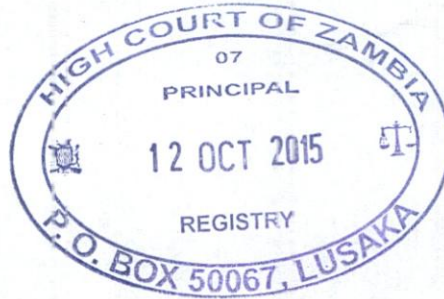


**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
AT LUSAKA  
(CIVIL JURISDICTION)**

**2011/HP/603**

**BETWEEN:**



**PATRICK TEMBO**

**PLAINTIFF**

**AND**

**DARIUS MAPUMBA  
LUSAKA WATER AND SEWERAGE  
COMPANY**

**1<sup>ST</sup> DEFENDANT**

**2<sup>ND</sup> DEFENDANT**

**Before : E.M. Hamaundu, J**

**For the plaintiff: In person**

**For the defendants: Mr V. Chanza and Ms S. Luwisha,  
Legal Counsel**

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**J U D G M E N T**

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The plaintiff's claim is for compensation in the sum of K300,000,000 (old currency) being the value of property destroyed. Alternatively, the plaintiff seeks an order that the defendants rebuild his house and also compensate him a sum of



K150,000,000 for anguish, trauma and embarrassment. The plaintiff seeks also general damages.

According to the plaintiff's statement of claim, the plaintiff had moved to an area known as Madimba, in Chelstone, here in Lusaka, in 1974. He started by cultivating vegetable gardens. There were several other people who settled on that area. The settlers started writing to the Lusaka City Council to formally recognize the settlement. The settlement expanded and now comprised about a thousand households. Between the years 2000 and 2010 the plaintiff built a ten-roomed structure on his land, up to roof level. In, 2011, while the Lusaka City Council was in the process of assisting the settlers, the defendants, without notice moved onto the defendants settlement and demolished the structure. This was notwithstanding the fact that the structure was over two hundred metres from the 2<sup>nd</sup> defendant's sewer system. The plaintiff's structure was the only one that was demolished. Hence this action.

The defendants filed a defence.

According to the defence, the plaintiff had trespassed on property belonging to the 2<sup>nd</sup> defendant and which the Lusaka City Council had approved for the 2<sup>nd</sup> defendant to carry out



sewer treatment operations. The plaintiff had been warned repeatedly to desist from undertaking illegal developments on the 2<sup>nd</sup> defendant's property. Hence the demolition of the plaintiff's structure.

At the hearing, the plaintiff testified as follows: He was a retiree who lived in Kamanga township in Lusaka. He had lived on the disputed land since 1974. The land had been allocated to him by the Lusaka City Council who had even demarcated it. There were about 3000 houses in the area. On the 8<sup>th</sup> February, 2011, the Zambia Police Officers, as well as officers from the 2<sup>nd</sup> defendant went to the plaintiff's plot around 02.00hours and demolished his ten-roomed house. This surprised him because his house was the only one that was demolished. The house was about two hundred metres from the 2<sup>nd</sup> defendant's sewer system. The 2<sup>nd</sup> defendant had never warned him about the intended demolition.

In cross-examination, the plaintiff replied as follows: The disputed area belonged to the Lusaka City Council. The Council had given them the land. They did not have title to the land, but the council had said that it would give them title later. The 1<sup>st</sup> defendant used to come to inspect the sewer ponds but he was



also eyeing the plaintiff's plot. Therefore, he used to tell lies to the 2<sup>nd</sup> defendant that the plaintiff had illegally built on sewer pipes.

The plaintiff called two other witnesses.

The first witness was Fina Luwaya Kalepo. Her testimony was as follows: She was a housewife, living in Chelstone township. She started cultivating on the disputed land in 1974. There was no sewer pipe. On the 8<sup>th</sup> February, 2012, the plaintiff's house and the witness's structure which was at foundation level were demolished. Structures belonging to other settlers which were also at foundation level were demolished too. However there were those who had built near the sewer ponds, some were as close as ten metres to the sewer ponds and yet their houses were not demolished. The plaintiff's plot and those of the witness and others whose structures were demolished were about two hundred metres away from the ponds.

In cross-examination, the witness replied as follows: the houses that were demolished were ten in number. The settlers had sought permission in 1974 from the Council to be cultivating on the land. The settlers had written letters requesting to be allocated plots. The Council did not respond but merely told them to guard their areas against those who were getting illegal plots.



In 2010 a group of cadres came and said that they wanted to demarcate plots. The settlers refused.

The second witness was George Chinga. His testimony was as follows: He was a security guard by profession and lived in Kamanga compound. In 1974, he, together with other settlers, asked the Lusaka City Council for some land to cultivate on. They were allowed to cultivate on the land in dispute. Around 2005, some people started putting beacons in the area. The sellers went to apply for plots in the same area from the Lusaka City Council. The Council told them to submit all the names of the applicants who were on that piece of land. The sellers submitted their names. Some people started building, including the plaintiff. In 2011, the plaintiff came to inform the witness that his house had been demolished. Together, they went to report to the police at Chelstone, who told them to go and see the 2<sup>nd</sup> defendant to whom the land belonged. They went to the 2<sup>nd</sup> defendant and met the 1<sup>st</sup> defendant, an employee of the 2<sup>nd</sup> defendant, who told them that it was his employer who had instructed him to demolish the plaintiff's house.

In cross-examination, the witness replied as follows: They had not known the 1<sup>st</sup> defendant's position in the 2<sup>nd</sup> defendant



company. The 1<sup>st</sup> defendant told them that the plaintiff's house was demolished because it had been built on the 2<sup>nd</sup> defendant's land.

That was the case for the plaintiff.

The 1<sup>st</sup> defendant testified on behalf of both defendants.

The 1<sup>st</sup> defendant's testimony was as follows: He held the position of Security Services Manager in the defendant company. He joined the defendant in May, 2010. His overall duties included protecting the 2<sup>nd</sup> defendant's assets and also to protect clients and employees of the 2<sup>nd</sup> defendant on its premises. On the 18<sup>th</sup> September, 2010, he was instructed by his employer to go and verify reports that some people had encroached on the 2<sup>nd</sup> defendant's sewer ponds in Chelstone. At the site he found a group of people clearing land. The group was led by a Mr Dauzeni Tembo, who was a Youth Chairman for Munali Constituency in the Movement for Multi-Party Democracy. Dauzeni Tembo told the witness that the Lusaka City Council was allocating the land. Then, another group of people led by plaintiff came to see him. This group complained that the Movement for Multiparty Democracy youths had chased them from their gardens and shared the land surrounding the ponds. The witness and the



plaintiff went round and uprooted iron bars which the youths had put as beacons. The plaintiff then obtained the witness's contact number. The following day Dauzeni Tembo and his fellow youths went back to the area and started sharing the land. The witness went with police officers and held a meeting with Dauzeni Tembo. From that day, the youths stopped sharing the land. The plaintiff's group was allowed to continue cultivating on the land but not to build any structures until after the witness had arranged for surveyors and confirmed the beacons. The witness took a surveyor and a site map which contradicted the beacons that the plaintiff's group were claiming. The plaintiff rejected the site plan. At that point, the witness warned the group not to build any structure, otherwise the 2<sup>nd</sup> defendant would demolish them. After about a month, the witness noticed that some people had dug foundations. He sent casual workers, accompanied by the police, to bury them. Among the foundations buried was one belonging to the plaintiff. Three weeks later, three people dug foundations which developed into foundation boxes. The witness managed to talk to two of the developers and warned them not to continue building. The two stopped. As for the third developer, the builder refused to disclose his identity. The witness left his



contact details and told the builder to tell the developer to contact him. The building of the structure was progressing in the meantime. Finally, a person claiming to be the developer called and said that a Mr Tembo had sold him the land. The witness told the person to go and see him. That person stopped communicating with the witness. The structure had now almost reached window level. The 2<sup>nd</sup> defendant's management decided to demolish the structure in order to deter others as well. Therefore, on the 9<sup>th</sup> February, 2011 the 2<sup>nd</sup> defendant sent casual workers, accompanied by police officers, to demolish the structure. Two weeks later, the plaintiff came to see the witness in the company of two other people who claimed that they were the owners of the demolished structure. They said that the plaintiff had sold them the piece of land and had told them not to go to the offices of the 2<sup>nd</sup> defendant. The witness told them that the plaintiff had cheated them because the land on which they had built the structures belonged to the 2<sup>nd</sup> defendant. The two people got annoyed with the plaintiff for cheating them. Subsequently, the plaintiff commenced this action.

In cross-examination, the witness replied that the first person he had met at the site was Dauzeni Tembo.



That was the case for the defendants.

The following facts are not in dispute:

- (i) The plaintiff and other people have been cultivating since about 1974 on land which is around the sewer treatment ponds.
- (ii) Between 2010 and 2011, the plaintiff and a few others built structures on the portions of land which they were cultivating.
- (iii) On or about the 9<sup>th</sup> February 2011, the 2<sup>nd</sup> defendant demolished the structures belonging to the plaintiff and others.
- (iv) The plaintiff does not have title to the land on which he built his structure.

I find the foregoing as facts.

The plaintiff now seeks compensation as a result of that demolition. The plaintiff's claim is founded in tort. For the plaintiff to succeed, he must show that the defendant's demolition of his house was wrongful. The question is. Under what tort does the plaintiff's action fall? It cannot be under torts affecting goods because a house is not classified as such. A house is built on land and is, therefore, defined in relation to



land. In defining trespass to land, the editors of **Clerk and Lindsell on Torts, 11<sup>th</sup> edn.** Provide;

***“It is a trespass to remove any part of the soil of land in the possession of another or any part of a building or other erection which is attached to the soil so as to form part of the realty.”(para 899).***

Therefore, the plaintiff’s claim can be categorized as a trespass to land.

The plaintiff, therefore, must show that he has title to the land on which his structure was. One of my findings of fact is that the plaintiff does not have title to that land. On the other hand, there was evidence led by the defendant showing that the land belonged to 2<sup>nd</sup> defendant which maintains sewer treatment ponds thereon. That evidence has not been rebutted by the plaintiff. There was evidence both from the defendant and one of the plaintiff’s witness that the plaintiff and other people had been permitted by the 2<sup>nd</sup> defendant to merely cultivate around the sewer ponds. Therefore, since the plaintiff lacked title to the land, I am not satisfied that he had any right to erect a structure thereon. Secondly, the plaintiff having failed to rebut the defendant’s evidence that the land belonged to it, I am satisfied



that the plaintiff has failed to prove that the defendants had no right to demolish his structure.

Therefore, the plaintiff has not proved his claim. The same is dismissed. I award costs to the defendants.

Dated the .....day of .....2015



**E. M. Hamaundu**  
**HIGH COURT JUDGE**