

IN THE HIGH COURT FOR ZAMBIA

1990/HP/935

HOLDEN AT LUSAKA

(CIVIL JURISDICTION)



B E T W E E N :

PETER ISAAC SHIYENGE

PLAINTIFF

\$

and

DANIEL BILL MUNTEMBA

1ST DEFENDANT

NCHETULO MATOKOLOSHI

2ND DEFENDANT

THOMAS KASHINOSHA

3RD DEFENDANT

EDSON MUKUBWE

4TH DEFENDANT

EDWARD KALASWA

5TH DEFENDANT

Before the Honourable Mrs. Justice I.M.C. MAMBILIMA in  
Open Court on the 30th day of August, 1993 at 0900 hours.

For the Plaintiff - Mr. S. KAKOMA of mundia Kakoma and  
Company.

For the Defendants - Dr. M. KAMWANGA of Lisulo and Company.

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JUDGEMENT

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By a writ of summons the Plaintiff is claiming firstly,  
for damages for trespass to his land being Farm No. 5400  
Chisamba. Secondly, a permanent injunction to prevent the  
Defendants or their servants and/or agents from interfering with  
his personal enjoyment of the said farm. He avers in his state-  
ment of claim that he holds a fourteen year lease for the said  
farm with effect from 1st February, 1989 and that he holds a  
certificate of title No. L. 1091 as evidence of his title. He  
alleges that the defendants, their servants or agents have en-  
croached on his piece of land and refuse to stop trespassing  
thereon. He states that since April, 1989, the said Defendants

have cultivated gardens on various parts of his piece of land and that they have threatened to pull down the house which the Plaintiff has erected thereon. The Plaintiff claims that by reason of this he has suffered loss and damage and therefore claims for damages for trespass and a permanent injunction to prevent the Defendants from continuing to interfere with his peaceful enjoyment of his farm.

In his evidence at the court, the Plaintiff said that he settled on the disputed piece of land in early 1987 and at that time the land was traditional. He told the court that this land was allocated to him by headman MUNTEMBA together with Chief CHAMUKA. The land is now state land after the Plaintiff applied for a certificate of title. He told the court that he is desirous of developing this piece of land hence he approached the village headman to inform him that he intended to get title deeds for the land and the village headman consented. He then approached the Chief who is Chief CHAMUKA who also had no objection to the Plaintiff obtaining title deeds. The headman and the Chief indicated their agreement in writing. The Plaintiff referred the court to Document No. 1 in his bundle of documents which is a letter from Chief CHAMUKA to the Provincial Land Use Department in Kabwe. It is dated 10th August, 1987. In the said letter the Chief wrote as follows:-

"The above named person (Peter SHIYENGE) intends to apply for a fourteen year land lease from Kabwe Rural Council and I would be very grateful if you would go and survey his place.

When surveying the place, could you liaise with the Ward Chairman and the Village headman to ensure that the demarcated area does not incorporate other people's land or fields to avoid any future problems."

The Plaintiff testified that he took this letter to the addressee who came and surveyed the farm in the presence of the Plaintiff and headman MUNTEMBA. The total hectarage of the farm was then

250 hectares. The Plaintiff then submitted a sketchplan of the farm to the Kabwe Rural Council. Before it could be approved, objections were raised from another headman, headman KALASO (4th Defendant) that the demarcated area encompassed part of his land. The Plaintiff brought in surveyors again so that they could demarcate the land leaving out the area complained of. After the second survey, the area of the farm was reduced to 197 hectares. Thereafter councillors from Chibombo visited the area to make sure that the farm did not encroach on other villages. When the councillors came to the area, they were taken round by headman MUNTEMBA. After going round through the farm and making sure that the farm did not encompass any other villages. Headman MUNTEMBA then wrote a letter which has been exhibited as document 5 saying:-

"I have this day confirmed to say I have given in allocation of 197 hectares for Mr. P. SHIYENGE for project."

This letter is dated 29th October, 1988. The Plaintiff said that this letter was written in the presence of the councillors from Kabwe Rural. On 13th November, 1988 the Ward Chairman of the area in which the land is situated also wrote to the District Executive Secretary at Chibombo saying inter alia:-

"I am therefore confirming once more or again that we have no objection for him (Plaintiff) to develop the place offered to him for agricultural purposes."

The Plaintiff collected all these documents and bound them together and personally delivered them to Kabwe Rural Council at Chibombo in the presence of the Chief. The Council responded to his application on 29th December, 1988 through a letter from the Development Secretary which says:-

"I refer to your recent application for land Title Deeds amounting to 197 hectares in Chief CHAMUKA's area.

I am pleased to advise that the fourth ordinary Council meeting held on 16th December, 1988 did finally approve the application. All the necessary documents in this regard are being processed for onward transmission to the Commissioner of Lands - Lusaka."

The Plaintiff was subsequently given a Certificate of Title No. L. 1091 allocating him a piece of land as farm No. 5400 and 197 hectares in extent. He told the court that after receiving the certificate of title he has suffered a lot of mental anguish over his stay in the area because the Defendants have demanded that the should vacate the farm alleging that he obtained the title deed for the farm fraudulently and that the headman who allocated him the land is not a headman after all. He went on to say that he is the only one who cultivates in the demarcated area of the farm but that one of the Defendants who has since died recently manhandled one of his workers and got away with his tools. Several meetings have been convened to discuss the issue but the Plaintiff told the court that he refused to attend the said meetings for fear that they would be rowdy. he however tried to resolve the matter with the chief who called them all together and tried to pacify them. The Plaintiff told the court that the third Defendant even wrote to the area Governor claiming the same pice of land saying that it should revert to him as the rightful owner. The said letter has been exhibited on page 27 of the Bundle of documents and in the said letter the third Defendant says that the land should revert to him on the following grounds:-

"(a) the land was alienated by a mistaken belief that it did not belong to anybody. Kabwe Rural Council should have made enquiries from local villagemen and elders in the areas about the traditional title to the land before allocating it Mr. SHIYENGE in line with the usual regulations and practices. These enquiries would have shown that the piece of land in question belongs to me;

(b) in line with the Lenje tradition the piece of land in question (Litongo ly ba nene bangu) automatically reverses to me as the brother of the deceased. From the time immemorial litongo which is the traditional title deed cannot be taken over by anybody without consent of the deceased. This is a cardinal requirement of natural justice."

This letter is undated but it shows on the date stamp that the



District Governor received it on 18th December, 1989. The Plaintiff told the court that two types of meetings were held in the area. One meeting was held by villagers alone at which he was invited but he refused to attend and according to the Plaintiff the objective of this meeting was to evict him from the piece of land because the villagers did not want any one with title deeds to settle in the area. The other meetings were those between the Plaintiff, the Chief and the villagers and also attended by some of the Defendants notably the second and the fourth Defendants. At this meeting the question of the third Defendant's brother's title to the land was discussed. The Chief pointed out that the brother to the third Defendant had temporarily settled on the farm before moving to another area called Shikwasha which is not part of the farm. The Plaintiff went on to say that the fourth Defendant is also claiming part of his land which is not even part of his village. He went on to say that this is the man who had earlier raised objections necessitating the second survey which chopped part of the land. The Plaintiff informed the court that the second Defendant has since died and that his village is also not within his farm.

The Plaintiff maintained that he was given the land in question by headman MUNTEMBA and from there he went on to approach the Chief and followed all the procedures which ended up by his getting the certificate of title for the land. In cross examination, he was referred to Document No. 25 written by Headman MUNTEMBA to the District Executive Secretary at Chibombo on 28th April, 1989 in which the headman wrote:-

"I regret to inform you that Mr. P. Shiyenge's application for title deeds included a piece of my land.

- (1) Mr. Shiyenge P. has not completed his probation period for 3 years being a resident in the village
- (2) He, himself and his family have not been registered in my village register.
- (3) He has made everything on his own without my knowledge.
- (4) My village residents and my fellow headmen have refused to his request.

The piece of land over which he has applied for title deeds is larger than the area I had consented to."

The Plaintiff told the court that although the headman MUNTEMBA wrote this letter, he did all that he did with his consent and he took it that the headman fully understood his intention and that he must have written this letter as an after-thought. He told the court that since getting the land, he has developed the area. According to the Plaintiff the Defendants were not happy with his having obtained the title deeds for the area.

The Plaintiff was also referred to document 31 which is a letter from Daniel MUNTEMBA addressed to the Plaintiff inviting him for a meeting with indunas at Muntemba village. It is dated 18th April, 1990. The Plaintiff told the court that he did not attend these meetings because of the atmosphere prevailing at these meetings saying that at one such meeting, one of the Defendants actually fought with Mr. MUNTEMBA.

The Plaintiff called Daniel Bill MUNTEMBA who is also the first Defendant as his witness. This witness told the court that he has known the Plaintiff since 1985 when he was introduced to him by Chief CHAMUKA. He went on to say that the Plaintiff applied for a piece of land in his village and he allocated him 197 hectares. This was reduced from 200 hectares when a neighbouring headman, headman KALASWA, fourth Defendant herein complained that the land given to the Plaintiff encroached on part of his land. The land was redemarcated to take into account the objection raised. According to Mr. MUNTEMBA, the fourth Defendant was called by

the Chief and in the presence of headman MUNTEMBA and the Plaintiff, he was told that his land had been left out of the original farm and upon being asked if he had any claim, he said that he had none

On the meetings which were called when the Plaintiff's title was disputed, headman MUNTEMBA told the court that he was present at one such meeting together with the third and fifth Defendants. The Plaintiff did not come. Headman MUNTEMBA told the court that the meeting ended on a fracas because he was beaten up by headman KATATALA for the reason that he had given the land to the Plaintiff. He went on to say that he is aware that he is among those sued for disturbing the Plaintiff at his farm. He denied having interfered with the Plaintiff and told the court that it is the second and fourth Defendants who interfered with the Plaintiff. He told the court that the land was his and he gave it to the Plaintiff and it was approved by Chief CHAMUKA. He told the court that he inherited the land. He described the other Defendants as squatters saying the second and the third Defendants came from Lyambo village while the fourth Defendant comes from Muchinda area. According to Headman MUNTEMBA, the land being claimed by the fourth Defendant does not belong to him.

Headman MUNTEMBA was referred to documents 31 and 32 in the bundle of documents. Document 32 dated 22nd April, 1990 is addressed to the Plaintiff's lawyers and it reads in part:-

"Please be informed that the farm of your client partly encompasses the villages of headmen Kalaswa, Muntemba and Shikwasha. It is for this reason the headmen and their people very much want to discuss with Mr. Shiyenge in order to resolve the matter but he does not want to meet them. The allegations that I and some misguided villagers are trespassing on his farm and threatening him together with his workers are a fallacy. How can villagers whose villages are partly encompassed be said to be trespassers? There is a misrepresentation of the facts in the matter now under reference and that is why the title deed was issued to your client.

Finally, I wish to inform you that when Mr. Shiyenge came to look for a place where to settle, it was myself who received him and gave him a place next to mine in the village area to settle. He was allowed to settle as a villager but through dubious means and without consultation with the affected headmen in the area, he clandestinely acquired a document of title for 14 years for property in excess of what he was given in the first instance. The poor affected villagers are waiting hopelessly to learn of the next developments."

Headman MUNTEMBA admitted that he signed these letters but that the letters were written by the fourth Defendant. He told the court he was forced to sign the letters as he was being threatened and the others were in a group. He told the court that it is the fourth Defendant who saw the District Governor at Chibombo, went to the Ministry of Lands and first went to Lizulo and Company and that when the case came to court, he saw the chief and discussed the threats on him in the presence of the Defendants. According to headman MUNTEMBA, the Plaintiff did not get the land fraudulently.

The Plaintiff also called Hudson CHIMUNSIKA CHIKONGO, who is the current Chief CHAMUKA (hereinafter referred to as the "Chief") as his witness who told the court that the Plaintiff approached him in about 1986 looking for a piece of land. He first introduced him to headmen FWANKILO, SABUTA and BALAKA who are north of Kabwe with instructions that they should look for a piece of land. Headman FWANKILO found the land but the Plaintiff complained that the land was too far from Lusaka. It was then that he introduced him to headman MALAMBWE who is Daniel MUNTEMBA the first Defendant herein. The first Defendant allocated 250 hectares to the Plaintiff which was approved by the Chief. Four councillors inspected the piece of land. Objections were then raised by headman KALASHA who said that part of the land given to the Plaintiff encroached upon his land. The chief instructed that this land be excluded from the allocation. Another objection was raised by headman SHIKWESHA who also said that the land given to the Plaintiff belonged to him but

other headmen disagreed with him saying that the land did not belong to the headman. After this land was redemarcated, leaving a portion of 197 hectares which was allocated to the Plaintiff. The chief explained that he had a meeting with the village headmen concerned at which he told them that Government had agreed that people in reserve and trust land could get title. He told the court that he learnt this from the Registrar of Lands and Deeds when he went round the country explaining to chiefs that they could recommend people to get title deeds or land in their areas so as to enable these people to develop those areas when they got loans from lending institutions. The chief told the court that he explained to the headmen that the Plaintiff had come to stay with them and therefore they should not object that he should settle in the area.

On the headmanship of Mr. Daniel MUNTEMBA, the Chief told the court that he recognises the headmanship of Mr. MUNTEMBA as Headman MALAMWE but that the headmanship of SHIKWESHA is self proclaimed and is not recognised by him as chief. He went on to say that he has actually visited the area which has been allocated to the Plaintiff and it does not incorporate any villages or fields. He maintains that he followed the right procedure as outlined in Land Circular 1 of 1985 in giving the land to the Plaintiff. The land was allocated after it had been properly surveyed and referred to a subcommittee at Chibombo dealing in land matters. Approval was given after satisfaction that settlements, interests and rights of other people had not been affected. He went on to say that since the Plaintiff took the land the third Defendant raised a dispute with him alleging that, that is where his late elder brother was staying. The chief testified that this claim by the third Defendant was discussed and that since the elder brother died there were no people staying on the land. According to the chief, this whole problem of the Defendants challenging the Plaintiff was started by the late Edward KALASHA who was a magistrate and worked for the Minister of Lands and headman SHIKWESHA.

As far as the chief is concerned, the land was properly given to the Plaintiff. With the evidence of this witness, the Plaintiff closed his case.

The Defendants in their statement of claim deny that they trespassed or that they have encroached on the Plaintiff's piece of land. They raise a counter claim and they are asking the court to set aside the certificate of title alleging that it was obtained fraudulently and without the concern of interested parties. They are also asking the court that the Plaintiff must be removed from the land which he now occupies because he breached a bonafide agreement made between himself and the headmen of the area.

The first to give evidence was Edson MUKUBWE who is also headman KALASWA the fourth Defendant herein. He testified that sometime in 1988 he saw some surveyors making demarcations in his area and when he asked them what they were doing, they told him that they were demarcating the area of Mr. SHIYENGE. A meeting was thereafter held, attended by Chief CHAMUKA, 7 headmen and some ordinary villagers. The Plaintiff was also in attendance. At this meeting headman SHIKWESHA complained about the Plaintiff's demarcation of the land without their consent and alleged that part of his land had been taken by the Plaintiff. Mr. MUKUBWE told the court that he also alleged at the said meeting that the Plaintiff had also entered into his land. He explained that the Plaintiff's land was between their fields and their grazing land. He told the court that the other villagers also objected to the issuing of title deeds to the Plaintiff lest they be accused of trespassing. He went on to tell the court that after these objections, the Chief then told the Plaintiff that since people had objected to his obtaining the title deeds, the Plaintiff should stay among them as an ordinary villager to which the Plaintiff agreed and that was the end of the meeting.

Another meeting was called in 1989 by the Ward Chairman and it was

attended by 5 headmen and the Plaintiff. At that meeting the ward chairman asked the headman if they had allowed the Plaintiff to obtain a title deed. The village headman then indicated that if the Plaintiff had the intention of obtaining a title deed, he should go back where he had come from and the Plaintiff agreed to leave and look for land elsewhere. They later saw surveyors come to demarcate the land this time, it took a new dimension. Later, he got summons to appear in the High Court. This witness told the court that he is not aware that Daniel MUNTEMBA the first Defendant is a headman. According to him, MUNTEMBA has no land at all and he stays at Katatala village. He admitted that when he first raised an objection that the Plaintiff had encroached in his land, the Chief came and thereafter 53 hectares were left out of the allocation. He told the court that he did not actually see this; that he only saw the cutting line which passed through his land. According to this witness, the Chief was lying in his evidence to the court when he said his objections were taken into account. He told the court that he did not even know if the area he is complaining of has been cut off, though he did not know all the land in Chief CHAMUKA's area. Upon being shown the original map of the demarcated area at page 3 of the bundle of documents, and the new map showing the area which was chopped off at page 7 of the bundle of documents, he told the court that he had agreed that the area he was complaining of had been left out of the allocation to the Plaintiff. He maintained however, that the area of the land on the map was given without his consent.

The third Defendant Thomas KASHINOSHA gave evidence in which he said that he learnt of the dispute in court in May, 1990 when he was visited by Chief CHAMUKA, the first Defendant's son by the name of Ophi MUNTEMBA and the Plaintiff. They discussed the Plaintiff's intention to acquire land in the area and Mr. KASHINOSHA told the Plaintiff that the piece of land which would be given to him should leave out his brother's land. He



told the court that he claimed this land as his traditionally and the Chief agreed with him at the time. He said he heard the Plaintiff tell the Chief that he had spent a lot of money on the land. Mr. KASHINOSHA went on to say that after this, he attended another meeting with all village headmen in April, 1990. At that meeting the first Defendant told the gathering that he had not agreed to the giving of titled deeds to the Plaintiff. He told the court that all the village headmen were against the first Defendant because they thought he was the one who brought the Plaintiff to that area. The first Defendant asked the village headmen to sign something to the effect that they did not want the Plaintiff in the area. He told the court that at the time of this meeting they did not know that the first Defendant had in fact written a letter to recommend that the Plaintiff should get title deeds for the land. He told the court that although he had been sued for trespass, he had never at any time gone into the Plaintiff's land. He told the court that the current allocation to the Plaintiff encompasses his land and when he told the chief to cut this piece off, the chief refused. He told the court that he is now claiming this land.

The next witness was Jeff MIYANDA who is also headman KATATALA. He told the court that he became headman in 1987 after succeeding his uncle. He went on to say that he is the one who is heading MUNTEMBA's village and not the first Defendant. According to this witness, the first Defendant cannot be headman because he comes from the paternal side while the witness comes from the maternal side and therefore qualifies for headmanship. He told the court that the Chief recognised his appointment as Headman KATATALA. He told the court that he attended 3 meetings which were held on the land dispute. One was in 1987 another on 3th April, 1990 and the third one on a date he cannot recall. He told the court that <sup>at</sup> one of these meetings he differed with the first Defendant. This was after the first Defendant asked him to sign a piece of paper to the effect that they did

not want the Plaintiff to come into that area. He told the court that he refused to sign because he is not the one who received the Plaintiff in the area. He instructed the other headmen to remove his name from the list of names which had already been put on the paper. He went on to say that he manhandled the first Defendant with an intention of fighting with him. This witness insisted that he did not know about the first Defendant being headman MALAMBWE. All he knows was that the first Defendant was settled on his land. He told the court that he maintained the village register which is kept at Chibombo Rural Council and he uses the same register which was used by his later uncle. He further told the court that all the headmen objected to the Plaintiff obtaining title to the land. On the land given to the Plaintiff, he said that this land involves all of them because it is in the middle and surrounded by eight headmen. Headman KATATALA was the last witness for the defence. The court was informed that the second Defendant Nchetulo MATOLOKOSHI and 5th Defendant Edward KALASHA had since the commencement of these proceedings passed away.

From the evidence on record, it is not in dispute that the Plaintiff is currently the registered proprietor of Farm NO. 5400 Chisamba. It is also common cause that <sup>+</sup>he land on which the said farm is located was converted from reserve and trust land i.e. traditional land to state land on application by the Plaintiff. The contention by the Defendants now excluding the first Defendant is that the Plaintiff had the land converted to state land fraudulently and hence the counter claim that the certificate of title obtained by the Plaintiff be set aside and that the Plaintiff should be removed from this land for having cheated the villagers that he would settle among them as a villager. Section 34 (1) (c) of Lands and Deeds Registry Act (Cap 287) provides:-

action

"No action for possession or other <sup>action</sup> for the recovery of any land, shall lie or be sustained against the Registered proprietor holding a certificate of title for the estate or interest in respect to which he is registered

except in any of the following cases, that is to say:-

- (c) the case of a person deprived of any land by fraud, as against the person registered as proprietor of such land through fraud....."

It is clear from this provision that if the Defendants can prove that the Plaintiff obtained his certificate of title fraudulently, then his title can be set aside.

The procedure for converting traditional land to state land is well illustrated in Land Circular No. 1 of 1985 <sup>issued</sup> ~~issued~~ by the Ministry of Lands on 10th May 1985. The circular outlines the procedure on Land Alienation. On Reserves and Trust Lands, it provides:-

- "(i) In the Reserves and Trust Lands, the powers of the President, in making grants or disposition of land, are limited by the requirement to consult local authorities affected by such grants or dispositions of land;
- (ii) Local authority, in orders, has been administratively understood to mean the Chief and the District Council. This means, therefore, that the consents of the chiefs and District Councils shall continue to be the basis for any approval of applications for land in the REserves and Trust Lands."

The circular goes on to state that the Commissioner of Lands will thus insist on the following documents when processing applications for grants or disposing of land:-

- (a) written consent of the chief under his hand;
- (b) extracts of minutes of the Committee of the Council responsible for land matters;
- (c) extracts of minutes of a full Council meeting.

Not more than 250 hectares may be allocated. The allocating authority must physically inspect the land applied for to make sure that settlements and other persons' interests and rights have not been affected by the approval. In this case, the Plaintiff's evidence shows that Chief CHAMUKA consented to the allocation as evidenced by the letter which the Chief wrote to the Council. Indeed in his evidence in court, the Chief said that he approved the allocation. It is on record that on the

<sup>there</sup>  
initial allocation<sup>^</sup> was for 250 hectares but objections were received from Headman KALASWA, the fifth Defendant necessitating a scaling down of the farm to 197 hectares leaving out headman KALASWA's area. An objection from headman SHIKWESA was brushed aside when it was established that the land he complained of did not belong to him.

The Defendant's position seems to be that headman MUNTEMBA (first Defendant) who offered the land to the Plaintiff is not a legitimate headman since, according to Jeff MIYANDA (Headman KATATALA) he comes from the paternal side. Jeff MIYANDA told the court that he is the one heading MUNTEMBA's village. Chief CHAMUKA told the court that he recognises Daniel MUNTEMBA as headman MALAMBWE. Being the Chief of the whole area, it is for him to recognise the headman in his area and if he says that Daniel MUNTEMBA is a legitimate headman, then that is so. In terms of Land Circular 1 of 1985, however, it is the Chief who must approve and indicate his approval in writing which appears to have been done in this case. The Chief told the court that he visited the land in question and it did not incorporate any villages or fields and that the land was allocated after being surveyed.

From the evidence of the Chief, it appears the Plaintiff made his intentions known from the beginning. But it would appear that the other headmen took up issue with the Plaintiff on learning that the Plaintiff was obtaining title deeds to the land. Chief CHAMUKA told the court that he held a meeting with the village headmen concerned and told them that Government had authorised people to get title deeds in reserve and trust lands.

I find it difficult however, to believe that the headmen concerned did not know that the Plaintiff was getting title deeds for the land. It is on record that the initial allocation of 250 hectares was slashed down to 197 hectares to accommodate some objections. Headman KALASWA conceded in cross examination upon being shown the original map and the

new map that the area he complained of had been left out of the land allocated to the Plaintiff.

Daniel MUNTEMBA who had initially approved the allocation as headman later changed his mind and wrote a letter withdrawing his support. His own explanation is that he was threatened, hence the letters he later wrote questioning the allocation.

Indeed headman KATATALA told the court that he manhandled the first Defendant intending to fight him. It would not be far fetched therefore for one to conclude that the first Defendant's behaviour was as a result of threats and hence when it came to giving of evidence in court, he sided with the Plaintiff.

As to the 3rd Defendant's claim that part of this land belongs to him as his inheritance from his later brother, I should point out that when the court visited the area, there were no settlements on the farm and what the 3rd Defendant identified as his brother's land appeared to be an abandoned settlement with a few mango trees growing. This lends credence to the evidence of the Plaintiff that when the issue of the third Defendant's brother's title was discussed at a meeting, the Chief had explained that the brother to the third Defendant had temporarily settled on the land before moving to another area called Shikwasha which is not part of the farm.

On what is before me, I do not find any evidence of fraud on the part of the Plaintiff. From the beginning Chief CHAMUKA and the First Defendant knew the intentions of the Plaintiff and the interests of those affected were taken into account. I find that the Plaintiff's certificate of title was properly obtained in compliance with Land Circular No. 1 of 1985. As a registered proprietor therefore, the Plaintiff cannot be ejected from the land in question. For this reason, the counterclaim fails.

The Plaintiff claims for damages for trespass to his land. He alleges that the Defendants and their agents and or servants have cultivated gardens on various parts of his land. Upon the court's visit to the land, all

that was seen were old gardens and some areas cultivated by the Plaintiff. The Plaintiff has not stipulated the nature of quantum of damages he suffered. It is indeed for him to produce evidence of any damage suffered and any shortfall in this regard can only react against him. For this reason, I am unable to make an award of damages for trespass.

The Plaintiff also seeks a permanent injunction to restrain the Defendants and their agents or servants from interfering with his peaceful enjoyment of farm 5400 Chisamba. As already stated the Plaintiff is a registered proprietor of this farm and as such, he is entitled to quiet and peaceful possession. I will thus grant him a permanent injunction restraining the Defendants or their agents or servants from interfering with his quiet possession of the farm as prayed. To this extent, the Plaintiff's claim succeeds with costs to be taxed in default of agreement.

Delivered in Open Court this 30th day of August, 1993 at 0900 hours.



I.M.C. Mambilima

JUDGE