magistrate misdirected herself in law and in fact when she ordered vacant possession of the surveyed 65 hectares which encompasses the piece of land belonging to the 1<sup>st</sup> Defendant who holds it on customary tenure; and**

5) **That the learned trial Magistrate misdirected herself in law and in fact when she ordered that the 1<sup>st</sup> Defendant occupy the 2 hectares and that it should be paid for at the rate of ZMW,1,500.00 per hectare as initially agreed when the 1<sup>st</sup> Defendant was not part of the signed agreement.**

## **2. Appellant's Arguments**

2.1 The appellants filed heads of argument dated 4<sup>th</sup> March 2024. With regards to ground one, it was argued that the lower Court had no jurisdiction to hear the matter whose dispute was outside its jurisdiction. Section 4 and 12 of the Subordinate Court Act, Chapter 28 of the Laws of Zambia was cited to reinforce the position that the Subordinate Court has no jurisdiction to hear matters that are outside of its jurisdiction. To buttress this position, the cases of **Vengelatos and Another vs. Metro Investments Limited and Others**<sup>1</sup> and **Bashir Seedat vs. Donovan Chipande**<sup>2</sup> were cited.

2.2 It was Counsel's submission that in considering the meaning of the term jurisdiction, the Supreme Court in the

case of **Godfrey Miyanda v The High Court**<sup>3</sup>, had this to say:

*“The term ‘jurisdiction’ should first be understood. In one sense, it is the authority which a court has to decide matters that are litigated before it; in another sense, it is the authority which a court has to take cognizance of matters presented in a formal way for its decision. The limits of authority of each of the courts in Zambia are stated in the appropriate legislation. Such limits may relate to the kind and nature of the actions and matters of which the particular court has cognizance or to the area over which the jurisdiction extends, or both.”*

2.3 It was further submitted that apart from the court being limited to the district it is constituted in, the Court also has jurisdiction to hear matters in any district in which the Defendant resides. To buttress this position, reliance was placed on **Order 14 (b) and (c)** of the Subordinate Court Rules which provides as follows;

**“(b)All other suits may be commenced and determined in any court having jurisdiction in any District in which the defendant resides or carries on business. If there are more defendants than one, resident in different Districts, the suit may be commenced in any court having jurisdiction in any one of such Districts; subject, however, to any order which the court may, upon the application of any of the parties, or on its**

**own motion, think fit to make with a view to the most convenient arrangement for the trial of such suit.**

**(c)In case any suit shall be commenced in any other court than that in which it ought to have been commenced, the same may, notwithstanding, be tried in the court in which it shall have been so commenced, unless the court shall otherwise direct, or the defendant shall plead specially in objection to the jurisdiction before or at the time when he is required to state his answer to or to plead to such suit.”**

2.4 Proceeding from that premise, the law further allows a Defendant to bring forth his or her objection as to the jurisdiction of the Court before or at the time of pleading to such suit.

2.5 Furthermore, it was argued that in the event a Magistrate finds that he or she has no jurisdiction, the Magistrate in question should dismiss the case or application before him. To reinforce this position, the case of **Zyambo vs. Ntharzy**<sup>4</sup> was relied upon.

2.6 With regards to grounds two and four, it was argued that the lower Court’s finding that the Plaintiff had proved his case on a balance of probability and ordered vacant possession of the purported surveyed 65 hectares in the absence of evidence on the record, was wrong because

there was no cogent evidence to support the lower Court's finding. Furthermore, it was argued that the findings are perverse, made in the absence of any relevant evidence, with misapprehension of the facts and are findings which, on a proper view of the evidence, no trial Court acting correctly and reasonably can make.

2.7 It was argued that there are a plethora of authorities in our country that govern the review of findings of fact by an Appellate Court. The cases of **Nkhata and Others vs. Attorney General**<sup>5</sup>, **Wilson Masauso Zulu vs. Avondale Housing Projects Limited**<sup>6</sup>, **Attorney General vs Marcus Chiume**<sup>7</sup> and **Zambia Revenue Authority vs. Dorothy Mwanza and Others**,<sup>8</sup> were cited to reinforce the following position that an Appellate Court can overturn findings of fact made by a trial judge;

**“Where the trial Magistrate or Judge made a critical findings of fact which has no basis in evidence or is unsupported by the evidence placed before her;  
Where the Appellate Court is satisfied that the trial Magistrate or Judge’s decision cannot reasonably be explained or justified or is obviously and palpably wrong;**

**Where the finding of fact was either perverse or made in the absence of any relevant evidence, or is based on a demonstrable misapprehension of the relevant facts, or that they are findings which, on a proper view of the evidence, no trial Court acting correctly and reasonably can make;  
Where there has been a demonstrable failure to consider relevant evidence; and  
Where the trial Magistrate or Judge took into account some matter which he could have ignored or failed to take into account something which he should have considered.”**

- 2.8 The matter was called for hearing on 13<sup>th</sup> August, 2024. Counsel for the Appellants was present while on the other hand, there was no appearance on the part of the Respondent, who did not contest the appeal.

### **3. CONSIDERATION OF GROUNDS OF APPEAL**

#### **3.1 GROUND ONE**

In addressing the 1<sup>st</sup> ground, I am of the considered view that the lower court had jurisdiction to hear the case in Lusaka, based on the Subordinate Court Rules under order 14 (1) (a) and or (c). If the parties do not object to the jurisdiction based on location at the beginning of the case or plea stage, the Magistrate can proceed to hear the

matter in the court where it was commenced, namely, Lusaka, in the case in casu.

### 3.2 **FOUNDATIONS TWO AND THREE**

With regards grounds two and three, it was argued that the lower Court's finding was perverse and was made in the absence of any relevant evidence. Thus, it was the Appellants' contention that such findings warrant this Court to interfere and set aside the said findings.

I refer to page 7 of the record of appeal, where DW1 told the court that he had given portions of his land to his children namely, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants who in turn sold to the plaintiff. That he signed the documents pertaining to the sale of land. DW1 conceded that he was there when the K100,000.00 was paid and received by the 4<sup>th</sup> defendant who signed for it. DW3 testified that he agreed with 2<sup>nd</sup> defendant, 4<sup>th</sup> defendant and headman Muntanga, that they put money together and sell it to the plaintiff and that they were the 3 of the them when they received K80,000.00 from the plaintiff. The 3<sup>rd</sup> defendant under cross

examination from the plaintiff, said that the 2<sup>nd</sup> and 4<sup>th</sup> defendants are his brothers while the 1<sup>st</sup> defendant is their father. That what was sold was the land the 1<sup>st</sup> defendant gave to them. That all the land was surveyed including the 1<sup>st</sup> defendant's because the money they got from the plaintiff was too much. He said that the beneficiaries of the money for the land they sold, were the 2<sup>nd</sup> defendant, 4<sup>th</sup> defendant, and their sister Norah, also daughter of the 1<sup>st</sup> defendant, and himself (3<sup>rd</sup> defendant).

I note that there is a contract that was entered into between the parties herein only that 600 hectares plus cannot cost K750.00, which in my considered view could be a typographical error (at page J5). The Magistrate in the court below states that the contract shows payment terms of K80,000.00 as first installment and K20,000.00 as second instalment payable on 29<sup>th</sup> June, 2020. The lower court noted a few contradictions on the purchase price, namely that the agreement is for the purchase price of K750.00, but yet installments are over and above the sum of K750.00 showing K80,000.00 and K20,000.00 which when put

together, comes to K100,000.00. The parties are talking of payments of K200,000.00 during the transaction as the lower court established. Be that as it may, I find that there is enough evidence to suggest that the parties herein did enter into a binding agreement as there was offer and acceptance.

The lower court at page J9 found no evidence of duress in the manner the contract was entered into and hence found that the plaintiff is entitled to recover from the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants only the sum of K71,000.00. The lower court after analyzing the evidence on record found that the plaintiff had proved his case on a balance of probabilities, I find that grounds 2 and 3 have no merit and are forthwith dismissed.

### 3.3. **GROUND FOUR AND FIVE**

I shall deal with grounds 4 and 5 together. In grounds 4 and 5, the lower court after analyzing the facts of the case and having also applied the law to the facts at page J7 of the judgment, the learned Magistrate found that this case is based on customary law, as such land is obtained

through the chief or headman. Further that the land devolves upon successors until abandoned. She further, found that under customary law, one has perpetuity of tenure but does not have absolute power of disposition. The lower court therefore found that the plaintiff bought land under customary tenure from the defendants and paid K200,000.00 for it. She also found that the plaintiff was granted the right to occupy and use the said land by the Chief who accepted that the defendants did sell their interest in the land in issue and or their portions of land to the plaintiff. It is also important to note from the evidence on record, that the defendants now Appellants, are members of the same family. In the case of **Attorney General v. Marcus Achiume**<sup>(6)</sup> the Supreme Court held that:

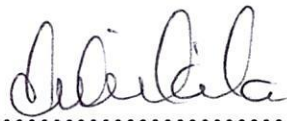
***“The Appeal Court will not reverse findings of fact made by a trial judge unless it is satisfied that the findings in question were either perverse or made in the absence of any relevant evidence or upon a misapprehension of the facts or that they were findings which, on a proper view of the evidence, no trial court acting correctly can reasonably make”.***

3.4 In view of the above, I decline to interfere with the findings of fact made by the court below. I further find that the court below did not err in law and fact in its judgment.

All the grounds of appeal fail and the appeal is accordingly dismissed.

Leave to appeal is granted.

Dated at Lusaka this.....9<sup>th</sup>.....day of.....October.....2025



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**ELITA P. MWIKISA**  
**HIGH COURT JUDGE**