

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



2022/HP/0951

BETWEEN:

**DAVIE MUSEISEI SILILO****PLAINTIFF**

AND

**ZAMBIA RAILWAYS LIMITED  
UNKNOWN PERSON (Alias DON MULE)**

**1<sup>st</sup> DEFENDANT  
2<sup>nd</sup> DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 11<sup>th</sup>  
DAY OF JANUARY, 2024**

*For the Plaintiff : In person*

*For the 1<sup>st</sup> Defendant : Mr. Z. Musonda, In house Counsel*

*For the 2<sup>nd</sup> Defendant : Mr. O. Sinkamba, Messrs Sinkamba Legal Practitioners*

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## **R U L I N G**

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### CASES REFERRED TO:

1. *British and Commonwealth Holdings Plc v Quadrex* 1969 QB 842
2. *Bellamano v Ligure Lombarda Limited* 1976 ZR 267
3. *Wilson Masuso Zulu v Avondale Housing Project* 1982 ZR 82
4. *Lumanyenda and another v Chief Chamuka and others* 1988/1989 ZR 194
5. *John Chisata v Attorney General* 1990/1992 ZR 19
6. *Anti-Corruption Commission v Barnet Development Corporation Limited* 2008 Vol 1 ZR 69
7. *Twampane Mining Co-operative Limited v E.M Storti Mining Limited* 2011 Vol 3 ZR 67
8. *Corpus Legal Practitioners v Mwanandani Holdings Limited* SCZ No 50 of 2014
9. *Concrete Pipes and Products Limited and another* SCZ Appeal No 014/2015
10. *Hanif Bhura v Yousuf Ismail Issa* SCZ No 15 of 2015
11. *Finsbury Investment Limited v Antonio Vetriglia and others* SCZ No 42 of 2016

**12. Germano Kaulungombe v Tazama Pipe Lines Limited  
SCZ/8/307/2023**

LEGISLATION REFERRED TO:

- 1. The Rules of the Supreme Court of England, 1999 Edition**
- 2. The Land Survey Act, Chapter 188 of the Laws of Zambia**
- 3. The Railways Act, Chapter 453 of the Laws of Zambia**
- 4. The Railways (Deviations) Act Chapter 456 of the Laws of Zambia**
- 5. The Mashona Railway Company Limited Act Chapter 459 of the Laws of Zambia**

**1. INTRODUCTION**

1.1 In this Ruling, the Plaintiff, Davie Museisei Sililo seeks an Order of this Court to determine the following questions:

- 1. Whether Farm No 1209, the Zambia Railways Reserve Strip (Line of Railway) can be altered and be extended beyond the boundaries prescribed in the Schedule under the provisions of Section 3 and 6 of the Mashona Railways Company Act No 459 of the Laws of Zambia without subjecting such deviation to the provisions of the Railways (Deviations) Act Chapter 456 of the Laws of Zambia.*
- 2. Whether a right under the Railways (Deviations) Act Chapter 456 of the Laws of Zambia was acquired by Zambia Railways Limited to dispossess retrospectively and sublease portions of Farm 408a/B to the unknown person alias Don Mule for purposes not available to holders of a railway permit issued by the Minister.*
- 3. And for the reasons stated in the affidavit in support hereof.*

- 1.2 The application which was filed on 22<sup>nd</sup> May, 2023, and is made pursuant to **Order 14A Rules 1 and 2 of the Rules of the Supreme Court of England, 1999 Edition**, is supported by an affidavit and a List of Authorities and Skeleton Arguments. In opposition to the application, the Defendants, Zambia Railways Limited and the unknown person alias Don Mule, filed Lists of Authorities and Skeleton Arguments in opposition.
- 1.3 Davie Museisei Sililo filed Skeleton Arguments and a List of Authorities in reply on 24<sup>th</sup> November, 2023.

## **2. BACKGROUND**

- 2.1 Davie Museisei Sililo commenced this action 21<sup>st</sup> June, 2022 by Writ of Summons accompanied by a statement of claim and the other documents claiming:
- i. A declaration that the line of railway (the rail reserve strip) Farm No 1209 between Kalomo and Kabwe has a prescribed width of 100 yards or 91.44 metres between the terminal points unless where it has been altered in accordance with the law;*
  - ii. A declaration that there is no law that provides that all land within 50 metres from the track of metals (Rail Track) in the rail reserve strip forms part of the "Line of Railway";*
  - iii. A declaration that Farm 408a/B or its' subdivision are outside the rail reserve strip under Farm No 1209 and therefore does not fall with the "Line of Railway" as defined in the statutes;*

- iv. *A declaration that the unknown person alias Don Mule has no legal or equitable interests to justify possession of any Section of Farm 408a/B or any subdivision thereof;*
- v. *An Order to demolish all structures built by the unknown person alias Don Mule on subdivision 6 of Farm 408a/B;*
- vi. *An Order for the barring of the fish pond that extends from Farm 1209 into subdivision 7 of Farm 408a/B for among other reasons, encroachment and failure to comply with the applicable land use as permitted in the Railway permit granted to Zambia Railways Limited by the Minister of Transport.*
- vii. *An injunction restraining Zambia Railways Limited and the unknown person alias Don Mule from entering, altering, interfering, or disturbing the boundaries of Farm 408a/B or its' subdivisions unless approved in accordance with the law for "purposes of a railway company" as defined in the Act and/or pursuant to the Railway permit;*
- viii. *Damages;*
- ix. *Any other relief the Court may deem fit;*
- x. *Costs.*

2.2 Zambia Railways Limited entered appearance and filed its' defence on 6<sup>th</sup> July, 2022. The unknown person, alias Don Mule entered appearance and filed his defence on 8<sup>th</sup> July, 2022, in which he identified himself as Don Mwewa Mule. On 17<sup>th</sup> August, 2022, Davie Museisei Sililo applied for an

Order to verify the boundaries of Farm 408a/B and Farm 1209. The Order granting the same was made on 19<sup>th</sup> October, 2022.

2.3 Thereafter, Davie Museisei Sililo filed the application that is subject of this Ruling.

### **3. AFFIDAVIT IN SUPPORT**

3.1 In the affidavit filed in support of the application, Davie Museisei Sililo deposes that he is the registered owner of the property known as 408a/B, as shown by the certificate of title exhibited as 'DMS1'. He further avers that according to the First Schedule to the Zambia Railways Limited's List of Documents which was filed into Court, on 19<sup>th</sup> July, 2016, it entered into an agreement for Five (5) years, for a portion of an alleged vacant piece of land purportedly on Farm 1209, in extent of 1000 square metres (50 x 20 metres), as stated in paragraph 9 of its' defence.

3.2 Davie Museisei Sililo alleges that the said piece of land is within 45.72 square metres from the rail track, and which is on the eastern side of the said rail track towards Farm 408a/B Chilanga. He goes on to depose that Zambia Railways Limited, has in the said paragraph 9 of its' defence, confirmed that the entire rail strip is 91.44 metres or 100 yards (300 feet). The contention is that Don Mwewa Mule has occupied Two (2) portions, and he is constructing a dwelling house that has extended into Farm 408a/B.

3.3 Exhibited as 'DMS2', is an extract of a map from the Surveyor General's office, depicting Farm 408a/B in red and

Farm 1209 in yellow. He also states that Zambia Railways Limited and Don Mwewa Mule contend that the entire leased portion is on their Farm 1209, which is premised on the misguided fact that any land within 45.72 metres from the rail track forms part of the easement strip. Therefore, by law, such land belongs to Zambia Railways Limited under Farm 1209.

- 3.4 Also deposed, is that by an application, this Court granted an Order for the Surveyor General to verify the boundaries of Farm No 1209 and Farm 408a/B, and the Order and the Report by the Surveyor General are marked 'DMS3' and 'DMS4'. It is stated that under Findings at sub paragraph (ii) in the Survey Report, the google images in the said document, as well as the Plan that was drawn from the coordinates extracted from the said survey, it is undisputable that Don Mwewa Mule has encroached on subdivision B of Farm 408a.
- 3.5 Davie Museisei Sililo also deposes that Zambia Railways Limited and Don Mwewa Mule have qualified the leasing agreement on the basis that the leased portion does not fall within Farm 408a/B because the easement strip of 45.72 metres forms part of the 91.44 metres protected by law as a rail-reserve strip under F/1209.
- 3.6 However, as shown by exhibit 'DMS5', the Lands Register for Farm 1209 (rail-reserve strip), Farm 408a/B is not part of Farm 1209, which is a registered easement strip on a 100 year lease to Rhodesia Railways Limited. Davie Museisei

Sililo also avers, that Zambia Railways Limited in the First Schedule of its' List of Documents, has failed to demonstrate that it has any title deed for Farm 1209, but has instead exhibited an indenture, which was abolished in 1975.

- 3.7 The assertion is that the reserve strip has title, and it has been surveyed, as shown on exhibit 'DMS5'. Therefore, without a title deed, the activities on Farm 408a/B are unlawful, and the argument that a reserve strip can be altered cannot stand.

#### **4. LIST OF AUTHORITIES AND SKELETON ARGUMENTS IN SUPPORT**

- 4.1 The provisions of ***Regulation No 92 (1) of the Land Survey Act, Chapter 188 of the Laws of Zambia*** are cited. It is also stated that ***Sub regulation (3) of Regulation 41 of the Land Survey Act*** specifies that where a strip of uniform width is surveyed for registration of easement rights, it must not exceed 300 feet (91.44 metres). The argument is that in this matter, rail reserve strip on Farm 1209 which is in issue, is 91.44 metres (300 feet).
- 4.2 He contends that Zambia Railways Limited and Don Mwewa Mule have interpreted that differently, by stating that the rail tracks on the railway is legally on the mis point of 91.44 metres rail reserve strip, and they have divided that by 2, thereby coming up with the measurement 45.72 metres on either side of the rail track, as stated in paragraph 10 of Zambia Railways Limited's defence.

- 4.3 However, the provisions of **Section 25 (1) of the Land Survey Act** are referred to, and on that basis, it is stated that the argument of 45.72 metres on either side of the railway track falls off, and that the rail reserve strip under Farm 1209 was surveyed for that purpose. **Sections 5 and 6 of the Mashona Railway Company Limited Act Chapter 459 of the Laws of Zambia** are also referred to, and the argument is that the companies allowed by law to construct on the rail line between Southern Province and Copperbelt Province already did what the law designated them to do.
- 4.4 Further, in argument, Davie Museisei Sililo states that any other company that intends to alter the railway line that is already constructed, must obtain the consent of the Minister of Transport and Logistics under the **Railways (Deviations) Act Chapter 456 of the Laws of Zambia**. He goes on to argue that the width is measured interchangeably in different units of metres, feet or yards depending on the Act, but states that ultimately, the size is the same, because 91.72 meters is 100 yards or 300 feet.
- 4.5 **Section 3 of the Mashona Railways Company Act** and the Schedule under that Act are cited, and it is also argued that the **Land Survey Act** governs surveys by a designated person called a Land Surveyor. Further, under **Section 45 of the Land Survey Act**, the Surveyor General is mandated to maintain a register of all surveys. Then under **Section 5 of the Mashona Railways Company Act**, it provides that a

Surveyor may be engaged for the purposes of surveying land and setting out the line of railways between the said points.

- 4.6 It is also argued that the survey report shows that the survey was done in the presence of all the parties, and the argument that any land within 45.72 metres from the rail track forms part of the rail reserve strip is misconceived, because the entire rail strip is surveyed, and it can only be altered or extended into private properties on the procedure in the ***Railways (Deviations) Act*** being invoked in the national interest.
- 4.7 Thus, the purported extension by Zambia Railways Limited of the rail reserve strip to create space for a house and a fish pond on portions of Farm 408a/B is flawed, without the consent of the Minister of Transport and Logistics. It is further argued that under ***Section 35 of the Lands and Deeds Registry Act***, adverse possession of property is proscribed. Further, under ***Section 9 of the Lands Act***, unlawful possession of land is prohibited.
- 4.8 The case of ***Lumanyenda and another v Chief Chamuka and others*** <sup>(4)</sup> is said to have considered whether occupation of real property or land in a manner that is inconsistent with the rights of the real owner is available in Zambia. Further, the cases of ***Anti-Corruption Commission v Barnet Development Corporation Limited*** <sup>(6)</sup> and ***Corpus Legal Practitioners v Mwanandani Holdings Limited*** <sup>(8)</sup> are cited, as having held that a certificate of title is conclusive evidence of ownership of land.

4.9 Thus, the prayer is that Judgment be entered on points of law in favour of Davie Museisei Sililo.

## **5. SKELETON ARGUMENTS IN OPPOSITION BY DON MWEWA MULE**

- 5.1 Don Mwewa Mule contends that Davie Museisei Sililo's Skeleton Arguments are misleading as **Section 6 of the Railways Act Chapter 453 of the Laws of Zambia** deals with registration of property to be transferred by the Board. He further argues that **Order 14A of the Rules of the Supreme Court of England**, which has been relied on, in making the application, can only be invoked where the questions are suitable for determination without a full trial of the action.
- 5.2 He argues that Zambia Railways has power to own property that was previously owned, and to finalise any appropriate action relating to its' property, and that it is not for the Attorney General to validate such acts by operation of the law. It is also stated that Farm 1209 belongs to Zambia Railways Limited, and not the Rhodesia Railways Limited.
- 5.3 Reliance is placed on the case of **British and Commonwealth Holdings Plc v Quadrex** <sup>(1)</sup> stating that in that matter, it was held that the expense and delay which can result from seeking to determine complex issues on summons under **Order 14A**, and in particular, on an appeal from the decision of a Judge, makes such cases not suitable for determination under **Order 14A**.

- 5.4 The case of ***Germano Kaulungombe v Tazama Pipe Lines Limited*** <sup>(12)</sup> and ***Concerete Pipes and Products Limited and another*** <sup>(9)</sup>, are also cited as authority in that regard. Therefore, the contention is that the objections that have been raised in this matter can be referred to the main hearing.
- 5.5 Further reliance is placed on the case of ***John Chisata v Attorney General*** <sup>(5)</sup> the argument being that it was held in that case, that cases should wherever possible be allowed to come to trial, so that the issues in contention are properly resolved, and that interlocutory orders that prevent this should be avoided.
- 5.6 Also cited as authority, is the case of ***Wilson Masuso Zulu v Avondale Housing Project*** <sup>(3)</sup> where the Supreme Court held that:
- “(i) The trial Court has a duty to adjudicate upon every aspect of the suit between the parties so that every matter in controversy is determined in finality. A decision which, because of uncertainty or want of finality, leaves the doors open for further litigation over the same issues between the same parties can and should be avoided.”***
- 5.7 The argument is that, it is clear why the Three (3) beacons are missing, and why he was given a certificate of title deed for land in the Zambia Railways strip reserve. Further, as even alleged by Davie Museisei Sililo, there was an agreement between Zambia Railways Limited and Don

Mwewa Mule with various other rights between the parties to be determined by the Court, which can only be determined at trial, and not on affidavit evidence.

- 5.8 It is also stated that Davie Museisei Sililo did not obtain the leave of Court to file the alleged report out of time, and neither did he obtain leave to have the survey done out of time, which is fatal to the report being used in the application.

## **6. SKELETON ARGUMENTS IN REPLY**

- 6.1 In reply, Davie Museisei Sililo argues that Zambia Railways Limited has referred to the provisions of **Order 14A of the Rules of the Supreme Court of England** providing that the Rule is only applicable where the questions for determination are suitable without the need for a full trial. However, in this case, the questions sought to be determined are not suitable to be determined without a full trial, and once determined, they will not determine the entire cause.
- 6.2 It is also argued that Zambia Railways Limited has argued that to determine the matter with finality at this stage, will cause miscarriage of justice. The argument is further that Zambia Railways Limited has argued that Davie Museisei Sililo will not suffer any prejudice if the matter proceeds to trial.
- 6.3 In respect of Don Mwewa Mule's arguments, the reply is that the said Don Mwewa Mule in his arguments, has disputed ownership of the land that is registered in Davie Museisei Sililo's names, alleging that it is clear why the Three (3)

beacons are missing, and why he was given a certificate of title for land in the Zambia Railways strip reserve.

- 6.4 He also highlights the other arguments that have been advanced by Don Mwewa Mule, and states that Don Mwewa Mule has rebutted paragraph 4.7 of his Skeleton Arguments and has quoted **Section 6 of the Railways Act, Chapter 453 of the Laws of Zambia**. It is stated that Don Mwewa Mule has further challenged the use of **Order 14A of the Rules of the Supreme Court of England**, arguing that this application cannot finally dispose of the matter.
- 6.5 Further in reply, Davie Museisei Sililo states that Don Mwewa Mule has argued that the preliminary objections that have been raised, are integrally linked to the main matter and should be deferred to disposal of the main matter, so that the Court may adjudicate all the issues in this matter.
- 6.6 The reply is also that Don Mwewa Mule has objected to the survey report on the basis that Davie Museisei Sililo did not comply with the Court's Orders, and he did not obtain leave to file the report after the expiration of time, and neither did he obtain leave to have the survey done out of time.
- 6.7 Davie Museisei Sililo argues that he has satisfied all the requirements of **Order 14A of the Rules of the Supreme Court of England** in making the application. He adds that the essence of the notice of intention to defend being given by the Defendants, is for the Court to evaluate the defence and the sort of witnesses and other evidence that is likely to be presented at trial.

- 6.8 Reference is made to the decision of the Supreme Court in the case of ***Finsbury Investment Limited v Antonio Vetriglia and others*** <sup>(11)</sup> and it is argued that Zambia Railways Limited and Don Mwewa Mule have not answered the questions that have been raised, but have instead come up with their own preliminary issues. Thus, they are in breach of **Section 10 of the High Court Act**.
- 6.9 Relying on the case of ***Bellamano v Ligure Lombarda Limited*** <sup>(2)</sup>, Davie Museisei Sililo contends that Zambia Railways Limited and Don Mwewa Mule should have cited the provisions of the law on which their objections were anchored. It is also stated that the case of ***Twampane Mining Co-operative Limited v E.M Storti Mining Limited*** <sup>(7)</sup> held that:
- “It is important to adhere to Rules of Court in order to ensure that matters are heard in an orderly and expeditious manner. Those who choose to ignore Rules of Court do so at their own peril.”***
- 6.10 The argument is that Zambia Railways Limited has justified why it felt it unnecessary for the matter to be disposed of on points of law, and merely suggested that no prejudice will be occasioned to Davie Museisei Sililo if the matter goes to trial. However, Davie Museisei Sililo states that he will be prejudiced, as the core of the dispute and the interests being asserted by Zambia Railways Limited and Don Mwewa Mule are not suitable to be dealt with in open Court.

- 6.11 He argues that when Zambia Railways Limited and Don Mwewa Mule filed their notices of intention to defend, they asserted that the law permits them to occupy any land within 45.72 metres from the rail tracks, and that any such land is part of the rail reserve strip numbered as Farm No 1209. Davie Museisei Sililo states that therefore, it is the responsibility of Zambia Railways Limited and Don Mwewa Mule to demonstrate to the Court, by providing a List of Authorities and arguments to support that assertion.
- 6.12 The contention is that it is absurd to suggest that the questions of law that have been posed in this application for the Court's interpretation, require witnesses or should be dealt with in open Court, when the dispute is purely about the law. He goes on to state that Zambia Railways Limited and Don Mwewa Mule have admitted that they are in occupation of land that is within 45.72 metres, asserting that the law empowers them to do so.
- 6.13 However, in disputing the same, Davie Museisei Sililo has produced the cadastre survey report, that shows that Zambia Railways Limited and Don Mwewa Mule have encroached on his land, being Farm 408a/B. It is also submitted that Farm No 1209 is an easement reserve strip which has been established by various statute books.
- 6.14 The case of ***Hanif Bhura v Yusuf Ibrahim Issa Ismail*** <sup>(10)</sup> is stated as having held that the Court will not fail to adjudicate on matters simply because they were not pleaded, in the face of glaring evidence suggesting so. That in doing

so, the Court will be aiding the Respondent to launder their certificate of title.

## **7. DECISION OF THIS COURT**

7.1 I have considered the Notice of Motion. It has been made pursuant to **Order 14A Rules 1 and 2 of the Rules of the Supreme Court of England, 1999 Edition**, which provide as follows:

***“(1) The Court may upon the application of a party or of its own motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that –***

***(a) such question is suitable for determination without a full trial of the action, and***

***(b) such determination will finally determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.***

***(2) Upon such determination the Court may dismiss the cause or matter or make such order or Judgment as it thinks just.”***

7.2 The questions raised in the Notice of Motion are:

1. *Whether Farm No 1209, the Zambia Railways Reserve Strip (Line of Railway) can be altered and be extended beyond the boundaries prescribed in the Schedule under the provisions of Section 3 and 6 of the Mashona Railways Company Act No 459 of the Laws of Zambia without subjecting such deviation to the provisions of the*

*Zambia Railways (Deviations) Act Chapter 456 of the Laws of Zambia.*

2. *Whether a right under the Zambia Railways (Deviations) Act Chapter 456 of the Laws of Zambia was acquired by Zambia Railways Limited to dispossess retrospectively and sublease portions of Farm 408a/B to the unknown person alias Don Mule for purposes not available to holders of a railway permit issued by the Minister.*

3. *And for the reasons stated in the affidavit in support hereof.*

7.3 It will be seen from **Order 14A Rule 1**, that the Court may determine an application under that Rule, where the questions raised or the construction of documents is suitable for determination without a full trial of the action. In this matter, there is an allegation that Don Mwewa Mule has encroached on Davie Museisei Sililo's property being Sub B of Farm 408a, after he entered into a lease with Zambia Railways Limited, for land that Zambia Railways owns on Farm 1209.

7.4 Davie Museisei Sililo applied that a boundary verification exercise be conducted, after defences were filed in this matter. That application was granted, and I directed that the same be done in the presence of all the parties. A boundary verification report was issued by the Ministry of Lands on 16<sup>th</sup> March, 2023. That report is exhibited as 'DMS4' to the affidavit filed in support of the Notice of Motion.

- 7.5 The report shows that the house that has been built, lies 4.01 metres on one side, within sub B of Farm 408 and on the other end 4.56m, hence causing encroachment. The report further shows that the same is the case for the fish pond which lies 4.64m and 0.55m.
- 7.6 The report essentially reveals that Don Mwewa Mule has encroached on Davie Museisei Sililo's property, being Farm No Sub B of Farm 408a. It is also noteworthy that the survey report found that the beacons HE and HoE were not found, but that the line was determined according to SR\_4714/2020 in relation to SR\_655/2002.
- 7.7 Earlier in that report, it is indicated under the source of Data, that in Order to have the theoretical coordinates of the boundary points for the verification ascertained, the previous survey records SR\_195/71, SR\_4714/2020 and 655/2002 were considered. Then under the desktop research, the finding was that Survey Record 195/71 which is LO 29 system when compared to SR\_4714/2020 UTM 27 system, revealed that the coordinates of the Two surveys were slightly different.
- 7.8 It was also stated that the inconsistency or difference was uniform in relation to all the beacons, and thus the adoption of the survey records SR\_4714/2020.
- 7.9 From these findings, it can be observed that there was more than One (1) survey that was conducted, over the pieces of land in contention, which revealed different coordinates on the land. That being the position, this is not a case where it

can be said that survey has established with certainty the extent of encroachment on sub B of Farm 408a.

- 7.10 There is need for the Surveyors to give their expert testimony on why One (1) survey was preferred over the other, so that all the issues in controversy in this matter can be adjudicated at once, to avoid a multiplicity of actions. Further, it is trite that an expert report, is but only part of the evidence that informs a Court in arriving at its' decision. The Court is not bound by the evidence of an expert, but considers such a report in relation to all the other evidence that is adduced before the Court.
- 7.11 On that basis, I will not determine the questions that have been raised at this stage, as such questions can only be fully determined at trial.
- 7.12 While it has been argued by Don Mwewa Mule, that no leave was obtained from this Court to file the Survey report out of time, and to do the survey out of time, the record shows that on 19<sup>th</sup> October, 2022, I extended time for conducting the boundary verification report to 30<sup>th</sup> November, 2022, and I directed that the report thereof would be filed into Court by 19<sup>th</sup> December, 2022.
- 7.13 When the matter came up for a status conference on 19<sup>th</sup> January, 2023, Davie Museisei Sililo informed the Court that the survey had been done by the Surveyor General's office but it had not been concluded. He asked for Three (3) weeks for the process to be completed, which was granted and the matter was adjourned to 10<sup>th</sup> March, 2023.

7.14 On 10<sup>th</sup> March, 2023, I was informed that the report was yet to be completed, and I adjourned the matter to facilitate the same. Thereafter, Davie Museisei Sililo filed the application, which is subject of this Ruling. Therefore, the argument by Don Mwewa Mule is without merit.

7.15 Defences were filed in this matter, and there is a pending application for misjoinder which was filed by Don Mwewa Mule on 22<sup>nd</sup> September, 2022. That application shall come up on 14<sup>th</sup> February, 2024 at 08:30 hours. Costs shall be in the cause, and leave to appeal is granted.

**DATED AT LUSAKA THE 11<sup>th</sup> DAY OF JANUARY, 2024**

*S. Kaunda*  
**S. KAUNDA NEWA**  
**HIGH COURT JUDGE**

