

**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**

*(Civil Jurisdiction)*



IN THE MATTER OF:

**The Encroachment of the Land Herein  
Namely; Commercial Plot, Stand  
Number 980, Chilanga**

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

OBED MANJONI

**APPLICANT**

**AND**

GEORGE KAPILA

**RESPONDENT**

**Before Honourable Mrs. Justice M. Mapani-Kawimbe on the 12<sup>th</sup> day of  
May, 2017**

*For the Plaintiff : Ms. N. Sumbwa, Messrs Kalokoni & Co.*

*For the Defendant : In Person*

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

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By Originating Summons, the Plaintiff seeks the following reliefs:

1. *An order of demolition of the erected structure built on the land;*
2. *Vacant possession for the said piece of land;*
3. *Mesne profits; and*
4. *Costs*

The Originating Summons are supported by an Affidavit sworn by the Applicant, **Obed Manjoni**. He states that on 21<sup>st</sup> August, 2002, he successfully applied to Kafue District Council for a piece of land as shown in the exhibit marked "**OM1**." He paid the service charges as shown in the exhibits marked "**OM2**", "**OM3**" and "**OM4**". He avers that a boundary dispute subsequently arose between him and the Respondent, and he requested Dunga Mtonga Surveyors to solicit the Surveyor General's advice as shown in the exhibits marked "**OM5**" - "**OM12**."

The deponent states that on 28<sup>th</sup> October, 2013, the Surveyor General declared the survey of Plots 981 and 982 erroneous but was perplexed to discover that that the Respondent encroached his property Plot 980. He concludes with a prayer asking the Court to grant him the reliefs sought.

The Respondent, **George Kapila** filed an Affidavit in Opposition. He contends that he is the registered owner of Plot No. 981, situated in Chilanga, which shares a boundary with the Applicant's property Plot No. 980. This is shown in the exhibit marked "**GK1**." He states that on 18<sup>th</sup> April, 2002, the Kafue

District Council offered him the property as shown in the exhibit marked "**GK2.**" That he paid the requisite fees to the Ministry of Lands for the property as shown in the exhibit marked "**GK3.**" Further, that on 3<sup>rd</sup> April, 2003, he applied to the Town and City Planning Department to erect shops and approval was given as shown in the exhibit marked "**GK4.**"

The deponent states that his property was surveyed by the Lusaka Province Regional Survey Office as shown in the exhibit marked "**GK5.**" That he only became aware of his alleged encroachment of the Applicant's land in 2014, when he was summoned to Chilanga District Council as shown in the exhibit marked "**GK6.**" He concludes with a prayer beseeching the Court to dismiss the action as the Applicant is not entitled to the reliefs sought.

At the hearing, Learned Counsel for the Applicant placed reliance on the Affidavit in Support and the Bundle of Documents filed herein. The Respondent relied on his Affidavit in Support.

I have paid the closest attention to the Affidavits filed herein and Applicant's Bundle of Documents. It is not in dispute that the Applicant and Respondent share a common boundary. They were both allotted land by Kafue District Council and paid the relevant service fees and charges to the Council and the Ministry of Lands.

The Applicant's Surveyors, Messrs Dunga Mtonga wrote a letter to the Surveyor General on 11<sup>th</sup> April, 2005 regarding the survey of stands 981 and 982, Chilanga. In that correspondence Mr A.D. Mtonga stated the following:

**"... upon my personal visiting the site to carry out the survey, I failed to make sense out of the records in my possession. I requested Mr. Kalunga to either show me found beacons or those placed by him. He agreed to the idea, but when we visited the site together, he was unable to show me anything.... In my opinion, this survey should not have been approved in any case, but will avail you why I say this...." (sic)**

On 15<sup>th</sup> January, 2008, a Report on the boundary verification for Plots 981 and 982, Chilanga was prepared by Mr. Boudouin Lungu of the Ministry of Lands. The relevant portions of the Report are reproduced here below:

**" Problem Definition:**

**It is alleged that the surveyor who did the survey did not place the beacons, and hence the owner of the property has built in error."**

One of the interesting findings in the Report reads as follows:

**“The beacons shown to us, (labelled B1, B2 and B3 on sketch A1), by the owners are erroneous as they do not agree as is provided by Regulation 26 of the Land Survey Regulation. The area enclosed by these beacons is 1772 square metres instead of 651 square metres as per SR525/2002. The area is almost 3 times what it should be.”**

The recommendations offered in the Report are stated as follows:

- “(i) The surveys for Stand 981 and Stand 982 be cancelled.**
- (ii) Stand 981 be replanned considering the existing structure**  
(underlining my own)
- (iii) Stand 982 be resurveyed accordingly.”**

On 13<sup>th</sup> December, 2016, Mr. J. Minango, the Surveyor General wrote a letter to the Plaintiff’s Advocates on the verification of the boundaries of Plots 980 and 981, Chilanga, where he stated the following:

**“The exercise was done in line with the recommendations done in line with the previous recommendations to the effect that due to some inconsistencies in the surveys done and the developments that were done in the area in general, the survey of Plot 980 and 981 should A available. As a result of this settlement, adjustments to the abutting properties will be inevitable. I must make mention that should the changes be proportionally huge, a re-planning process shall be ideal as compared to generating the survey diagrams.” (sic)**

Mr. E. Mpange of the Regional Survey Office Lusaka, wrote the Plaintiff’s Advocates a letter on 9<sup>th</sup> January, 2017, where he stated

that the Surveyor General was ready to resolve the boundary disputes on Plots 980 and 981.

The sole issue therefore, that falls for determination is whether the Respondent has encroached the Applicant's land.

After carefully examining the evidence adduced, I find that there are inconsistencies in the survey diagrams for Plots 981 and 982. The Surveyor General is well aware of this fact and recommended the replanning of Plot 981, and re-surveying of Plot 981.

In my considered view, this recommendation does not imply that Plot 980 is unaffected. I would be weary and reluctant to arrive at such a conclusion given that the Applicant was allocated his property on 21<sup>st</sup> August, 2002, while the Survey diagram in the Respondent's title was issued on 9<sup>th</sup> July, 2002. The erroneous boundaries are admitted by the Surveyor General and in my view, that office is best suited to resolve the boundary disputes. In consequence, it is inopportune for the Court to interfere with the determination of boundaries that are non-existent. The

determination of this issue, I must state does not give rise to a legal question and therefore requires the intervention of the Surveyor General.

Accordingly, I order and direct the Surveyor General to re-survey or replan Plots 980 and 981 so as to determine the boundaries. This should be done with due consideration to the existing structures on the ground.

Each party must bear their own costs.

Leave to appeal is hereby granted.

Dated this 12<sup>th</sup> day of May, 2017.

*M. Mapani*

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