

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



2013/HP/1305

BETWEEN:

**BRETHERTON BROTHERS LIMITED
AND
EMELY LUVWEYI SANGAMBO**

PLAINTIFF

DEFENDANT

Before Hon. Mrs. Justice M.S. Mulenga on the 29th day of February, 2016

FOR THE PLAINTIFF

: MR. C. NHARI OF NHARI MUSHEMI AND ASSOCIATES

FOR THE DEFENDANT

: MR. M. IMENDA OF M.M. IMENDA ASSOCIATES

J U D G M E N T

Cases cited:

1. **Anti Corruption Commission v Barnet Development Corporation Limited (2008) ZR 69**
2. **Sithole v State Lotteries Board (1975) ZR 106 at 115**
3. **Nkongolo Farm Limited v Zambia National Commercial Bank Limited, Kent Choice Limited (in receivership) Charles Haruperi (2005) ZR 78 (S.C)**
4. **David Nzooma Lumanyendo and Another v Chief Chimuka and the Two Others (1988/89) ZR 194**
5. **G.F. Construction (1976) Limited v Rudnap (Z) Limited and Another (1999) ZR 134**

The Plaintiff took out Originating Summons dated 4th September, 2015 wherein the following reliefs are sought:

- i. *An Order for Summary Possession of Subdivision A of Subdivision No. 10 of Subdivision B of farm No. 873, Lusaka*
- ii. *Costs*
- iii. *Any other relief the Court may deem fit.*

The Plaintiff states in the affidavit in support sworn by its Managing Director, Rudolf Faerber, that sometime in 1991 it purchased the property called Subdivision A of Subdivision No. 10 of Subdivision B of Farm No. 873 Lusaka (873/B/10/A) from one Simon Dennis Katema. By a further agreement between the parties dated 20th October, 1992 the purchase price of the property was changed from K480,000.00 to K720,000.00 as per exhibit marked "RF1" being a copy of the agreement. The purchase price was paid in installments in full and ownership of the property was subsequently changed into the Plaintiff Company's name in 2002 as per copy of the registered assignment marked "RF2". The Plaintiff is the registered owner of the property and the Defendant has no claim of right or entitlement thereto as per true copy of the certificate of title no. 40701 marked "RF3".

That sometime in the year 2004 the Defendant occupied the property and attempted to start construction works claiming she had purchased the same from the aforementioned Simon Dennis Katema. However, she does not hold any title or entitlement to the said property and has been interfering with the Plaintiff's quiet enjoyment of its property.

The Defendant in her affidavit in opposition dated 15th November, 2013 states that the Plaintiff had earlier on sued her under cause no. 2013/HP/0395 and later discontinued the prosecution of its action by filing a notice of discontinuance exhibited as "ELS1". The Plaintiff after

abandoning its earlier action commenced this action by originating summons under cause No. 2013/HP/1305 with a similar claim.

That it is true that the Plaintiff holds a Certificate of Title issued in 2005. However, the origin of her possession and occupation of the said property was from the vendor Simon Dennis Katema. In 2001, she saw an advertisement in the Daily Newspaper for the sale of property No. 873/B/10/A Lilanda/Barlastone Lusaka for which she and the vendor agreed on a price of K8,000,000.00. That since she did not have ready cash they agreed that the amount be paid in installments which she completed in 2004 and thereafter entered into a contract of sale marked "ELS2".

She further states that the Plaintiff has failed to exhibit the original Contract of Sale of 1991 which should show an amount of K480,000.00 because the Supplemental Agreement talks only of K390,000.00 and also the balance of K250,000.00 was not paid at all since there was no completion. The 2002 new price of K6,000,000.00 proposed by the Plaintiff has also never been paid but the Vendor had signed the conveyance on the understanding that they were going to pay since he owed them K350,000.00 which he was paid in 1991 according to his letter dated 2nd December, 2002 addressed to the Permanent Secretary Ministry of Lands which is marked "ELS3". Therefore, all the necessary steps for issuance of the certificate of title as stated in the Lands and Deeds Registry Act were not complied with by the Plaintiff.

The Defendant further states that she has been deprived of her land through fraud. Despite the vendor being deceased she was relying on his letters such as the one addressed to the Permanent Secretary and another letter which the vendor wrote to her dated 8th November, 2002, marked "ELS4" which show that the vendor had by that date agreed with her to sell his land Farm No. 873/B/10/A and she had already paid some money. That the issues raised by the parties were contentious and were required to be proved by witnesses viva voce and thus the matter could not be properly determined on affidavit evidence based on the originating summons.

In reply, the Plaintiff states in its affidavit that the land in issue in extent of 8 acres was offered to the Plaintiff by the late Dr. Simon Dennis Katema on 14th April, 1991 at an agreed price of K480,000.00 being K60,000.00 per acre. On 17th July, 1992 the late Dr. Simon D Katema proposed to increase the purchase price from K60,000.00 per acre to K100,000.00 per acre and undertook to pay all further payments until the transfer was complete as per copy of the letter marked "RF1". On 19th August, 1992 he wrote a follow up letter to the Plaintiff raising the said purchase price to K800,000.00 to which the Plaintiff agreed as per exhibit marked "RF2". As at 23rd September, 1992, the Plaintiff had paid the Late Dr. Simon D. Katema the sum of K480,000.00 leaving a balance of K320,000.00 only which was confirmed by him in a letter exhibited as "RF3". The late Dr. Katema applied for consent to subdivide the said 8 acres of land in favour of

the Plaintiff and on 5th August, 1993, he confirmed in writing that consent to subdivide had being granted to him and that the balance outstanding on the purchase price was only K80,000.00 as can be seen in the exhibit marked "RF4".

The purchase price was fully paid to the deceased and additionally the Plaintiff over paid him through fees and taxes to the Ministry of Lands, the Surveyors and the Zambia Revenue Authority which the former indicated in his letter exhibited "RF5". That the figure of K6,000.00 placed in the Assignment was arrived at on assessment for tax purposes by the Zambia Revenue Authority and the Ministry of Lands way after the said Late Dr. Simon D. Katema had been paid the agreed purchase price in full.

Considering the contentious issues, I directed that the matter proceed as though commenced by writ of summons and the parties filed their respective bundles of documents. At the trial PW1 was Rudolph Faerper, the Managing Director in the Plaintiff company. He testified that plot 873/B/10/A Lusaka West Barlastone Park belongs to the Plaintiff as confirmed by the title deeds.

He explained the history of the purchase of the property to the effect that a contract of sale was signed between Dr. Katema and the Plaintiff through Messrs Adams, a firm of lawyers in 1983. He basically outlined the contents of the affidavits in support and in reply.

He added that at some point Dr. Katema went out of the country as a diplomat and came back in the year 2000 during which they asked him to finalize the transaction by signing the assignment which he did. The assignment was for the transfer of the subdivision which was signed by PW1 and Dr. Katema and witnessed by Ms. Chooka. The amount indicated in the assignment was K6 million because ZRA insisted on current figures as the value of the kwacha had depreciated thus the K6 million was assessed by ZRA for taxation purposes and Dr. Katema was informed in a letter to that effect at page 11 of the Plaintiff's bundle of documents. The K6 million indicated was not paid but was the value assessed for tax purposes. They paid the tax, survey fees and other fees which Dr. Katema had agreed to pay. PW1 further testified that he had sight of a letter written by Dr. Katema to the Ministry of lands over the transaction and requesting them to cancel the sell and demanding for more money. The Ministry of lands did not cancel the sale, they instead issued title deeds.

The Plaintiff did not allow the Defendant to enter onto the land or build on the property. The Defendant had since built a small structure occupied by some people. The Plaintiff was denied entry on to the property to plant maize or utilizes the land by the people staying in the said house.

Page 7 is a letter from Dr. Katema concerning the balance that was to be collected by him. Pages 5 and 6 are the supplementary agreements

to increase the purchase price. PW1 went on to state that the Plaintiff does not owe Dr. Katema any money over the land transaction and Dr. Katema did not refund the Plaintiff any money he had been paid. PW1 finally prayed for an order of possession of the property, damages and costs.

Under cross examination PW1 stated that he met the Defendant during the course of the investigation regarding the building on the property. She told him that she bought the property from Dr. Katema. However PW1 did not verify her claims as he had title deeds and she did not. He did not know anything about the contract between the Defendant and Dr. Katema. He acknowledged having seen the letter to the Permanent Secretary before. The balance was K80,000.00, which they paid in 1993 and shortly after Dr. Katema disappeared and went abroad. The title was issued in 2005 and PW1 was not aware of what Dr. Katema was doing with the Defendant in 2004 as Dr. Katema signed the assignment in 2002 and so he could not offer the plot to any other person without first cancelling the transaction and refunding the money.

As regards the money paid by the Defendant, PW1 commented that Dr. Katema should refund the Defendant her money as the property was already sold. That in the course of his dealings with Dr. Katema he noted that he frequently changed prices which they always agreed to until they paid the full amounts. As indicated at page 22 the Plaintiff was paying ground rent even in 2010.

The Defendant also testified in her Defence that from June 2001, she met with the late Dr. Katema and they started negotiations for the land. He gave her permission to start cultivating on the land whilst in the process of making installment payments. She had been cultivating on the land from 2001 to 2010 when she started putting up a structure.

The late Dr. Katema had told her that he offered the land to the Plaintiff in 1992 and then went out of the country. When he returned the Plaintiff did not show any interest and that is how he went to see her. He told her that the Plaintiff had paid K350,000.00 at that time but did not mention the full purchase price. She came to know in 2002 that the land was sold to the Plaintiff. Dr. Katema told her that the Plaintiff representatives went to him in Mufulira in 2002 and made fresh arrangements to buy the land at K6 million and he agreed as they had paid K350,000.00 before. That however when he traveled to Lusaka to get the K6 million they told him that they had already paid him K350,000.00 and so they did not pay him the K6 million. He refused and then wrote to the Permanent Secretary and also wrote to her as at page 7 of the Defendant's bundle of documents dated 8th November, 2002 and told her that they could go ahead with the sale of the land. She was convinced by his letter. He offered to sell her the land at K8 million and she paid the full price. The Plaintiff's representatives started coming when Dr. Katema was already dead. She felt bad to hear that another person bought the land and was

claiming the land after she had paid. In the year 2010 when the caretaker's house reached roof level that is when a Mr. Zulu went to tell her that the land was theirs and wanted her to go to the Plaintiff's office. She declined saying she only knew Dr. Katema and that the land also belonged to her as she had paid for it. Dr. Katema did not show her documents of any kind relating to this property at the time he said he had a relationship with the Plaintiff. Pages 14,15,16 and 21 of the Defendant's bundle were issued by Dr. Katema as acknowledgement of payment. She transacted with Dr. Katema as the owner but he did not show her his certificate of title for the subject land but showed her the beacons and the extent of the land.

Under cross examination the Defendant stated that she did not have title deeds to the land in issue. She did not pay any tax to ZRA as the late Katema said he would do that himself. She did not see any documents on which Dr. Katema paid tax. The land register at page 24 of the Defendant's bundle of documents at entry 3 shows Katema as assignor and the Plaintiff as assignee and entry 4 shows the title holder as the Plaintiff. Her contract of sale at pages 17 to 19 of the Defendant's bundle of documents was prepared by Veritas Chambers but she could not recall if they placed a caveat on her behalf. Page 24 of the Defendant's bundle of documents is from Dr. Katema confirming that she had paid K7,500.00 (K7.5 million) as at August 2004. In 2001 they did not sign a contract of sale they just discussed the matter. She did not know the Plaintiff until 2010. She got the land from the late

Dr. Katema thus she did not understand why his estate had not been joined to this case.

This marked the close of the trial. Both parties were given opportunity to file submissions but only the Defendant did so. There are several statements in the submissions attributed to the Defendant but which were never said on record and thus amount to counsel giving evidence from the bar. I have ignored the same.

The Defendant's advocate in the submissions dated 11th December, 2015 relies on the provisions of sections 33 and 34 of the Lands and Deeds Registry Cap 185 (the Act) which provide that a certificate of title is conclusive evidence of ownership of land by a holder of a certificate of title but that title can be challenged and cancelled for fraud in its acquisition as held in **Anti Corruption Commission v Barnet Development Corporation Limited (2008) ZR 69** that **"it is true that holder of Certificate of Title is always presumed to be the owner of land in question."**

Counsel argues that the Plaintiff cannot be the owner of Farm 873/B/10/A when in 2002 there was still the amount of K6,000,000.00 which remained unpaid. There is no exhibit of the original contract of sale of 1991 but only a Supplementary Agreement of 20th October, 1992 which does not say what the original price was. The Plaintiff claims have to have bought the land in 2002 but only obtained title in 2005.

Counsel argues that the late Dr. Katema in his letter of 17th July, 1992 wrote to the effect that the price should be increased and it appeared this letter when received by the Plaintiff resulted in the issuance of the Supplementary Agreement authenticated on 20th October, 1992. That whether or not the change in the purchase price had really been satisfied is a matter in doubt since on 30th October, 2002 the late Dr. Katema wrote a letter to the Defendant requesting to be paid K2.5 million followed by the other letter dated 12th May, 2003.

That under section 34 of the Act, a certificate of title can be challenged and cancelled if it was improperly acquired. That this fact should stand to defeat the Plaintiff's assertion that the Defendant has failed to prove fraud, error or mistake in the issuance of the title deeds since improper acquisition of the property can be established. That the Defendant in her evidence never alleged any element of fraud. Therefore there was no need to bring a claim of fraud in the matter. There is improper acquisition because it is disputable whether or not the Plaintiff has settled the contract sum.

That the vendor had offered the Defendant the land after the Plaintiff's failure to complete paying the purchase price of K6,000.00 which was agreed between the parties. It is unfortunate that the vendor to both parties died and cannot confirm whether or not the Plaintiff had fulfilled or paid the contract sum in full or whether the Defendant had entered into a valid contract with the vendor. The Defendant paid the

purchase price and she constructed a small house in reliance on the vendor. He surmises that in line with section 10 (2) of the Lands (Acquisition) Act Chapter 184 the Defendant is entitled to compensation for the improvements made on the land.

The Defendant was given the access to the property by the vendor himself. Also the Plaintiff watched the Defendant develop the land that belonged to it and did nothing until 2012 when the assignment was signed in 2002. The Defendant could not obtain title deeds because the vendor did not have the original copy of his title deeds. The numerous letters that passed between the vendor and the Plaintiff are conclusive evidence that somehow something was wrong on the part of the Plaintiff.

Further, that the Lands Register shows that the Plaintiff obtained its certificate of title in 2005 when the assignment was signed in 2002. That Dr. Katema had rescinded the contract of sale as far back as the year 2002 as per reason stated in the letter dated 20th July, 2000. All transactions that followed were illegal and the issuance of the title deeds to the Plaintiff was illegal too. The Defendant bought the land without any misrepresentation, mistake or fraud. She is a bonafide purchaser thus section 33 has been clearly defeated. The contract of sale of land is fundamental to the purchase of land and if marred with irregularities, then the contract of sale becomes invalid automatically.

Furthermore, that it is undisputed that the vendor had signed the assignment in 2002, but that this court should refer to page 11 of the Plaintiff's bundle of documents where the Plaintiff admits that the K6,000,000.00 was not the actual amount paid to the vendor and the actual amount was not disclosed. Counsel in conclusion submits that even if the Defendant has no title deeds, she deserves the same since the Plaintiff though in possession of title, there is so much doubt as to the manner it was issued after the contract was first rescinded in 2000 by the vendor and secondly, the contract sum was not fully paid and there was no contract document itself.

I have considered the evidence on record and the submissions by the Defendant.

The facts as I find them are that the Plaintiff herein is the title holder of the property known as Subdivision A of Subdivision No. 10 of Subdivision B of subdivision of farm no. 873 (873/B/10/A) by virtue of the certificate of title number 40701 which was issued to him upon purchasing the property from the late Dr. Katema. On the other hand the Defendant's claim to the property in issue is based on a contract of sale dated 4th August, 2004 which was signed upon the late Dr. Katema allegedly rescinding the contract between him and the Plaintiff for failure to complete payment.

The Defendant has argued from her pleadings and submission that the certificate of title's conclusiveness as provided for under the Lands

and Deeds Registry Act has been defeated by the fact that the transaction is dented with fraud and impropriety. That the supplementary agreement does not have an initial document which was the basis upon it was drawn and that despite the contract having been rescinded the Plaintiff went ahead and obtained title even in the face of the letter to the Permanent Secretary.

Section 33 of the Lands and Deeds Registry Act provides as follows:

"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"

The Plaintiff has exhibited letters by the late Dr. Katema over the sale transaction of the subject plot and page 4 of the Plaintiff's bundle of documents is dated 23rd September, 1992 wherein Dr. Katema indicated that K320,000.00 was the amount due after adjusting the earlier agreed purchase price. A supplementary Agreement was subsequently executed by the parties on 20th October, 1992. The handwritten letter dated 5th August, 1993 at page 7 indicated that there was an outstanding balance of K80,000.00. The Plaintiff has also exhibited an Assignment dated 8th November, 2002 executed by the late Dr. Katema which indicates the price as K6 million and that the same was acknowledged to have been paid to the vendor. The

Plaintiff then wrote the letter dated 22nd November, 2002 to the late Dr. Katema stating that it was not owing any money and that the K6 million mentioned in the Assignment form was *“as per current value and payment of percentages to both Ministry of Lands and the surveyors.”* The certificate of title was subsequently issued to the Plaintiff dated 25th June, 2005. This status is confirmed by the Lands Register at page 24 of the Defendant’s bundle of documents. The Plaintiff has thus proved that it is the registered proprietor of the subject property.

To prove fraud on title deeds one has to come within the limits as set out in the case of **Sithole v State Lotteries Board (1975) ZR 106 at 115** where it was held that **“if a party alleges fraud the extent of the onus is greater than a simple balance of probabilities.”** The case of **Bater v Bater** was cited in which Denning LJ stated that:

“A civil case may be proved by a preponderance of probabilities but there may be a degree of probability within that standard. The degree depends on the subject matter. A civil court when considering a charge of fraud will naturally require a high degree of probability than that which it would require if considering whether negligence was established. It does not adopt so high a degree of a criminal court, even when it is considering a charge of a criminal nature, but still it does require a degree of probability which is commensurate with the occasion.”

Further in **Nkongolo Farm Limited v Zambia National Commercial Bank Limited, Kent Choice Limited (in receivership) Charles Haruperi (2005) ZR 78 (S.C)** the Supreme Court held that:

“where a party relies on any misrepresentation, fraud, breach of trust, willful default or undue influence by another party, he must supply the necessary particulars of the allegation in the pleadings. Fraud must be precisely alleged and strictly proved. There is no presumption of fraud. In the instant case, fraud was not alleged.”

I have considered the Defendant's case and her quest to have the certificate of title owned by the Plaintiff cancelled.

This matter was allowed to proceed as though commenced by writ of summons which gave the parties the liberty to call witnesses to prove their allegations. Both parties testified without calling additional witnesses. As regards the Plaintiff's case, PW1 produced several documents signed between the Plaintiff and the late Dr. Katema. The final ones being the Assignment dated 8th November, 2002 and the certificate of title subsequently issued. At this stage it shows that the Plaintiff purchased the property from the deceased and that its title is conclusive.

I have also considered the documents produced by the Defendants to impugn the said certificate of title. The document at page 5 of the Defendant's bundle of documents dated 20th July, 2000 is cancelling the sale of the property in issue. Another letter at page 6 dated 30th October, 2002 acknowledges the receipt of some part payment and requests payment for the balance of the purchase price from the Defendant. The Assignment to the Plaintiff is dated 8th November, 2002 a few days after receiving and demanding the payment from the Defendant. A month later the late Dr. Katema was appealing to the Permanent Secretary for intervention in the matter through the letter dated 2nd December, 2002. There is also a letter dated 12th May, 2003 wherein the late Dr. Katema sets out conditions for him to agree to

proceed with the sale of the property to the Plaintiff however there are no records of final payments made by the Plaintiff. The Defendant has produced documents marked 14 through to 21 in her bundle of documents showing that she made a total payment of K7,500.00. The Defendant has argued, to support her allegations of fraud, that there was no consent to assign and property transfer tax clearance certificate which is issued separately to support the completion of the transaction involving the Plaintiff which culminated in the issuance of the title deeds.

This argument that fraud is proved on account that the Plaintiff has not exhibited a consent to assign and property transfer tax clearance certificate is not entirely valid in the face of the certificate of title being held by the Plaintiff. Section 33 of the Act plainly states that a certificate of title is conclusive proof and the Supreme Court authority of **Nkongolo Farms** cited above states that fraud must be proved on a higher standard than the balance of probability. The higher standard has not been met in this regard.

The fact that the acknowledgment of receipt of the balance of the money is not produced also does not prove fraud. If the late Dr. Katema was not paid the balance, he would have either not signed the Assignment to the Plaintiff in 2002 or after signing, he could have challenged the transaction in Court or the Lands Tribunal. The letter to the Permanent Secretary dated 2nd December, 2002 wherein the late Dr. Katema was seeking the intervention of the Permanent Secretary

over his transaction with the Plaintiff does not assist the Defendant in this matter. The late Dr. Katema was seeking a ruling from the Permanent Secretary which office was not competent to deal with legal or contractual issues between the Plaintiff and the late Dr. Katema. The sought for ruling was never given. The late Dr. Katema did not go further to either cancel the transaction as he had earlier done through the letter of 2000 or place a caveat on his property to prevent the transfer or indeed take out an action. Nothing was done until his death and the administrator of his estate did not pursue the Plaintiff over the same. This state of affairs is consistent with the Plaintiff's assertions that it settled the full purchase price and had the title validly transferred into its name.

The Defendant on the other hand acknowledged that she started discussing the purchase of the property with the late Dr. Katema in 2001 and after paying a total of K7,500.00 from January 2003 to August, 2004 the parties executed a contract of sale dated 4th August 2004. That she never had sight of the original title deeds or other related papers from the late Dr. Katema from 2001 up to the time of signing the contract of sale. It appears she fully trusted the said Dr. Katema. That he never told her about the transaction involving the Plaintiff until sometime in 2002 and 2003 when he was apparently being pressured by the Plaintiff. Despite the late Dr. Katema executing the Assignment with the Plaintiff in 2002, he proceeded to receive money from the Defendant from 2003 to 2004 when the contract of sale was finally executed. The acknowledgment of payment

at page 21 of the Defendant's bundle is for the total sum of K7,500.00 and not the K8,000.00 stated in the contract of sale. This shows that the late Dr. Katema's conduct in relation to the Defendant was questionable and fraudulent as he apparently knew that he had concluded the transaction with the Plaintiff and did not even have the original certificate of title in his possession whilst dealing with the Defendant.

In light of these facts, the Defendant's claim to being the bonafide purchaser without notice or the legitimate beneficial owner cannot stand. Her transaction was done after the late Dr. Katema had already assigned the property in issue to the Plaintiff in 2002 and could therefore not validly transact with the Defendant over the same. The Defendant would have done well to pursue the estate of the late Dr. Katema to recover her money.

The Defendant has also raised the issue of being in possession. It is not in dispute that the Defendant was cultivating on the land and started erecting a two roomed structure in 2010. It was in the process of her construction that the Plaintiff's representatives approached her and stated that they were the beneficial owners and asked to see her legal documents. That is how this matter was eventually brought to court. The case of **David Nzooma Lumanyendo and Another v Chief Chimuka and the Two Others (1988/89) ZR 194** cited by the Defendant's counsel is clear when it states that:

"No rights by adverse possession can be acquired if land becomes the subject of the certificate of title."

In this case, the Defendant started building her structure in 2010 way after the Plaintiff had obtained title in its name in 2005 as reflected on the Lands Register and the certificate of title. She therefore cannot acquire rights on the land by adverse possession. The issue of how long it has taken the Plaintiff to go on to the land is not relevant at this point. The Defendant also took six (6) years to put up something on the land after signing the contract of sale in 2004. Delay in effecting development cannot be a ground for obtaining adverse possession in the absence of the proper procedures being followed by the Ministry of Lands to re-enter and cancel the certificate of title of the defaulting party.

I wish to add that in the case of **G.F. Construction (1976) Limited v Rudnap (Z) Limited and Another (1999) ZR 134 at 136** the Supreme Court held as follows:

"We take judicial notice of the fact that a contract of sale of land does not per se transfer ownership of land to the buyer. Much more is required. There must be a deed of assignment executed by the parties which must be lodged with the Registrar of Lands together with the necessary consents or licence."

In this instant case, the Defendant only has a contract of sale of 2004 and did not have the vendor execute an assignment despite stating that the full purchase price was paid in 2004. On the other hand the Plaintiff had an assignment executed by the vendor which was lodged and a certificate of title obtained.

In light of all that has been discussed above, I find that the Plaintiff has proved its case against the Defendant that it is the beneficial owner of the subject stand No. 873/B/10/A having purchased the same from the late Dr. Katema. The Defendant has failed to prove the allegations of fraud or impropriety as against the certificate of title issued in favour of the Plaintiff.

I hereby grant the Plaintiff the order of summary possession of subdivision A of subdivision 10 of subdivision B of farm 873, Lusaka (873/B/10/A). In light of the facts of this case which arose as a result of the conduct of the late Dr. Katema as vendor to both parties, I order that each party should bear its own costs.

Leave to appeal is granted.

Dated this 29th day of February, 2016



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M.S. MULENGA
HIGH COURT JUDGE