

IN THE HIGH COURT FOR ZAMBIA  
AT PRINCIPAL REGISTRY  
LUSAKA  
(Civil Jurisdiction)

2014/HP/1807

KABWE MANDONA

PLAINTIFF

AND

ALEXANDER MALAMA

DEFENDANT



Before Honorable Mr. Justice C.F.R Mchenga SC

For the Plaintiff: No appearance

For the Defendant: P. Mulenga, Paul Mulenga & Associates

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## R U L I N G

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The defendant has pursuant to Order 14A Rule and 2 of the Rules of the Supreme Court read together with Practice Direction No.1 of 2002, raised two preliminary issues. These are:

1. *Whether or not this cause of action is competent and properly before Court in view of the provisions of Section 4 and 16 of the Lands Tribunal Act 39 of 2010; and*
2. *Whether or not in view of (1) above the matter is liable for dismissal on the grounds of being irregular, a nullity and for want of jurisdiction.*

At the hearing, Mr. Bwalya relied on the application and skeleton arguments filed on 3<sup>rd</sup> November 2015. He pointed out that the plaintiff, in his statement of claim, seeks reliefs including:

1. *Declaration that he is the legal owner of portions of land known as Stands No. L28285/M and No. 283556 situated in Lusaka West.*
2. *An order of interim injunction against the defendant.*

He referred to **Sections 4 and 16 of the Lands Tribunal Act, Act No. 39 of 2010** and submitted that the jurisdiction to hear and determine land matters is now vested in the Lands Tribunal. He also submitted that the High Court no longer has original jurisdiction in Land matters; it can only deal with them when they come on appeal from the Lands Tribunal. He then referred to the case of **Zambia National Holdings Limited and Vim v The Attorney General [1994] Z.R. 22** and submitted that though the High Court has unlimited original jurisdiction, its jurisdiction is not limitless; the **Lands Tribunal Act** has limited the jurisdiction of the court, counsel argued.

Finally, Mr. Bwalya referred to the cases of **Matridah Ngulube v Hilda Malasha and 3 Others 2013/HP/0773** and **Precious M Mwetwa Vs Inonge Wamui and 2 others, 2014/HP/1104** in which my learned brothers, Mr Justice Kondolo SC and Mr. Justice Chitabo SC, respectively, decided that following the enactment of the **Lands Tribunal Act**, the High Court no longer has original jurisdiction in land matters.

I am indebted to counsel for his submissions and I have taken them into account in arriving at my decision.

- (c) *generally to inquire and adjudicate upon any matter affecting the Land rights and obligations, under this Act, of any person or the Government; and*
- (d) *to perform such acts and carry out such duties as may be prescribed under this Act or any other written law.*

In extent of the tribunal's jurisdiction as it was established under the **Lands Act** was considered the case of **Kawana Mwangela v Ronald Bwale Nsokoshi and Ndola City Council (SCZ Judgment No. 29 of 2000)**

*"In our considered opinion a reading of Section 15 and 22 of the Lands Act shows quite clearly that the jurisdiction of the Lands Tribunal is limited to the settlement of "Land disputes" under the Act and is not an alternative forum to the High Court where parties can go to, even for the issuance of prerogative writs such as mandamus."*

Coming to the jurisdiction of the tribunal under **Section 4 (1) of the Lands Tribunal Act**, it is my view that the provision does not vest exclusive original jurisdiction in land matter in the tribunal. What it has done is to extend the scope of matters the tribunal can adjudicate over and the range of remedies it can award. The provision does not state that matters set out in clauses a-i of subsection 1 can only be adjudicated on by the Lands Tribunal but that it now has the powers to deal with those issues and the remedies set out therein.

I also find that **Section 16 (1) of the Lands Tribunal Act** does not limit the jurisdiction of the High Court to being that of an appellate court. The High Court will only be an appellate court in cases where a land matter is commenced in the lands Tribunal and there is an appeal against its decision.

This being the case, I find that this matter is properly before the High Court. The objections are dismissed.

Costs will be in the cause and leave to appeal is granted.

Delivered in chambers at Lusaka this 4<sup>th</sup> day of December, 2015

  
C. F. R. MCHENGA SC  
JUDGE