

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

**2016/HP/0472**



**B E T W E E N :**

JOHN CHIZEMBE	<b>1<sup>ST</sup> PLAINTIFF</b>
ALICK CHANGWE	<b>2<sup>ND</sup> PLAINTIFF</b>
WALYA CAROLINE NGOMBE	<b>3<sup>RD</sup> PLAINTIFF</b>
TRICIA CHIABI	<b>4<sup>TH</sup> PLAINTIFF</b>

**AND**

ALEXANDER NGANDU	<b>1<sup>ST</sup> DEFENDANT</b>
IBRAHIM PHIRI	<b>2<sup>ND</sup> DEFENDANT</b>
MR. MALASHA	<b>3<sup>RD</sup> DEFENDANT</b>
THE ATTORNEY GENERAL	<b>4<sup>TH</sup> DEFENDANT</b>
LUSAKA CITY COUNCIL	<b>5<sup>TH</sup> DEFENDANT</b>
CHARLES DINDIWE	<b>6<sup>TH</sup> DEFENDANT</b>

**Before Honourable Mrs. Justice M. Mapani-Kawimbe on the 9<sup>th</sup> day of August, 2017**

*For the Plaintiffs* : *Mr. J. Chibalabala, Messrs John Chibalabala  
Legal Pratiitioners*  
*For the Defendants* : *No Appearance*

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

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**Cases Referred To:**

1. *Khalid Mohamed v The Attorney General (1982) Z.R 49 (S.C)*

**Legislation Referred To:**

1. *Lands and Deeds Registry Act, Chapter 185*

**Other Works Referred To:**

1. *Land Law in Zambia, Cases and materials, Fredrick S. Mudenda, 2007*

By Writ and Statement of claim, the Plaintiff seeks the following reliefs:

- i. *A declaration that the 1<sup>st</sup> Plaintiff is the beneficial owner of the property known as LUS/38753.*
- ii. *A declaration that the 2<sup>nd</sup> Plaintiff is the equitable owner of the property known as LUS/38750.*
- iii. *A declaration that the 3<sup>rd</sup> Plaintiff is the beneficial owner of the property known as LUS/38752.*
- iv. *A declaration that the 4<sup>th</sup> Plaintiff is the equitable owner of the property known as LUS/38751.*
- v. *A declaration that the Defendants whether by themselves or by their servants or agents or otherwise whomsoever are not entitled to enter on the said properties of the Plaintiffs or otherwise obstruct or interfering with the Plaintiffs' peaceful possession and quiet enjoyment of their respective pieces of land.*
- vi. *A permanent injunction to restrain the Defendants whether by themselves or by their servants or agents or otherwise howsoever from continuing the trespass and threatening workers at the Plaintiffs' land.*
- vii. *Any other relief the Court may deem fit, and*
- viii. *Costs*

The particulars of the Statement of Claim are that on 20<sup>th</sup> May, 2014, the Commissioner of Lands offered Francis Muzyani to purchase property known as LUS/38753, who sold the said property to the Plaintiff on 23<sup>rd</sup> May, 2014. The Plaintiff states that sometime in May 2015, the Lusaka City Council demolished illegal structures on the western side of the property, which included the Defendants' structures, which were deemed to have been built on the road reserve.

On 19<sup>th</sup> February, 2016, the Commissioner of Lands issued the Plaintiff Certificate of Title No. 18173 to the Plaintiff. Sometime in September 2015, the Plaintiff started erecting a boundary wall fence along his property, when the Defendants falsely alleged that he had illegally acquired the property and was building on the reserve road. On the 8<sup>th</sup> September, 2015, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and other persons instructed their advocates Messrs Hobday Kabwe and Company to write a letter to authorities alleging inter alia that the Plaintiff had built structures on a reserve road, Lusaka Water Sewerage Company's pipes and under ZESCO's 33KV power line.

The Plaintiff claims that from September 2015, to date, the Defendants have devised various tactics to frustrate his building project including intimidating and threatening his builders and general workers with physical violence. On one occasion, the 2<sup>nd</sup> Defendant accused the Plaintiffs' workers namely, Peter Banda, Elifasi Phiri, Mabvuto Banda and Daniel Kapenda of stealing his assorted goods from his demolished structure and were detained at Chilenje Police Station. They were later released without being charged of any offence after Police investigations.

The Plaintiff avers that on several occasions the Defendants have used abusive language and threatened him with violence. The Plaintiff states that he has verbally warned the Defendants to stop interfering with the peaceful possession and quiet enjoyment of his property including reporting the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to both Chilenje and Woodlands Police Stations but to no avail.

The Statement of Claim discloses that on 27<sup>th</sup> February, 2016, and at the instance of the Defendants, a TV 2 Crew from ZNBC went to the Plaintiff's property to cover a story on a purported land

dispute. When the Plaintiff arrived at the scene, the Defendants used abusive language against him and physically assaulted him. A footage on the above incident was published on ZNBC TV 2 news on 27<sup>th</sup> February, 2016, where the Plaintiff was branded as the master minder of the land dispute.

The Plaintiff avers that the Defendants are trespassers on his property and incidentally, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' plots do not share boundaries with the Plaintiff. The Plaintiff states that he has suffered loss and damage. The particulars of loss are:

- i) The Defendants' hostility has caused the Plaintiff's work to stall as workers have been threatened with physical violence.
- ii) The completion schedule of the Plaintiff's building project is severely compromised.

On 27<sup>th</sup> March, 2017, I issued an Order for directions, in which the Defendants were to file their defences within seven (7) days from the date thereof. The Plaintiffs were ordered to file a

Reply within five (5) days of receipt of the defences and to settle an Order on the remaining directions in the usual format. The matter was scheduled for trial on 19<sup>th</sup> and 20<sup>th</sup> July, 2017 and all witnesses were required to attend without fail.

The Defendants failed to serve their defence on the Plaintiff, within the stated period, and in the meantime, the Plaintiffs applied for judgment in default of defence, which was withdrawn on 19<sup>th</sup> July, 2017, to pave the way for trial. On that same date, the Plaintiffs were ordered to file their Bundle of Pleadings and Documents in readiness for trial on 20<sup>th</sup> July, 2017 at 10.00 hours.

Before the trial could take off, Messrs Lungu Simwanza and Company, the Advocates for the Defendants applied to withdraw from representing their clients due to insufficient instructions. The Director of Legal Services for the Lusaka City Council applied for misjoinder as there was no cause of action against them. Both applications were granted and trial commenced without them.

**John Chizembe** testified as **PW1**. His evidence was that he bought property known as 38753, Chalala on 23<sup>rd</sup> May, 2014 from Francis Muzyami. He then mobilized resources to start building and when he moved on site, he discovered that some unknown persons had encroached his property. PW1 testified that he reported the unknown people to the Lusaka City Council, who in turn demolished the illegal structures.

It was PW1's evidence that he came to know the person who built the illegal structures on his property as Mr. Malasha. About six months after the demolition, he began to develop his property but encountered problems with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants who physically abused his workers and ordered them to stop further developments. PW1 stated that he then requested for a meeting with the Defendants but they did not respond and they continued to harass his workers.

PW1 testified that the Defendants on several occasions invited the public media houses such as the Zambia Broadcasting Services (ZNBC TV2) and MUVI Television to capture developments at his

property where they alleged that he had built on illegally acquired land.

PW1 further stated that on 27<sup>th</sup> February, 2017, the Defendants invited ZNBC TV2 at his property and captured the Defendants verbally and physically abusing him. PW1 told the Court that a footage on the incident was published on TV2 News on 27<sup>th</sup> February, 2016, where he was branded by a ZNBC reporter as the master mind of the land dispute without verifying the facts. The following words were used in the broadcast that went nationwide:

**“There was a near punch-up among some residents of Lusaka’s Woodlands Chalala border view area following a wrangle over land. This was as a result of the demolition of some houses by a Zambia Airforce ZAF Officer who is alleged to have illegally acquired the respective land where houses were built.”**

PW1 further testified that he was not the only one who had encountered problems with the Defendants. His neighbours, namely, Alick Changwe owner of Stand No. 38750, Walya Caroline Ngombe of Stand No. 38752 and Tricia Chiabi of Stand No. 38751,



had suffered similar harassments at the hands of the Defendants. He added that they too were seeking similar reliefs from the Court.

Learned Counsel filed written submissions for which I am indebted. Counsel submitted that the Plaintiffs were bonafide owners of their properties and the Defendants had no right whatsoever to interfere with their peaceful possession and quiet enjoyment. He further submitted that the 1<sup>st</sup> and 3<sup>rd</sup> Plaintiffs were legal owners, while the 2<sup>nd</sup> and 4<sup>th</sup> Plaintiffs had equitable title. Counsel submitted that the Defendants' conduct was totally unreasonable and prayed to the Court to stop them from trespassing on the Plaintiffs' property. Further to stop them from using abusive language and violence against the Plaintiffs.

I have earnestly considered the evidence adduced and the submissions made herein. The issue that falls for determination is whether the Plaintiffs are the legal or equitable owners of the properties and therefore entitled to quiet possession.

It is not in dispute that PW1 is the registered owner of Stand No. 38753, Lusaka and holds a Certificate of Title No. 18173 dated 9<sup>th</sup> February, 2016 as shown at pages 1-4 in the Plaintiffs' Bundle. Alick Changwe the 2<sup>nd</sup> Plaintiff is the offeree of Stand No. 38750 Lusaka as shown at pages 10-11 of the Plaintiff's Bundle. Tricia Chiabi Masowe the 3<sup>rd</sup> Plaintiff is the registered owner of Stand No. 38752 Lusaka and holds Certificate of Title No. 14501 dated 17<sup>th</sup> October, 2015 as shown at pages 12-16 of the Plaintiff's Bundle. Walya Caroline Ngombe the 4<sup>th</sup> Plaintiff is the bonafide purchase of Stand No. 38751 Lusaka as shown at pages 17-20 in the Plaintiffs' Bundle.

I am mindful that the Defendants have not contested this action. It therefore falls on the Plaintiffs to prove their case to the required standard of proof. This principle of law is elucidated in the case of **Khalid Mohamed v The Attorney General**<sup>1</sup>.

The Learned author **Fredrick S. Mudenda** goes on to quote **Mergarry's Manual of the Law of Real Property**, which

summarizes the distinction between a legal and equitable right thus:

**“There is a great difference between legal and equitable rights. This is sometimes expressed by saying that legal rights are rights in rem, equitable rights are rights in personam. A legal interest in land is a right in the land itself, so that whoever acquires the land is bound by that right, whether he knew of it or not. A legal right is like a live electric wire which shocks those who touch it whether or not they know of it. Equity on the other hand would enforce equitable rights only against certain persons.... Legal rights are good against the world; equitable rights are good against all persons except a bonafide purchaser of a legal estate, for value without notice and those claiming under such a purchaser.... The extent to which a purchaser is bound by third party rights when acquiring property is often determined by whether the rights are equitable or legal...”**

The Learned author **Fredrick S. Mudenda, Land Law in Zambia Cases and Material**, defines an equitable right as follows:

**“An equitable right is a right in personam; it is enforceable against certain persons only. It binds every transferee of Land except a bonafide purchaser for value of a legal estate in the land who had no notice of the equitable right.”**

It is a well settled principle of law that a certificate of title is prima facie evidence of ownership. Section 54 of the Lands and Deeds Registry Act Chapter 185 provides that:

**“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 seized of or as taking estate or interest in the land therein described is seized 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 this case, PW1 and the 3<sup>rd</sup> Plaintiff have produced evidence that they are title holders. This proves their ownership of property and I have no hesitation in declaring them as the beneficial owners of their properties. PW2 Plaintiff has shown that he is the offeree of Stand No. 38750, while the 4<sup>th</sup> Plaintiff has produced evidence to show that she is a bonafide purchaser of Stand 38751. In my view, this proves that they have acquired an equitable interest in the land and I so declare them.

On the basis of the evidence adduced, I find that PW1 was physically abused by the Defendants, thereby causing him embarrassment. I award him damages to be assessed. I further

find that the Defendants have continued to interfere with the Plaintiffs' quiet enjoyment of their properties with impunity. Accordingly, I order the Defendants to be immediately evicted from the Plaintiffs' property and award the Plaintiffs damages for trespass to be assessed.

Costs shall abide the event to be taxed in default of agreement.

Dated this 9<sup>th</sup> day of August, 2017.

*M. Mapani*

M. Mapani-Kawimbe  
**HIGH COURT JUDGE**