

**IN THE HIGH COURT FOR ZAMBIA**  
**2013/HP/0296**  
**AT THE PRINCIPAL REGISTRY**  
**AT LUSAKA**  
**(Civil Jurisdiction)**

**IN THE MATTER OF: SECTION 81 (1) OF THE LANDS AND DEEDS  
REGISTRY ACT CHAPTER 185 OF THE LAWS OF  
ZAMBIA**

**IN THE MATTER OF: CAVEAT REGISTRATION AGAINST STAND NO.  
20845, ALICK NHATA ROAD, LUSAKA**

**BETWEEN:**

**ZEP-RE (PTA REINSURANCE COMPANY)**

**APPLICANT**

**AND**

**JIM GONDWE  
BALDWIN AND BROWNBUILT LIMITED  
THE COMMISSIONER OF LANDS  
THE ATTORNEY GENERAL  
BENNY MAKONDO  
BETTY CHISI  
DANA HOLDINGS LIMITED**

**1<sup>ST</sup> RESPONDENT**  
**2<sup>ND</sup> RESPONDENT**  
**3<sup>RD</sup> RESPONDENT**  
**4<sup>TH</sup> RESPONDENT**  
**5<sup>TH</sup> RESPONDENT**  
**6<sup>TH</sup> RESPONDENT**  
**7<sup>TH</sup>**

**RESPONDENT**

**Before the Hon. Mrs. Justice A. M. Sitali on the 7<sup>th</sup> day of August,  
2014.**

***For the Applicant : Miss T. Marietta of  
Messrs Sharpe and Howard  
Legal Practitioners***

***For the 1<sup>st</sup> and 2<sup>nd</sup>  
Respondents : In Person***

***For the 3<sup>rd</sup> and 4<sup>th</sup>  
Respondents : Captain N. Mulenga, State Advocate***

***For the 5<sup>th</sup> to 7<sup>th</sup>  
Respondents : Mr. T. Chali of  
Messrs H. H. Ndhlovu and Company***

# J U D G M E N T

---

## **Cases referred to:**

- 1. Construction and Investment Holdings Limited v. William Jacks and Company Zambia Limited (1972) ZR 66**
- 2. Lenton Holdings Limited v. Moyo (1982) ZR 55**
- 3. Sithole v. The State Lotteries Board of Zambia (1975) ZR 106**
- 4. Anti Corruption Commission v Barnnet Development Corporation Limited (2008) ZR 69**

## **Legislation referred to:**

- 5. The Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia, sections 76 and 81 (1) and (2).**

The Applicant commenced this action by originating summons issued out of the principal registry on 6<sup>th</sup> March, 2013 seeking an order that the 1<sup>st</sup> and/or 2<sup>nd</sup> Respondent forthwith withdraw or otherwise cause to be withdrawn the caveat against the property known as Stand No. 20845, Alick Nkhata Road, Lusaka, or in the alternative, an order that the 3<sup>rd</sup> Respondent forthwith removes or otherwise cancels the caveat registered against the property known as Stand No. 20845, Alick Nkhata Road, Lusaka. The Applicant further seeks a declaration that the Applicant is the rightful owner of the property known as Stand No. 20845, Alick Nkhata Road, Lusaka; damages against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents; any other relief the court may deem fit; and costs of and incidental to this action.

The originating summons is supported by an affidavit sworn by Shipango Muteto who described himself as Country Manager of the Applicant Company. Shipango Muteto deposed that in June 2009 the plaintiff entered into a contract of sale with Dana Holdings Limited for the sale and purchase of Stand No. 20845, Alick Nkhata Road, Lusaka at an agreed price of

K6,000,000,000.00 (unrebased). A search conducted at the Lands and Deeds Registry on 25<sup>th</sup> June, 2009 revealed no encumbrances registered against the property and consent for the assignment of the property was granted on 2<sup>nd</sup> July, 2009. On 7<sup>th</sup> August, 2009 the parties executed an assignment and a certificate of title No. 88473 was issued in the name of the applicant in this matter on 11<sup>th</sup> August, 2009. To that effect the applicant exhibited a copy of the assignment and a copy of certificate of title No. 88473 marked “SM3” and “SM4”, respectively.

After the completion of the transaction, a subsequent search conducted at the Lands and Deeds Registry on 20<sup>th</sup> November, 2012 revealed that a caveat had been registered against the property on 14<sup>th</sup> September, 2012, by one Jim Majere Gondwe, the 1<sup>st</sup> Respondent in this matter, on behalf of Baldwin and Brownbuilt Limited, the 2<sup>nd</sup> Respondent in this matter. The caveat was entered well over three years from the date of completion of the transaction. On 25<sup>th</sup> February, 2013, the applicant’s advocates Messrs Sharpe and Howard Legal Practitioners wrote a letter to the Acting Chief Registrar at the Lands and Deeds Registry requesting that the caveat wrongfully entered on the property be removed within seven days as the applicant was a bona fide purchaser for value without notice. However, the caveat was not removed. The applicant prays that the Court may grant it the reliefs sought in this action.

On 27<sup>th</sup> March, 2013, the 3<sup>rd</sup> and 4<sup>th</sup> Respondents filed an affidavit in opposition to the originating summons which was deposed to by Michael Chisengele, Senior Registrar of Lands and Deeds in the Ministry of Lands, Natural Resources and Environmental Protection. Michael Chisengele deposed that property No. 20845, Lusaka was leased by the President to the 2<sup>nd</sup> Respondent Baldwin and Brownbuilt Limited on 11<sup>th</sup> July, 2001 through a Certificate of title No. 11795; that the 2<sup>nd</sup> Respondent assigned the property to Dana Holdings Limited and certificate of title No. 11795 was issued in the name of Dana Holdings Limited on 17<sup>th</sup> September, 2002. Dana Holdings

Limited subsequently assigned Stand No. LUS/20845 to ZEP - RE (PTA Re-Insurance Company) and a Certificate of title No. 88473 was issued in the name of ZEP - RE (PTA Re -Insurance Company).

He further stated that the Registrar registered a caveat lodged by Gondwe Majere Jim on behalf of Baldwin and Brownbuilt Limited on 14<sup>th</sup> September, 2012 in order to maintain the status quo as there were allegations of fraud on the property and the police were carrying out investigations.

On 15<sup>th</sup> April 2013, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed an affidavit in opposition to the originating summons which was deposed to by Jim Majere Gondwe, the 1<sup>st</sup> Respondent who described himself as chairman and chief executive officer of the 2<sup>nd</sup> Respondent Company. Jim Majere Gondwe stated that in 2002, Benny Makondo and Betty Chisi who are the 5<sup>th</sup> and 6<sup>th</sup> respondents in this matter fraudulently sold Stand No. 20845, Lusaka to Dana Holdings Limited, the 7<sup>th</sup> respondent in this matter, in their purported capacities as director and secretary of Baldwin and Brownbuilt Limited the 2<sup>nd</sup> Respondent when they were not. He exhibited a copy of the assignment executed between Baldwin and Brownbuilt Limited and Dana Holdings Limited marked "JMG1". He went on to state that although the vendor was the 2<sup>nd</sup> respondent, Baldwin and Brownbuilt Limited, the payments for the property were made to Benny Makondo the 5<sup>th</sup> respondent and his company called Amelika Enterprises. He exhibited copies of the cheques paid to Amelika Enterprises to that effect are jointly marked "JMG2". Jim Majere Gondwe contended that according to exhibit "JMG2" the 2<sup>nd</sup> Respondent did not benefit from the illegal sale of its property. The 1<sup>st</sup> respondent further alleged that when selling the property in dispute to Dana Holdings Limited, Benny Makondo and Betty Chisi connived with Mr. Sichone who was then Registrar of Lands and Deeds who was paid K500,000.00 and K7,000,000.00. To that effect the 1<sup>st</sup> respondent exhibited a copy of Amelika Enterprises' expenses relating to Stand No. 20845, Lusaka marked "JMG3".

He further deposed that the 2<sup>nd</sup> respondent reported the illegal and fraudulent sale of its property to Zambia Police Service at Woodlands Police Station and the suspects were summoned by the police.

He went on to state that the 2<sup>nd</sup> Respondent also reported the matter to Mr. A. G. Chimulu who was then Registrar of Lands and Deeds who on 27<sup>th</sup> October, 2004 banned further entries on the property without his consent. On 29<sup>th</sup> November, 2004, the Registrar of Lands and Deeds wrote a letter to Dana Holdings Limited in which he advised them that the property in dispute was transferred to them under some irregularity. The 1<sup>st</sup> respondent exhibited a copy of the land register showing an entry by the Registrar banning further entries on the property without his consent and a copy of the Registrar's letter to Dana Holdings Limited marked "JMG5 and JMG6", respectively.

The 1<sup>st</sup> respondent further contended that although the applicant stated that the validity of the transfer of Stand No. 20845, Lusaka from the 2<sup>nd</sup> respondent to Dana Holdings Limited was determined under cause number 2008/HP/1000 and that the property was the subject of litigation under cause No. 2003/HPC/161, the cases were not determined on their merits and the Court did not make a decision on who was the legal owner of the property. The 1<sup>st</sup> respondent alleged that the transaction between the Applicant and Dana Holdings Limited cannot stand since the purported transaction between the 2<sup>nd</sup> Respondent Baldwin and Brownbuilt Limited and Dana Holdings Limited was done illegally and fraudulently by officials at the Ministry of Lands. He went on to state that Benny Makondo and Betty Chisi were arrested and were being prosecuted in the Subordinate Court according to the summons marked "JMG15". The 1<sup>st</sup> respondent asserted that in view of the fraud and illegal acts exposed in his affidavit, it was lawful for him to place a caveat against Stand No. 20845, Lusaka.

The 1<sup>st</sup> respondent urged that this action be dismissed with costs for lack of merit and prayed for an order that the 2<sup>nd</sup> Respondent is the legal and lawful

owner of Stand No. 20845, Lusaka as the transaction to assign the property to Dana Holdings Limited was illegally and fraudulently done.

In reply to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents affidavit in opposition, Shipango Muteto stated that the 1<sup>st</sup> Respondent's name does not appear anywhere on the records held at the Patents and Companies Registration Agency in respect of the 2<sup>nd</sup> Respondent company Baldwin and Brownbuilt Limited. To that effect he exhibited a copy of a computer printout relating to Baldwin and Brownbuilt Limited marked "SM1". Shipango Muteto further stated that the question of the transfer of the property from the 2<sup>nd</sup> Respondent to Dana Holdings Limited was determined or otherwise disposed of under cause number 2008/HP/1000. He went on to state that contrary to the 1<sup>st</sup> respondent's assertions, the applicant was a bona fide purchaser for value without notice and that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents cannot claim a right to the property nor any interest in the property well after the fact.

In reply to the 3<sup>rd</sup> and 4<sup>th</sup> Respondents affidavit in opposition the applicant contended that the 3<sup>rd</sup> and 4<sup>th</sup> respondents have failed to advance any evidence or produce any documents to support the grounds on which the Registrar of Lands and Deeds relied in registering the caveat against Stand 20845, Lusaka. The applicant contended that the Registrar of Lands and Deeds did not have sufficient cause to register the caveat against the property as the 1<sup>st</sup> and 2<sup>nd</sup> Respondents had no legal claim to the property whatsoever, as the property had been rightfully acquired by the applicant as a bona fide purchaser for value without notice.

Due to the allegations of fraud made by the 1<sup>st</sup> respondent in his affidavit in opposition to the originating summons, I decided to hear viva voce evidence from the parties.

At the trial of the action, the applicant called two witnesses. PW1 was Maurice Chaiwila, an advocate by profession, who testified that sometime in 2001 his client, Dana Holdings Limited, the 7<sup>th</sup> Respondent in this matter, acting

through its Chairman Dr. Nama, informed him of the 7<sup>th</sup> respondent's intention to purchase a property known as Stand 20845, Alick Nkhata Road, Lusaka from the then Honourable Minister of Lands, Samuel Miyanda (now deceased) at the agreed consideration of three hundred million Kwacha (un-rebased). Mr. Chaiwila testified that when he contacted Honourable Miyanda he was advised that the property was still at offer stage and that the Commissioner of Lands had issued the offer to Baldwin and Brownbuilt Limited, the 2<sup>nd</sup> respondent herein. The witness went on to state that when title to the property was finally issued to the 2<sup>nd</sup> respondent, he proceeded to draft the requisite assignment which he sent to Messrs S. S. Miyanda and Associates who later returned it duly signed and sealed.

The witness recalled in that regard that sometime in July 2001 his chambers had received a letter from Honourable Miyanda advising that a Mr. Makondo had been nominated as the authorised signatory for Baldwin and Brownbuilt Limited. On the strength of that letter and based upon searches conducted at the Ministry of Lands and on evidence that Mr. Makondo had in fact signed the lease annexed to the original certificate of title relating to the property, he concluded that it was proper for his client, the 7<sup>th</sup> respondent, to complete the transaction and pay the balance of the purchase price. The original title deeds to the property were duly lodged for registration and transfer into the name of the 7<sup>th</sup> respondent Dana Holdings Limited.

The witness went on to state that sometime in 2004, following the demise of Honourable Miyanda, his client, the 7<sup>th</sup> respondent, advised him that one Jim Gondwe, the 1<sup>st</sup> respondent herein, was claiming an interest in the land. A meeting was immediately held at which Jim Gondwe was asked to produce evidence in support of his claim, which evidence he failed to produce. Subsequently, Jim Gondwe initiated proceedings in the Lands Tribunal which proceedings the witness believed had been abandoned as he heard little more of the matter until he was summoned to Zambia Police headquarters in 2012

to give a statement regarding his knowledge of the transaction involving the purchase of Stand No. 20845, Lusaka by his client.

In cross examination, this witness testified that he acted for the purchaser Dana Holdings Limited in the sale of the property by Baldwin and Brownbuilt Limited and that he conducted a search on the property at the Lands and Deeds Registry before he prepared the contract of sale. He stated that Mr Miyanda and the purchaser agreed on the person to receive payment and that the assignment was signed by Benny Makondo and Betty Chisi as directors in Baldwin and Brownbuilt Limited. He stated that he received a certificate of title in the name of the 2<sup>nd</sup> respondent and that after registering the assignment he handed over the certificate of title which was issued in the name of Dana Holdings Limited to his client.

He confirmed that on 29<sup>th</sup> November, 2004, his client received a letter from the Registrar of Lands and Deeds informing them that there was irregularity in the transfer of the property three years after the transaction was completed. He stated that according to the print out from the Patents and Companies Registration Agency produced by the applicant marked exhibit "SM1", the shareholders in Baldwin and Brownbuilt Limited were Ephraim Mwenda and Gary Charles Page and that Jim Majere Gondwe is not a shareholder or director in Baldwin and Brownbuilt Limited. He further testified that although Jim Majere Gondwe claimed that he is the secretary of Baldwin and Brownbuilt Limited, the secretary of that company is Ramalingam Jayatha according to exhibit "DN9" of the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents' affidavit in opposition. He further testified that Jim Majere Gondwe did not show him and his client any document to support his claim of ownership of the property to justify his placing a caveat on the property.

The witness stated that he had no reason to believe that the transfer of the property from the 2<sup>nd</sup> Respondent to the 7<sup>th</sup> respondent was irregular in any manner whatsoever and that to his knowledge and from evidence adduced to

him, he could see no relationship whatsoever between the 1<sup>st</sup> respondent and the 2<sup>nd</sup> respondent nor could he understand the claim to the property by the 1<sup>st</sup> respondent who, on several occasions and before other courts, had failed to show any proof to support his claim to the said property.

PW2 was Shipango Mutelo, the Country Manager of the applicant, who testified that in or about March, 2007, he was mandated by management of ZEP-RE (PTA Reinsurance Company), the applicant in this matter, to seek land upon which the applicant was to build its regional headquarters for Southern Africa, funds having been committed by the Board of Directors of the applicant as far back as 2009. When the property known as Stand No. 20845, Alick Nkhata Road, Lusaka was presented to the applicant for consideration, it was decided that the applicant proceed with the purchase of the same from its then registered owner, Dana Holdings Limited. The witness testified that through external counsel, Messrs Mulenga Mundashi and Company, they concluded the purchase of the property and title was duly passed to the applicant. Immediately thereafter, in 2010, the development of the property was approved.

The witness explained that the delay in obtaining approval was occasioned by the requirement that strict tender guidelines be followed as the applicant is a company owned by COMESA, the PTA Bank, the African Development Bank, the Government of the Republic of Zambia and all other member States of COMESA. In June 2012 the contract was finally awarded to a Chinese contractor and the date of 1<sup>st</sup> March, 2013, had been set for the groundbreaking ceremony which was to be attended by His Excellency, the President of the Republic of Zambia. The witness went on to testify that in November, 2012, as the contractor set to commence works as scheduled, it was brought to his attention that a caveat had been placed against the property by one Jim Gondwe, the 1<sup>st</sup> Respondent herein, alleging that there had been criminality in the initial transfer of the property from Baldwin and Brownbuilt limited to Dana Holdings Limited.

Upon consultation with its advocates and in the interest of protecting its reputation and that of its stakeholders, the applicant decided not to proceed with the development of the property until such a time as the question of the caveat had been resolved. The decision was in fact fortified when the applicant discovered that Jim Gondwe had moved onto the property with graders and other earth moving equipment with intent to clear the land. The witness stated that this action prompted the applicant to immediately seek an injunction against the said Jim Gondwe as well as an order for the removal of the caveat placed by him. As regards the effects of delays occasioned by the caveat, the witness stated that the applicant continues to incur daily penalties and other losses on account not only of the contract executed with the contractor for the development of the property but also on account of anchor tenants who had been secured to occupy the offices proposed to be constructed upon the property.

In cross examination by Dr Banda, counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents, PW2 testified that a search was conducted at the Ministry of Lands which detailed the ownership of Stand No. 20845, Lusaka from the time it was owned by Baldwin and Brownbuilt Limited. The search revealed that the property was assigned to Dana Holdings Limited who owned the property from 2004 till the applicant bought the property in 2009. He stated that the developments of the property by the applicant were supposed to commence in March, 2013 and be completed in August, 2014 and the ground breaking ceremony was cancelled after the applicant was tipped that Jim Gondwe was claiming ownership of the property and a search conducted at the Lands and Deeds Registry revealed that he had entered a caveat against the property in November 2012. He said according to a printout obtained from PACRA by Dana Holdings Limited, Jim Gondwe is not a shareholder in Baldwin and Brownbuilt Limited.

When cross examined by Captain Mulenga, counsel for the 3<sup>rd</sup> and 4<sup>th</sup> respondents, PW2 said when the applicant discovered that a caveat had been

entered against the property the applicant engaged the Registrar of Lands to have it removed but the response was that they could not remove the caveat until the criminal investigations against the persons who signed on behalf of Baldwin and Brownbuilt Limited in the transaction between that company and Dana Holdings Limited were completed.

In further cross examination by Mr Chali, counsel for the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents, PW2 said that he signed the assignment as country director on behalf of the applicant ZEP-RE (PTA Reinsurance Company). PW2 stated that the printout from Ministry of Lands stated that the caveat was entered on the ground that the transaction for the transfer of Stand No. 20845, Lusaka from Baldwin and Brownbuilt Limited to Dana Holdings Limited was subject to criminal investigations. It was his further testimony that the applicant commenced this action to have the caveat removed because the applicant could not see the interest of the caveator as there is no relationship, legal or otherwise, between Jim Gondwe and the property in issue. He stated that Ephraim Mwenda is the Zambian shareholder and director in Baldwin and Brownbuilt Limited and that the applicant has not received any correspondence from Mr Mwenda to confirm that what is stated in the caveat is correct and that Mr Mwenda is alive.

That was the applicant's case.

At the close of the applicant's case, Dr Banda counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents applied for an adjournment to enable him apply formally to withdraw from representing the 1<sup>st</sup> and 2<sup>nd</sup> respondents. On 8<sup>th</sup> April, 2014, counsel filed an application for an order to withdraw from representing the two respondents which order was granted to him. He deposed in support of the application that he had informed the 1<sup>st</sup> and 2<sup>nd</sup> respondents on 17<sup>th</sup> March, 2014 that he would no longer be representing them in this matter. At the subsequent sittings the 1<sup>st</sup> and 2<sup>nd</sup> respondents did not appear although they were notified of the hearing dates and thus they did not adduce any oral evidence.

The 3<sup>rd</sup> and 4<sup>th</sup> respondents called one witness, namely the Acting Chief Registrar of Lands, Michael Chisengele who was RW1. He testified that the property known as Stand No. 20845, Alick Nkhata Road, Lusaka is properly registered in the name of ZEP-RE (PTA Reinsurance Company) which was assigned title by Dana Holdings Limited. The witness testified that sometime in 2013 he received a visit from Jim Gondwe who requested that a caveat be registered against the property pending conclusion of certain police investigations around the said property. The witness testified that he requested Jim Gondwe on several occasions to avail him proof in support of his claims that a fraud had been committed in the transfer of the property from Baldwin and Brownbuilt Limited to Dana Holdings Limited but that no such proof was ever availed and the caveat was only finally registered after the said Jim Gondwe attended upon the office of a number of Registrars of Lands and Deeds within the Ministry of Lands.

In cross examination by Mr Chali, counsel for the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents, this witness informed the court that according to the records at the Ministry of Lands there were no irregularities in the manner Stand No. 20845, Lusaka was assigned from Baldwin and Brownbuilt Limited to Dana Holdings Limited or from Dana Holdings Limited to ZEP-RE (PTA Reinsurance Company) and that Dana Holdings Limited passed good title to the property to ZEP-RE (PTA Reinsurance Company). He reiterated that although Mr Gondwe claimed ownership of Stand No. 20845, Lusaka he did not provide any documents to the Ministry of Lands to prove that he was the owner of the property. He stated that if the applicant requested the Ministry to remove the caveat entered against the property by Jim Gondwe, he would support it because Jim Gondwe had no interest to lodge the caveat.

That was the 3<sup>rd</sup> and 4<sup>th</sup> respondents' case.

The 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents called two witnesses. Benny Makondo the 5<sup>th</sup> respondent in this matter was RW2. He testified that he was employed as Director by a group of companies including the 2<sup>nd</sup> respondent, Baldwin and Brownbuilt Limited. The witness testified that in the course of his employment, he was directed by the group Chairman, Honourable Samuel Miyanda, to place the property owned by Baldwin and Brownbuilt Limited, namely Stand No. 20845, Alick Nkhata Road, Lusaka on the market for sale. The property was put up for sale by the late Samuel Miyanda and Gary Page who is the other director in Baldwin and Brownbuilt Limited. This witness said he advertised the property and that Dana Holdings Limited came forward to buy the property. He stated that he was given all the documentation relating to the said property and he paid all the fees relating to the property at the Ministry of Lands. He stated that he was authorised to sign the original lease annexed to the certificate of title issued to Baldwin and Brownbuilt Limited. He further signed on the assignment as director in Baldwin and Brownbuilt Limited and that Betty Chisi was appointed as secretary in Baldwin and Brownbuilt Limited and she signed on behalf of the company. He stated that the authority to sell the plot was in writing on Baldwin and Brownbuilt Limited letterhead and was signed by Honourable S. S. Miyanda. He identified the letter marked "DN1" exhibited to the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents' affidavit in support of the application. He also identified the assignment prepared by Messrs Chaiwila and Chaiwila exhibited as "JMG1" to the 1<sup>st</sup> and 2<sup>nd</sup> respondents' affidavit in opposition.

The witness said that Dana Holdings Limited appointed Messrs Chaiwila and Chaiwila to conduct the transaction and that the purchaser's advocates liaised with SS Miyanda and Company over the transaction and the money was paid to Honourable Miyanda. The sale was duly concluded in favour of Dana Holdings Limited who assumed ownership of the property in 2001. The witness went on to testify that after the death of Honourable Samuel Miyanda in 2004, he learned that an individual by the name of Jim Gondwe was claiming ownership of Stand No. 20845, Lusaka although he did not produce

any evidence to that effect. The witness said that Jim Gondwe was advised to go to the Lands Tribunal where he lost the matter. He commenced an action in the High court but failed to prosecute it between 2006 and 2010 and so the matter was dismissed for want of prosecution. He appealed to the Supreme Court where he was ordered to pay security for costs in the sum of K50 million (un-rebased) which he failed to pay. The witness stated that in criminal proceedings in the Subordinate court against himself and Betty Chisi in which Jim Gondwe was the complainant, Jim Gondwe failed to show proof of ownership of the property as he claimed. The State then entered a nolle prosequi. The witness stated that Jim Gondwe had no authority to place a caveat on the property.

There was no cross examination of this witness.

Mukelebai Llywali, an inspector of Companies at the Patents and Companies Registration Agency (PACRA), was RW3. He testified that from records held at PACRA, Jim Gondwe is not a shareholder in Baldwin and Brownbuilt Limited and that there has been no resolution submitted on behalf of Baldwin and Brownbuilt Limited vesting Stand No. 20845, Lusaka in Jim Gondwe to hold on behalf of Baldwin and Brownbuilt Limited. He stated that the company was registered on 29<sup>th</sup> December, 1993 with two directors and shareholders namely Page Gray Charles and Ephraim Mwenda. The company secretary was Ramalingam Jayatha and that the information is the same to date.

In cross examination by Miss Marietta counsel for the applicant, the witness stated that there is no declaration at PACRA that any shares are held in trust for Jim Gondwe in Baldwin and Brownbuilt Limited.

That was the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents' case.

The applicant and the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents filed written submissions which are on record.

I have carefully considered the evidence adduced by the applicant and by the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents. I have also considered the written submissions filed by counsel for the applicant and by counsel for the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents and the authorities cited in the submissions. From the evidence on record it is common cause that Stand No. 20845, Lusaka which is the subject of these proceedings was initially owned by Baldwin and Brownbuilt Limited the 2<sup>nd</sup> respondent in this action. On 30<sup>th</sup> November, 2001 the property was assigned by Baldwin and Brownbuilt Limited to Dana Holdings Limited, the 7<sup>th</sup> respondent in these proceedings. Dana Holdings Limited in turn assigned the property to the applicant ZEP-RE (PTA Reinsurance Company) on 7<sup>th</sup> August, 2009. On 11<sup>th</sup> August, 2009, a certificate of title in respect of Stand No. 20845, Lusaka was issued in the name of the applicant which is currently the registered owner of the property.

On 14<sup>th</sup> September, 2012, Jim Majere Gondwe, the 1<sup>st</sup> respondent in this action lodged a caveat on behalf of Baldwin and Brownbuilt Limited stating that the caveat was entered to prevent fraudulent people having access to the property pending the conclusion of police investigations into the transfer of the property from Baldwin and Brownbuilt Limited to the current owner.

The Applicant has applied for the removal of the caveat pursuant to Section 81 (1) and (2) of the Lands and Deeds Registry Act which provides that:

*“81 (1) Such registered proprietor or other interested person may, if he thinks fit, summon the caveator, or the person on whose behalf such caveat has been lodged, to attend before the Court or a Judge thereof to show cause why such caveat should not be removed.*

*(2) Such Court or Judge, upon proof that such person has been summoned may make such order in the premises, either ex parte or otherwise, as to such Court or Judge seems meet.”*

From the foregoing provision, it is clear that the registered proprietor or any other interested person on his behalf may summon a caveator to show cause

why a caveat entered against a property should not be removed. As the Applicant herein is the registered owner of Stand No. 20845, Lusaka the applicant is entitled to summon the 1<sup>st</sup> respondent as caveator to show cause why the caveat should not be removed in terms of section 81 (1) and (2) of the Act. The 1<sup>st</sup> respondent as caveator has entered a memorandum of appearance and an affidavit in opposition to the application. He has therefore been properly summoned.

The applicant seeks an order that the 1<sup>st</sup> and 2<sup>nd</sup> respondent withdraw or cause to be withdrawn the caveat registered against the property known as Stand No. 20845, Lusaka or in the alternative, an order that the 3<sup>rd</sup> Respondent forthwith removes or otherwise cancels the caveat registered against the property known as Stand No. 20845, Alick Nkhata Road, Lusaka. In support of this claim, the applicant denies that there was any fraud in the manner Stand No. 20845 Lusaka was transferred by Baldwin and Brownbuilt Limited to Dana Holdings Limited and from Dana Holdings Limited to the applicant. The applicant asserts that it entered into a contract of sale with Dana Holdings Limited for the sale and purchase of Stand No. 20845 Lusaka at the agreed price of K6,000,000,000.00 (un-rebased) in good faith. The applicant asserts that it was a bona fide purchaser for value without notice and contends that the caveat was wrongly entered against the property and should be removed.

Part VI of the Lands and Deeds Registry Act Cap. 185 of the Laws of Zambia (hereinafter referred to as the Act) sets out the law regarding the administration of caveats in sections 76 to 83. In terms of section 76 of the Act, a caveat against dealing with land may be lodged by any person who discloses an enforceable interest in the property. To that effect section 76 of the Act provides that:

*“76. Any person-*

- a) *claiming to be entitled to or to be beneficially interested in any land or any estate or interest therein by virtue of any unregistered agreement or other instrument or transmission, or of any trust expressed or implied, or otherwise howsoever, or*
  - b) *transferring any estate or interest in land to any other person to be held in trust; or*
  - c) *being an intending purchaser or mortgagee of any land;*
- may at any time lodge with the Registrar a caveat in Form 8 in the Schedule."*

In the case of *Construction and Investment Holdings Limited v. William Jacks and Company Zambia Limited* (1) Scott J explained the effect of the lodgement of a caveat in the following terms:

*"...where a person lodges a caveat under section 49 of the Act, the Registrar is forbidden to make any entry on the register having the effect of charging or transferring or otherwise affecting the estate or interest protected by a caveat. This means that the registered proprietor is prevented from showing a clear title and dealing with his property as he might wish to do and would be able to do but for the caveat."*

Further, in the case of *Lenton Holdings Limited v. Moyo* (2) the Supreme Court held that a caveat should disclose the interest claimed in order for it to be effective.

In the present case, the 1<sup>st</sup> respondent lodged a caveat against Stand No. 20845, Lusaka purportedly on behalf of Baldwin and Brownbuilt Limited. According to the records obtained by the applicant from the Patents and Companies Registration Agency which is exhibited to the applicant's affidavit in reply to the 1<sup>st</sup> and 2<sup>nd</sup> respondent's affidavit in opposition to the originating summons, the 1<sup>st</sup> respondent is not a director or a shareholder in Baldwin and

Brownbuilt Limited. Exhibit "SM1" reveals that the company directors and shareholders in Baldwin and Brownbuilt are Gary Charles Page, a Ukrainian and Ephraim Mwenda, a Zambian. Neither of these individuals has come forward to support or confirm the allegations made by the 1<sup>st</sup> respondent that there was fraud in the manner Stand No. 20845, Lusaka was transferred by Baldwin and Brownbuilt Limited to Dana Holdings Limited which subsequently assigned the property to the applicant.

The 1<sup>st</sup> respondent who claims to be chairman and chief executive officer of the 2<sup>nd</sup> respondent company Baldwin and Brownbuilt Limited has not rebutted the evidence adduced by the applicant to the effect that he is neither a shareholder nor a director in Baldwin and Brownbuilt Limited nor has he provided proof of any other interest he claims he has in the said company. Although he alleges that there was fraud in the manner Stand No. 20845, Lusaka was transferred to Dana Holdings Limited he has not adduced any evidence to prove the allegations. It is trite law that if a party alleges fraud, the party must prove the allegations of fraud to a standard higher than a simple balance of probabilities: see *Sithole v. The State Lotteries Board of Zambia* (3). Not only has the 1<sup>st</sup> respondent failed to prove the allegations of fraud he made against the 5<sup>th</sup> and 6<sup>th</sup> respondents to the required standard of proof in this matter, he has also not disclosed any enforceable interest in Stand No. 20845, Lusaka which is recognised by section 76 of the Act.

As Counsel for the applicant rightly submitted and I agree with her, the 1<sup>st</sup> respondent has failed to show any interest in the property and as such had no legal or other right whatsoever to place a caveat against Stand No. 20845, Lusaka which is now registered to the applicant. I accordingly order that the caveat registered against Stand No. 20845, Lusaka on 14<sup>th</sup> September 2012 by the 1<sup>st</sup> respondent be cancelled forthwith.

The Applicant further seeks a declaration that the Applicant is the rightful owner of the property known as Stand No. 20845, Alick Nkhata Road, Lusaka.

It is trite law that legal ownership of land is evidenced by a certificate of title. To that effect, section 33 of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia provides that:

*“33. A certificate of title shall be conclusive as from the date of its issue and upon and after the issue thereof, notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the President or otherwise, which but for Parts III to VII might be held to be paramount or to have priority; the registered proprietor of the land comprised in such certificate shall, except in case of fraud, hold the same subject only to such encumbrances, liens, estates or interests as may be shown by such certificate of title and any encumbrances, liens, estates or interests created after the issue of such certificate as may be notified on the folium of the register relating to such land but absolutely free from all other encumbrances, liens, estates or interests whatsoever:*

- (a) except the estate or interest of a proprietor claiming the same land under a current prior certificate of title issued under the provisions of Parts III to VII; and*
- (b) except so far as regards the omission or misdescription of any right of way or other easement created in or existing upon any land; and*
- (c) except so far as regards any portion of land that may be erroneously included in the certificate of title, evidencing the title of such registered proprietor by wrong description of parcels or of boundaries.”*

In the case of *Anti Corruption Commission v Barnnet Development Corporation Limited* (4) the Supreme Court held that:

*“Under section 33 of the Lands and Deeds Registry Act, a certificate of title is conclusive evidence of ownership of land by the holder of the certificate ... we also know that under the same section or section 34 a certificate of title can be challenged and cancelled for fraud or for reasons of impropriety in its acquisition.”*

In addition, section 54 of the Act provides that:

*“54. Every Provisional Certificate and every Certificate of Title, duly authenticated under the hand and seal of the Registrar, shall be received in all courts of law and equity as evidence of the particulars therein set forth or endorsed thereon, and of their being entered in the Register, and shall, unless the contrary is proved by the production of the Register or a copy thereof certified under the hand and seal of the Registrar, or unless the rectification of a Provisional Certificate is ordered by the Court, be conclusive evidence that the person named in such Provisional Certificate or Certificate of Title, or in any entry thereon, as seised of or as taking estate or interest in the land therein described is seised or possessed of such land for the estate or interest therein specified as from the date of such Certificate or as from the date from which the same is expressed to take effect, and that such certificate has been duly issued.”*

In the present case, the Applicant has exhibited to the affidavit in support of the application a certificate of title No. 88473 marked “SM4” as evidence of ZEP-RE (PTA Reinsurance Company)’s ownership of Stand No. 20845, Lusaka. On the evidence laid before me, I find that Stand No. 20845, Lusaka legally belongs to ZEP-RE (PTA Reinsurance Company) as evidenced by certificate of title No. 88473 which is in the Company’s name. I further find that Jim Majere Gondwe, the 1<sup>st</sup> respondent has no legal right or claim to the said property as he is neither director nor shareholder in Baldwin and Brownbuilt Limited which was the registered owner of Stand No. 20845, Lusaka before it was assigned to Dana Holdings Limited who subsequently assigned it to the applicant company. I, accordingly, declare that ZEP-RE (PTA Reinsurance Company) is the registered owner of the property known as Stand No. 20845, Lusaka.

The applicant also claims for damages against the 1<sup>st</sup> and 2<sup>nd</sup> respondents. The evidence adduced by the applicant to support its claim for damages is to the effect that the 1<sup>st</sup> respondent entered a caveat against Stand No. 20845, Lusaka in September, 2012 after the applicant had engaged a contractor to start developing the property and that the project has not taken off as a result of the caveat. The applicant asserted through its witness PW2 who is the

applicant's country director that the applicant continues to incur daily penalties and other losses on account of the contract executed with the contractor for the development of the property and also on account of anchor tenants who had been secured to occupy the offices proposed to be constructed upon the property. As a result of the caveat entered against its property, the applicant has not been able to deal with its own property or to effect any developments on the property for a period of nearly two years now.

Section 82 of the Act provides that a person who enters a caveat without justifiable cause is liable to pay damages to the person who suffers damage as a result of the lodgement of the caveat. To that effect section 82 provides as follows:

*"82. (1) Any person lodging any caveat without reasonable cause shall be liable to make to any person who may have sustained damage thereby such compensation as may be just.*

*(2) Such compensation shall be recoverable in an action at law by the person who has sustained damage from the person who lodged the caveat."*

The applicant has further adduced evidence that clearly demonstrates that although the 1<sup>st</sup> respondent entered a caveat against Stand No. 20845, Lusaka on behalf of the 2<sup>nd</sup> respondent Baldwin and Brownbuilt Limited, the 1<sup>st</sup> respondent is neither a director nor a shareholder in the said company. The 1<sup>st</sup> respondent has not adduced any evidence to prove that there was any fraud in the manner the 2<sup>nd</sup> respondent assigned Stand No. 20845, Lusaka to the 7<sup>th</sup> respondent. After making allegations that the 5<sup>th</sup> and 6<sup>th</sup> respondent's fraudulently assigned Stand No. 20845, Lusaka to the 7<sup>th</sup> respondent in 2004, the 1<sup>st</sup> respondent failed to appear at the trial of the action to substantiate his allegations although he was aware of the proceedings. This clearly shows that the 1<sup>st</sup> respondent had no reasonable cause to enter the caveat against the

property three years after the property was assigned to the applicant by the 7<sup>th</sup> respondent.

In the absence of a valid reason for entering the caveat against the property the 1<sup>st</sup> respondent is liable to the applicant for damage suffered by the applicant as legal owner of Stand No. 20845, Lusaka. I, accordingly award the applicant damages to be paid by the 1<sup>st</sup> respondent, Jim Majere Gondwe as caveator. The damages are to be assessed by the Deputy Registrar.

I should state that although the applicant claimed damages against both the 1<sup>st</sup> and the 2<sup>nd</sup> respondents and although the 1<sup>st</sup> respondent supposedly entered the caveat against Stand No. 20845, Lusaka on behalf of the 2<sup>nd</sup> respondent, Baldwin and Brownbuilt Limited, there is undisputed evidence on record in the form of the computer printout from the Patents and Companies Registration Agency produced by the applicant marked "SM1" which clearly shows that the 1<sup>st</sup> respondent had no mandate to act on behalf of the 2<sup>nd</sup> respondent as he is neither director nor shareholder of the 2<sup>nd</sup> respondent. That being the case, the 2<sup>nd</sup> respondent is not liable to the applicant in any way.

With regard to the 3<sup>rd</sup> and 4<sup>th</sup> respondents, the evidence before me is that the Registrar of Lands and Deeds registered the caveat against Stand No. 20845, Lusaka, after Jim Gondwe made persistent complaints to that office alleging fraud in the manner the said stand was transferred from Baldwin and Brownbuilt to Dana Holdings Limited. Although the Registrar should have insisted on the caveator establishing his interest in the subject property in terms of section 76 of the Act, I find that the 3<sup>rd</sup> and 4<sup>th</sup> respondents are not liable to the applicant for registering the said caveat against the property in the circumstances of this case. The applicant's action against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents is, therefore, dismissed.

The 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents were joined to these proceedings by the 1<sup>st</sup> respondent on the ground that they acted fraudulently in the transfer of Stand

No. 20845, Lusaka from Baldwin and Brownbuilt Limited to Dana Holdings Limited. However, I find that there is no evidence before me to prove that the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents engaged in any wrong doing in the assignment of Stand No. 20845, Lusaka from Baldwin and Brownbuilt Limited to the 7<sup>th</sup> respondent. It is the alleged wrong doing which allegedly gave rise to the entry of the caveat against Stand No. 20845, Lusaka by the 1<sup>st</sup> respondent. As such, I find that they are not liable to the applicant in any way.

I order the 1<sup>st</sup> respondent Jim Majere Gondwe to pay the costs of the applicant and of the 4<sup>th</sup>, 5<sup>th</sup> 6<sup>th</sup> and 7<sup>th</sup> respondents as it is the 1<sup>st</sup> respondent whose actions have caused these parties to incur the costs of these proceedings. The costs shall be agreed and are to be taxed in default of agreement. Leave to appeal is hereby granted.

Dated this 7<sup>th</sup> day of August, 2014.

.....  
**A. M. SITALI**  
**JUDGE**