IN THE HIGH COURT FOR ZAMBIA **2012/HP/1174**
HOLDEN AT LUSAKA
(Civil Jurisdiction)

BETWEEN:

TYSON BRUNO CHISAMBO **PLAINTIFF**

VS

THE ATTORNEY GENERAL **1ST DEFENDANT**

ERIC N'HANDU **2ND DEFENDANT**

CORAM: HONORABLE JUSTICE MR. MWILA CHITABO, SC

For the Plaintiff: *Mr. H.B. Mbushi of Messrs HBM Advocates*

For the 1st Defendant: *Mrs. K. Ndulo Assistant Senior State Advocate*

For the 2nd Defendant: *In person*

JUDGEMENT

Cases Referred to:

1. *Anti-Corruption Commission V Barnnet Development Corporation Limited (2008) Z.R. 69 Vol. 1 (SC).*
2. *Justin Chansa v Lusaka City Council (2007) ZR 256*
3. *Steadman v Steadman (1974) 2ALL ER 977*

Legislation Referred to:

1. *Circular No. 1 of 1985*
2. *Lands and Deeds Registry Act Chapter 185 of the Laws of Zambia*

This matter was instituted by way of writ of summons supported by a statement of claim. The Plaintiff sought the following reliefs:

a) *An Order for specific performance that the 1st Defendants cancel the purported Re-entry certificate on Lot 13317/M, Lusaka.*
b) *An order that the 2nd Defendants do vacate Lot 13317/M Lusaka.*
c) *Damages for unlawful occupation of the Plaintiff's land*
d) *Costs*

The Plaintiff's statement of claimed revealed that he purchased Lot No. 13317/M Lusaka from one Mrs. Catherine Lishomwa Mwewa in November, 2003 at a consideration of K24,000,000. He had since made developments which include the construction of a two bed roomed house where the caretaker resides and began growing Jatropha and Moringa trees as raw material for the bio-fuels energy crops as well as planting maize.

It was also revealed that on20th June, 2010 the 1st Defendant advertised Lot 13317/M Lusaka with the intention of registration of a re-entry on the property due to lack of development which was not true. Upon seeing the advertisement the Plaintiff went to complain to the Commissioner of Lands who promised in writing

not to make any re-entry on the said land but failed to effect the promise hence the confusion that resulted in this action as the 2nd Defendants took advantage of the confusion and illegally occupied the Plaintiff's land with no justification.

In his Defence, the 1st Defendant admitted that he did advertise the Notice of Intention to Re-enter in relation to Lot 13317/M, Lusaka due to lack of development. He further admitted that the Plaintiff lodged an appeal against the re-entry which was allowed and averred that the Commissioner of Lands had not given anyone any letters of offer nor authorized any other person to move onto the property.

The 1st Defendant denied that the Plaintiff was to claim for specific performance against the 1st Defendant as the relief was untenable at law against the 1st Defendant. He further denied that the Plaintiff was entitled to any relief against him as he had not authorized any occupation of the Plaintiff's property.

The 2nd Defendant in his defence contended that there was no material development on the land but merely a small unplanned and unapproved structure. He asserted that the Commissioner of Lands' office caused Lot 13317/M to be advertised with the intention of re-entry on the property due to lack of development as the said land did not have any material development on it as the small unplanned and unapproved structure or alleged growing of Jatropha and Moringa trees did not amount to material development as required by law.

The 2nd Defendant further contended that he did not illegally occupy the Plaintiff's land but employed legal means by applying for Lot 13317/M following the public notice of re-entry of the said piece of land and their interest in land crystalized when the Commissioner of Lands through his letter of 27th June, 2012 confirmed that he would issue letters of offer of the land once the Kafue District Council offered no objection. In addition the 2ndDefendant stated that the Council by a letter dated 4th July, 2012 gave a go ahead to the Commissioner of Lands to Offer the said the said piece of land to the 2nd Defendant and the Commissioner of Lands commenced the processing of offers to the 2nd Defendant.

At trial the Plaintiff gave evidence on oath and called no witnesses. In his evidence the Plaintiff explained that in November, 2003 he bought a piece of land in Chilanga District from a Mrs. Lishomwa at a consideration of K24million old currency. Title was later issued in his name which title was on pages 1-7 of the Plaintiff's bundle of Documents.

He testified that the same piece of land had squatters and it took him time to finally pay them off and get rid of them. He then paid the rates and the ground rent which bills were on page 11 of the Plaintiff's bundle of documents. He explained that at the time he was growing maize, Jatropha plantation and Moringa Plantation which are energy crops for the Bio-fuels industry. He added that he built a two bedroomed house for his servants and farm manager.

He also explained that upon a valuation that was conducted by Anderson and Anderson found on pages 17 to 23 of the Plaintiff's bundle of documents the value of the property was K810million (old currency).

He testified that the reason he engaged the valuers was to establish the value of the property based on the intention of re-entry on ground of lack of development. He said he only came to know of the intention to re-enter through the press. Upon seeing the Commissioner of Lands over this intent and he was asked to put in appeal in writing which he did which document was on page 16 of the Plaintiff's bundle of documents. He explained in the letter that he had constructed a two bedroomed house for the servants and that he was the director of the Bio-fuels Association of Zambia as well as Chairman of the Renewable Energy and Bio Mass. He said his intention was to fully plant a Jatropha Plantation which the Government of Zambia had approved for blending of bio-fuels to petroleum products.

He testified that on 1st June 2011 he received a reply from the Ministry of Lands informing him that his appeal was successful and this was contained on page 36 of the Plaintiff's bundle of documents. The response from the Ministry meant that the re-entry had been reversed and property reverted to him. He said he instituted proceedings in this matter because some people were demarcating his piece of land without his authority when the land had been reverted to him.

He stated that the 2ndDefendant had engaged surveyors to demarcate his piece of land and started growing maize cops on his piece of land. According to him they were interfering with his piece of land and he did not allow them to do that. He said when he reported the matter to the police in Chilanga, he was advised to go to Ministry of Lands which he did and subsequently sued the Commissioner of Lands over the encroachment on his land. He narrated that the 2nd Defendant did not stop farming on the Plaintiff's land notwithstanding the injunction of this Court that was upheld by the Supreme Court. He told the Court that he would like to have his piece of land and enjoy the status of his possession. He was also claiming damages for infringement on his piece of land.

In cross examination by the learned State Advocate Ms. Ndulo, the Plaintiff explained that as at the date of the re-entry he had put up a two bedroomed house and had a plantation of Jatropha and Moringa trees. He said when the property was valued, at that time, it was valued at K800million (old currency). He also explained that when he saw the advert for the intended re-entry he immediately contacted the Commissioner of Lands and subsequently lodged an Appeal. Further, that when the appeal was successful, he was of the view that the land reverted to him as he was advised that the Registrar would reverse the re-entry.

The Plaintiff told the Court that the current status of the property was that he had put up a borehole for his farm workers and they were growing vegetables since they were told to stop developments

by virtue of the Supreme Court Judgment until the matter is resolved by this Court.

When cross examined by the 2nd Defendant, the Plaintiff maintained that growing Jatropha, Moringa and Maize was meaningful development. He also stated that according to page 11 of the Plaintiff's bundle of documents dated 19th September, 2012 he paid the sum of K3,475 toward the outstanding ground rent. He added that he also built some property on the land as demonstrated on page 34 of the Valuation Report. He reiterated that the purpose of the valuation report was to ascertain the value of the farm.

He explained that despite the Certificate of Re-entry that was issued against his piece of land, he did not surrender the Certificate of title because he appealed against this decision and the decision was later reversed. He referred the 2nd Defendant to page 36 of the Plaintiff's bundle of documents which contained a letter from the Commissioner of Lands dated 22nd September, 2012 informing the Plaintiff that the office of the Chief Registrar would cancel the Certificate of Re-entry. The Plaintiff asserted that the letter did not ask the Plaintiff to ensure that the cancellation was done.

He restated that his workers were cultivating vegetables on the land while the 2nd Defendant was cultivating maize but that further developments were halted in line with the Supreme Court's decision. With regard to the Commissioner's letter on page 14 of the Defendants bundle of documents, the Plaintiff stated that he was not aware of any negotiation settlement.

In re-examination the Plaintiff clarified that he spent money on planting of trees on the farm. He verified that there was development on the land evidenced by the valuation which valued the land at K800million (old currency). He further stated that by a letter dated 1st June, 2011 the letter from the Commissioner of Lands said the Certificate of Re-entry was cancelled and by copy of the letter would inform the Chief Registrar to cancel the certificate. He said that this letter was official and showed that the property reverted to him. He reiterated that it was not his responsibility to make sure that the Chief Registrar acts on the instructions of the Commissioner of Lands.

The Plaintiff closed his case and the Defence called two witnesses.

DW1 was Paul Kachimba, a Legal Officer at the Ministry of Lands who testified that according to their record the property in question, being Stand 1/13317/M, was on title and in the names of Mr. Tyson Bruno Chisambo sometime in the year 2010. He stated that his office together with the Estates unit inspected this property and confirmed that it was undeveloped. He said they proceeded to issue a notice of intention to re-enter through the Daily Mail Newspaper in June, 2010. After three months lapsed in September, 2010 the Ministry of Lands issued a Certificate of Re-entry as seen on page 12 of the Plaintiff's bundle of documents.

He explained that at this point the land was deemed repossessed and was at the disposal of the Commissioner of Lands. In 2011, he said the Plaintiff wrote to the Ministry of Lands appealing against

the Certificate of Re-entry stating that he had in fact developed the land of which at the time it had Jatropha and said that he would proceed to develop the property. The Commissioner then instructed the witness to write to the Plaintiff and inform him that his appeal was successful and his office should have proceeded to cancel the Certificate of Re-entry as seen on page 36 of the Plaintiff's bundle of documents.

It was his testimony that having written to the Plaintiff, it came to his attention that the Commissioner of Lands had authorized Chilanga Farmers Co-operatives Club to re-plan the property in question into smaller properties ranging from L/2524/M to L/25266/M within property L/13317/M. He informed the Commissioner of this predicament and the Commissioner decided to engage the parties in this matter in order to come up with an amicable solution.

He stated that their position was that the property had reverted to the Plaintiff as title holder pending the cancellation of the Certificate of Re-entry in the system. He explained that because the Commissioner of Lands indirectly offered the property to the 2nd Defendant by allowing them to re-plan the land, their office was bound to compensate the affected parties by finding alternative land as and when it was available. He testified that they also attempted to persuade the Plaintiff as title holder to surrender a portion of his land and he would in turn be compensated with another piece of

land but to date they had been unable to cancel the certificate or engage the affected parties due to this action.

The witness further explained that what constituted development was a difficult term to achieve or determine because the leases and offer letters were still couched to mean anything done on the property exceeding K500 old currency which is currently equivalent to K50.He added that the Courts had interpreted development in various ways such as even mere digging of a foundation and putting of a footing for foundation. In the Present case he stated that while there was no development per se, the land was being effectively being utilized for growing of Jatropha.

In cross examination the witness told the Court that the inspection report did not indicate that there were workers living on the farm and neither did it state that the land was partly cleared and stamped. He admitted that the report further did not mention the growing of Jatropha nor did it mention the three phase Zesco power lines. He admitted that all the factors mentioned cost money and that the Estates Report was very accurate and the decision for the notice of intention of re-entry was wrongly done.

He further explained that the process of subdividing land involved the provincial planning authority and this could be done on two conditions which are if its creating property for the first time or where the title was cancelled or re-entered after the office of the Commissioner of Lands confirms that indeed the property has been cancelled or re-entered and that they are at liberty to re-plan.

He said that rectification of the register could only be done by the Registrar on instruction by the Commissioner of Lands. According to him, the Chief Registrar had to be written to by a standard legal document requesting for the cancellation of the Certificate of Re-entry. Once this document is referred to the Chief Registrar, he is bound to register it. He said in the present case the reason for not cancelling the Certificate of Re-entry was purely due to the Registry's failure to file documents. It was his testimony that the Certificate of cancellation was in fact signed by the Commissioner of Lands but got misplaced somewhere along the line.

The witness told the Court that the Commissioner of Lands had not allowed anyone to occupy the land but merely allowed the re-planning. He admitted the Plaintiff had always been the owner of Lot No. 13317/M. When referred to the letter from the Commissioner of Lands to Kafue District Council requesting if they had any objection to process the offer letters to the 2nd Defendants, he stated that that did not amount to an offer to the 2nd Defendants of the Plots as no offer letters were generated despite there being no objection from the council.

When cross examined by the 2nd Defendant the witness explained that after the Plaintiff had appealed there was instruction from the Commissioner of Lands to inform him that his appeal was successful. Once this was sent to the Plaintiff, it was his duty as legal officer, to prepare the Certificate of Cancellation of Re-entry which once prepared is then sent to the Commissioner of Lands for

his execution. Once executed it is then sent to the Deeds Department for Registration. The Plaintiff's duty was merely to go back after a few days to see if the cancellation was effected.

He maintained that the Certificate of Cancellation of Re-entry was actually executed by the Commissioner of lands but unfortunately it was not registered as it was misplaced or lost. He said it was during this period that his office was trying to engage the parties. He admitted that it was not difficult to come up with another certificate of Cancellation. He maintained that the current owner of Lot No. 13317/M was the Plaintiff because the land reverted to him after his appeal was successful. He said that this was despite the fact that the Certificate of Re-entry still showed in the system due to the misplaced Certificate of Cancellation of the re-entry. The Certificate could not be cancelled once the matter was on Court.

According to him the document on page 22 of the Defendants' bundle of documents showed that the offer letter were being created in the system but that the said offer letters were never generated. He reiterated that the 2nd Defendants had no right to occupy the land because one could only take possession of property if they were in possession of a valid offer letter or certificate of title and the 2nd Defendant had none.

He admitted that to an extent the 1st Defendant failed to effect the cancellation. He further asserted that they did a subsequent inspection on the piece of land and found that the estate report indicating that there was no development on the land was

erroneous. He recalled that this was done when the plaintiff appealed against the re-entry alleging that the property was in fact developed. The witness also admitted that such cases were common to the office.

When referred to the document on page 24 of the Defendant's bundle of documents, he clarified that the issue of surrendering a portion or part of the land was optional to the title holder. He maintained that while the Certificate of Re-entry meant that the previous title had been cancelled, in the present case the land had reverted to the Plaintiff.

DW2 was **Mr. Eric N'handu**, the Chairman of the Chilanga Farmers Union. He explained that he was representing a group of people under the Chilanga Farmers Cooperatives Club which as duly registered with Kafue District Council. The club's objective was, amongst others, empowering the members with seasonal farming inputs and see that the members had land if possible.

He testified that it was not true that they were illegal occupants of the land as they followed all legal procedures.

He recalled that sometime in 2010 some people from the cooperative who were mandated to spearhead the project to acquire land approached Kafue District Council in search of vacant properties available. The Council informed them that the Ministry of Lands would repossess several properties around the country and they should be on the lookout for an advert in the Daily Mail.

In about September the same year an advert was placed for plots which were repossessed fully with Certificates of Re-entry of record. Upon seeing this advert, the members of the cooperative went to Kafue District Council to seek guidance on how to apply for the said plots.

They were advised on how they would go about applying for Lot No 13317/M by the Secretary of the legal department at the Council. He testified that the members of the cooperative were subsequently interviewed in order to determine their eligibility to own land. The Council later approved the creation of new stands from the plots that had been repossessed as evidenced by a letter from the Council to the Lusaka Province Planning Authority on page 4 of the Defendant's bundle of documents.

It was his testimony that the proposed re-planning of Lot 13317/M into smaller plots were approved by the Lusaka Planning Authority. He said according to page 5 of the bundle of documents, the Commissioner of Lands also approved re-planning. They were informed that that the members of the Cooperative needed to pay for the re-planning in the sum of K1,080 which was paid and the receipt was on page 6 of the Defendants bundle of documents.

A copy of the site plan was given the cooperative and showed that Lot 13317/M was cancelled and smaller plots were created. He further narrated that they were asked for land applications and the same were submitted. Receipt of the various applications were on pages 8-12 of the Defendant's bundle of documents. A quotation

was also obtained from the survey department of K30,600 and a down payment of K24,000 was paid with the balance being paid later. This was contained on pages 14 and 15 of the Defendants bundle of documents.

According to him, the Commissioner advised that there were internal issues at Kafue District Council and they were advised to apply for the new plots by-passing the council. The witness visited the Ministry of Lands legal office and he was given an internal memorandum found at page 19 of the Defendants bundle of documents. The Commissioner of Lands subsequently wrote to Kafue District Council asking whether offer letters should be issued The Council however did not answer their application letters. He stated that the Commissioner of Lands prepared the offer letters. He explained that the same letters were not before Court but computer printouts from the Ministry of Lands showed that one of the members of the cooperative was offered the said plot on page 22 of the Defendants bundle of documents.

He testified that the Commissioner later wrote to the cooperative informing them of the Court action pertaining to the same piece of land and that was the reason for not giving offer letters. This letter was on page 23 of the Defendants bundle of documents. According to him the Commissioner of Lands said he would give them an alternative piece of land.

In cross examination the witness admitted that the appeal against re-entry of the Plaintiff's land was successful as evidenced by a

letter to the Plaintiff but that the actual Certificate of Re-entry was not cancelled due an administrative problem. He explained that the Commissioner of lands could issue offer letters because the land in issue was not council property but belonged to the Ministry of Lands. He said that since payments were made for the survey of land, they would appreciate a refund for that and being given an alternative piece of land.

In reexamination the witness told the Court that he did not have offer letter from the Council as the Council had internal problems at the time. He referred to page 21 of the Defendant's bundle of documents where the Commissioner of lands said he would proceed to issue offer letter. He added that the Commissioner of Lands later wrote to the cooperative and explained why offer lettered were not issued and he alluded to a negotiation settlement.

The 2ndDefendant filed in written submissions where they firstly argued that the Plaintiff placed reliance on a valuation report prepared in September as part of his evidence, however, this was prepared after the cause of action had arisen and was therefore of no relevance in determining the matters in dispute. The submissions referred to DW1's evidence that the certificate of re-entry was registered after the three months had lapsed in accordance with section 13 of the Lands Act.

The 2nd Defendant's cited the case of ***Shadrick Wausula Simumba v Juma Banda and Lusaka City Council SCZ/8/96/2008*** argument that in that case the Supreme Court among other things

held that if repossession is effect in circumstances where the lessee is not given an opportunity to explain, such repossession could not be valid. It was argued that equally if repossession had been effected in circumstances where the lessee had been given an opportunity to explain why a certificate of re-entry should not be entered against the register, then such repossession must be said to be valid. It was his argument that the Plaintiff received the notice of the intended re-entry and did not make representation until 11th May when the legal process for re-entry had already run its full course.

It was argued that by this time the Commissioner of Lands became entitled to allocate the property because the Plaintiff because by this time the Plaintiff's proprietary interest were extinguished by operation of the law. It was his further argument that the Plaintiff had not challenged the re-entry anywhere in the pleadings but merely emphasized that the 1st Defendant should adhere to the letter on page 36 of the Plaintiff's bundle of documents which a letter from the Commissioner responding to the appeal. This letter came nine mother the Certificate of Re-entry was entered.

It was submitted that the Supreme Court in the case of ***Justin Chansa v Lusaka City Council (2007) ZR 256*** held that the local authority was mandated to advertise any land available, to receive applications from members of the public and make recommendations to the Commissioner of Lands. It was argued that the Chilanga Farmers' Co-operative Club opted to applying for land

through the local authority namely, Kafue District Council. When an advertisement appeared in the Daily mail the 2nd Defendant applied. According to the 2nd Defendant the letter from the Council to the Commissioner on page 21 of the Defendant's bundle of documents met the requirement laid down by Land Circular No. 1 of 1985.

The Defendant argued that the Plaintiff lodging his appeal 7 months of the publication of re-entry, the plaintiff had come too late to enjoy the benefits of section 13(3) of the Lands Act which allowed for the register to be rectified. They argued that the effect of the re-entry was that the land held by the Plaintiff had reverted to the State and the 1st Defendant was at liberty to offer the property to the 2ndDefendant.

He submitted that the 2ndDefendant had acquired an equitable interest in the property by the time the Plaintiff made his appeal. He urged the Court to give effect to the implied intention by the 1st Defendant to allocate the property to the 2nd Defendant by construing the various payments and the various communication passing between the Kafue District Council and the Commissioner of Lands on one side and the 2nd Defendant on the other side as clear proof of an agreement to convey proprietary rights to the latter.

It was further submitted that on authority of ***Steadman v Steadman (1974) 2 ALL ER 977***, where a party demonstrates part performance in reliance on the oral agreement with the contract

alleged, the Court will enforce the contract. He argued that the various payments made by the 2nd Defendant funded the process of re-planning and resurveying the repossessed property then the 1st Defendant would ultimately allocate the property to the 2nd Defendant.

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

The issue that is for this Court to determine is whether after the Certificate of Re-entry that was issued by the Commissioner of Lands against the Plaintiff's land, the 2nd Defendant had sufficient interest in the property. The evidence of the Plaintiff is that in as much as the Certificate of Re-entry was issued and registered against his land, he successfully appealed against the re-entry and the land reverted to him.

The 1st Defendant through DW1 admitted in evidence that infact the Plaintiff's appeal against the re-entry was successful and this was communicated to him and the implication was that the land reverted to him. He further denied there being any offer letter being generated with respect to the re-planned plots under the Plaintiff's piece of land.

The 2nd Defendant on the other hand maintained that the Certificate of Re-entry was never cancelled and as such their interest was valid. They maintained that the Commissioner was in the process of issuing offer letter to the new plots on the subject

property. They however conceded that they were open to being given alternative pieces of land.

The single and most important starting point in this matter is section 33 of the Lands ad Deeds Registry Act. The section provides that:

> *"a certificate of title is conclusive evidence of ownership of land by a holder of a certificate of title."*

These sentiments were echoed in the case of ***Anti-Corruption Commission V Barnnet Development Corporation Limited (2008) Z.R. 69 Vol. 1 (SC)***.

However, under section 34 of the same Act, a certificate of title can be challenged and cancelled for fraud or reasons for impropriety in its acquisition. Section 34 of the Lands and Deeds Registry Act which provides as follows:

> *34 (1) No action for possession, or other action for the recovery of any land, shall lie or be sustained against the registered proprietor holding a Certificate of Title for the estate or interest in respect to which he is registered, except in any of the following cases, that is to say:*
>
> *(a) the case of a mortgage as against a mortgagor in default;*
>
> *(b) the case of the President as against the holder of a State lease in default;*
>
> *(c) the cases of a person deprived of any land by fraud, as against the person registered as proprietor of such land*

through fraud, or against a person deriving otherwise than a transferee bona fide value from or through a person so registered through fraud;

(d) the case of a person deprived of or claiming any land included in any Certificate of Title of other land by mis-description of such other land, or of its boundaries, as against the registered proprietor of such other land, not being a transferee, or deriving from or through a transferee, thereof bona fide for value;

(e) the case of a registered proprietor claiming under a Certificate of Title prior in date in any case in which two or more Certificates of Title have been issued under the provisions of Part III to VII in respect to the same land.

(2) In any case other than as aforesaid, the production of the register or of a copy of an extract there from, certified under the hand and seal of the Registrar, shall be held in every Court of law or equity to be an absolute bar and estoppel to any such action against the registered proprietor of land the subject of such action, and in respect of which a Certificate of Title has been issued, any rule of law or equity to the contrary notwithstanding".

It is not in dispute that the Plaintiff was the title holder to plot 13317/M and it is not in dispute that the said title was not cancelled by virtue of the successful appeal against the re-entry. The law is very clear that a certificate of title is conclusive evidence

of ownership of title unless it is proven that the title holder fall under the exceptions outlined in section 34 of the same Act.

In the present case the evidence from both the Plaintiff and the Defendants is very clear that the land and certificate of title reverted to the plaintiff after an inspection was done on the Plaintiff's land and found that in fact there was development on the land. This lead to the successful appeal against the re-entry and in essence title remained with the Plaintiff.

The 1st Defendant on the other hand did not cancel the Certificate of Re-entry as it was supposed to and ended up holding the land out to be vacant to the 2nd Defendant. The 2nd Defendant in turn incurred costs towards the re-planning of the Plaintiff's land. I find as a fact that there was no offer to the 2nd Defendant because the procedure to make offers according to the provisions of **Circular No. 1 of 1985** requiring an offer to be preceded by minutes of the full Council meetings of the relevant council. The 2nd Defendants were advised to claim the monies spent on the survey diagrams.

With regard to the argument that the 2nd Defendant should be offered an alternative piece of land should is something that the 1st Defendant must deal with and not allow the Plaintiff to suffer for their failure to ensure that the procedure for cancellation of the Certificate of Re-entry was adequately dealt with. Even if it were to be argued that there was a mistake, a mistake can be corrected at any time.

Judgment entered in favour of the Plaintiff. The Plaintiff is to enjoy quiet possession of his property. Costs are for the Plaintiff and the 1st Defendant to be paid by the 2nd Defendant and to be taxed in default of agreement.

Leave to appeal is granted.

Delivered under my hand and seal this 14th day of December, 2017

Mwila Chitabo, S.C.

Judge