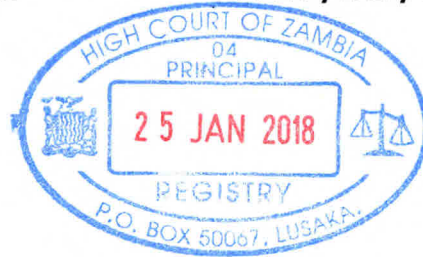


**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2017/HP/0764



B E T W E E N :

ELIAS TEMBO

PLAINTIFF

AND

BEAUTY MOYO
THE ATTORNEY GENERAL

**1ST DEFENDANT
2ND DEFENDANT**

**Before Honorable Mrs. Justice M. Mapani-Kawimbe on the 25th day of
January, 2018**

For the Plaintiff : *Mr. P.G Kapikisha , Mr. M. J. Katolo assisted by
Mrs. P.C. Hampungani, Messrs Milner & Paul
Legal Practitioners and Mr. L.M. Chikuta, Mumba
Malila & Partners*

For the 1st Defendant : *No Appearance*

For the 2nd Defendant : *Mr. C. Mulonda, Senior State Advocate, Mr. E.
Tembo, Asistant Senior State Advocate and
Mrs. N. S. Nchito, State Advocate*

J U D G M E N T

Cases Referred To:

1. *Anti-Corruption Commission v Barnnet Development Corporation Limited (2008) ZR 69*
2. *Jonas Amos Banda v Dickson Machiya Tembo, SCZ Judgment No. 18 of 2008*
3. *Saidi Chibwana and Others v Marrian Mutinta Chitauka (suing as Administratrix of the Estates of the late Hachambwa Chitauka) Selected Judgment No. 49 of 2017*

4. *Hilda Ngosi (suing as Administrator of Washington Ngosi) v the Attorney General and Another SCZ Judgment No. 18 of 2015*
5. *Judith Mporokoso v Kerries Mumbi, SCZ Judgment No. 19 of 2012*
6. *Jean Mwamba Mpashi v Avondale Housing Project Limited (1988-1989) ZR 140 (SC)*
7. *Masauso Zulu v Avondale Housing Project Limited (1982) Z.R 172*
8. *Justin Chansa v Lusaka City Council (2007) ZR 265*

Legislation Referred To:

1. *Lands and Deeds Registry Act, Chapter 185*
2. *Lands Act, Chapter 184*
3. *Urban and Regional Planning Act No. 3 of 2015*

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

- (i) *An order for specific performance of the covenants contained in the offer letter to Plaintiff's vendor of Stand No. LUS/24399 Lusaka, compelling the Commissioner of Lands to issue a Certificate of Title in favour of the Plaintiff as bonafide purchaser for value without notice of the said property.*
- (ii) *A declaration that offer letter and subsequent Certificate of Title issued to the 1st Defendant and/or any other subsequently issued are null and void on account of fraud, error and/or mistake in the acquisition processes.*
- (iii) *An order that the unexhausted improvements on Stand No. LUS/24399, Lusaka should not be demolished by the 1st Defendant and/or any other.*
- (iv) *An order of injunction restraining the 1st Defendant whether by herself, her agents, servants or whomsoever from disposing of by sale or otherwise and/or from effecting any construction works whatsoever and/or from carrying out any activities whatsoever on the whole or any portion of Stand No. LUS/24399 Lusaka until final determination of the matter or until further order of Court.*

- (v) Damages for inconvenience, mental distress and anguish occasioned to the Plaintiff by the Defendants.*
- (vi) An order of payment of the sum of ZMW500,000.00 by the 2nd Defendant being compensation for the demolished structures on account of the offer letter erroneously issued to Eddie Webber Sambwa by the Commissioner of Lands.*
- (vii) Mesne Profits*
- (viii) Costs*
- (ix) Any other reliefs the Court may deem fit.*

The Statement of claim discloses that on or about 6th January, 2000, the Lusaka City Council (LCC) placed an advertisement in one of the daily newspapers, where it invited members of the public to apply for residential plots in Libala South. The Plaintiff states that Mr. Charles Lububi subsequently submitted an application letter on 26th January, 2000.

By a letter dated 30th May, 2000, the Acting Director of LCC told Mr. Lububi that his application was successful and was recommended to the Commissioner of Lands for the allocation of Stand No. LUS/24399. Consequently, the Commissioner of Lands generated an offer letter on 14th August, 2001 in his favour and which he accepted. The Plaintiff states that Mr. Charles Lububi

sold him the property and he executed a contract of sale with him on 18th June, 2002. The value of the contract was ZMW4,000.00.

The Plaintiff states that he paid K591.20 as service charges on 17th November, 2004 to the LCC and a receipt was issued in Mr. Lububi's name. The Plaintiff also states that he engaged Alex Chikwari contracted by the LCC to survey his property. He paid for building plans using Mr. Lububi's name and the plans were approved by the Council. Further, that he built a house on which he spent over ZMW500,000 on building materials. He also states that the LCC collected property rates from him as the registered and legal owner.

The Plaintiff avers that the Commissioner of Lands has not served him any notice to withdraw or revoke Mr. Lububi's offer letter and contends that in absence of such notice, the offer letter is valid. The Plaintiff also states that Mr. Lububi submitted survey diagrams to the Commissioner of Lands for the preparation of the lease and title but he has delayed or neglected to act on them.

The Plaintiff avers that sometime in December, 2007, the 1st Defendant accompanied by Mr. Eddie Webber Sambwa approached him to yield vacant possession of the property and the duo threatened to demolish his house. He conducted searches at the Lands and Deeds Registry, where he discovered that the Commissioner of Lands offered and prepared a Certificate of Title in favour of the 1st Defendant at his expense. He further avers that he is a bonafide offeree of the property and with prior interest as a bonafide purchaser.

The Plaintiff contends that the Commissioner of Lands offered the 1st Defendant the property in breach of the law when she did not submit an application letter for it. According to the LCC records, the 1st Defendant did not pay the service charges before obtaining title. The Plaintiff avers that the Certificate of Title issued to the 1st Defendant is liable to cancellation on the grounds that it was issued in error and fraud.

The particulars of mistake given are that:

- i. *The 2nd Defendant issued subsequent offer letters to the Plaintiff whilst the vendor's (Mr. Lububi) offer subsisted.*
- ii. *The preparation of a Certificate of Title by the 2nd Defendant in favour of 1st Defendant at the expense of Mr. Charles Lububi.*

The particulars of fraud are that:

- i. *The 1st Defendant caused the Commissioner of Lands to generate an offer letter in her name despite not having submitted an application letter either to the Commissioner of Lands or LCC for the allocation of Stand No. LUS/24399 Libala South, Lusaka as required by law.*
- ii. *The 1st Defendant ought to have known at the time of procuring the offer letter, that it is not legally permissible for the Commissioner of Lands to allocate the said property without first submitting an application letter to either the Lusaka City Council or the Commissioner of Lands.*
- iii. *The 1st Defendant procured an offer letter without following the procedure under Circular No. 1 of 1985.*

The Plaintiff avers that it was erroneous for the 2nd Defendant and LCC to have maintained multiple active files in respect of the same property, which culminated in multiple allocations. He also avers that the Commissioner of Lands and the LCC are in the habit of recklessly losing or misplacing files, which leads to multiple allocations.

The Plaintiff states that in 2006, the late Republican President Levy Patrick Mwanawasa S.C. shut down the offices of the Ministry of Lands due to massive corruption at the institution on land allocation. The Commissioner of Lands erroneously allocated a subsequent offer to Mr. Eddie Webber Sambwa who demolished his house valued at ZMW500,000.00. The net effect is that he was deprived of his property and his house was demolished. This caused irreparable damage.

The 1st Defendant did not enter appearance.

The 2nd Defendant filed a Defence, where it contends that the Commissioner of Lands did not receive a recommendation in favour of Mr. Lububi from the LCC. It was never directly or indirectly copied in the communication between the Town Clerk and Mr. Lububi. The 2nd Defendant states that there is no notice of withdrawal due to Mr. Lububi who was never offered the property. Further, it never received survey diagrams from Mr. Lububi especially that he was not the offeree.

The 2nd Defendant also contends that the Plaintiff is not the legitimate and bonafide offeree of the property in dispute with prior interest. The Commissioner of Lands prepared a Certificate of Title, which was not at the expense of Mr. Lububi because he was never an offeree. Further, that the Plaintiff could not be a bonafide purchaser for value without notice as he purchased property from a person who has never been its owner.

The 2nd Defendant avers that the first offer ever made on the property was in favour of Mr. Eddie Webber Sambwa. The offer and Certificate of Title made to the 1st Defendant were not procured by mistake, fraud or misrepresentation because she applied for the property. The 2nd Defendant states that no computer generated file can be misplaced so as to lead to multiple allocations. Furthermore, corruption has not been established at the Ministry of Lands and no officer was convicted of the offence.

The 2nd Defendant avers that the offer letter to Mr. Eddie Webber Sambwa was not erroneous and it was generated after the LCC recommended him for the property. The 2nd Defendant also

avers that the Plaintiff has not suffered any loss, distress and damage because there was no fraud, mistake, error or misrepresentation perpetuated by the 1st Defendant or Mr. Eddie Webber Sambwa in acquiring their offers and respective Certificates of Title. As a result, Mr. Eddie Webber Sambwa's title is not liable to nullification.

The 2nd Defendant avers that the Plaintiff is not entitled to any of the reliefs sought.

PW1 was **Elias Tembo** who testified that Mr. Charles Lububi offered to sell him Stand No. LUS24399, Lusaka in 2001. On 8th November, 2001, he went to the Ministry of Lands to verify the status of the property and discovered that Mr. Lububi was offered the plot on 14th August, 2001. Consequently, he executed a contract of sale with him on 18th June, 2002, for a consideration of K4,000.00.

PW1 testified that at the time of the transaction, Mr. Lububi showed him the application he made to the Lusaka City Council

(LCC) dated 18th January, 2000, a letter of recommendation from the LCC to the Commissioner of Lands for the property dated 30th May, 2000, and the offer letter from the Ministry of Lands dated 14th August, 2001, all appearing at pages 1 – 4 of the Plaintiff's Bundle.

PW1 went on to testify that Mr. Lububi was the first offeree as opposed to Mr. Eddie Sambwa and Ms. Beauty Moyo. He stated that the number of offer letters on the property prompted him to sue the Commissioner of Lands to explain the nuisance. PW1 produced a receipt at page 5 of his Bundle showing that Mr. Lububi paid the lease fees in his offer letter.

He also testified that he applied for the property to be transferred to him and the application was made by Mr. Lububi on 18th June, 2002 at page 9 of his Bundle. PW1 stated that on 12th February, 2003, the Commissioner of Lands gave his consent to transfer the property. This is shown at page 14 of his Bundle. PW1 added that in May, 2003, Mr. Lububi applied for building permission on his behalf because the offer was still in his name.

The approval was granted on 20th January, 2006, and shown at page 65 of the Bundle. PW1 further stated that he built a house on stand No. LUS/24399, Lusaka measuring 24m x 12m.

According to PW1, he only became aware of Ms. Moyo in 2006, when she confronted his tenant claiming ownership of his property. PW1 testified that he reported the matter to Chilenje Police and discovered that she had a certificate of title, which is at pages 8 – 14 of the Defendant's Bundle. PW1 insisted that he was the real owner of the property because Mr. Lububi was the first offeree. It was PW1's evidence that the Commissioner of Lands erroneously issued Ms. Moyo title and he wanted the Court to compel the office to honour his sale agreement with Mr. Lububi. He also wanted the Court to compel the Commissioner of Lands to cancel the title issued to Ms. Moyo.

In **cross-examination**, PW1 testified at pages 8 and 10 of the Defendant's Bundle that Mr. Webber Sambwa and Ms. Beauty Moyo complained to the Commissioner of Lands on the multiple offers letter on the property. PW1 stated that the Commissioner of Lands

consented to the transfer of Mr. Lububi's offer letter to his name and he last dealt with Mr. Lububi in 2006/2007. He did not apply for property transfer tax because he was awaiting the lease. PW1 also stated that neither he nor Mr. Lububi had title to the property.

PW1 testified that when the claims over the property arose, Mr. Lububi wrote a letter to the Minister of Lands and the Commissioner of Lands who assured him that his matter would be resolved. PW1 went on to state that the certificate of title issued to Ms. Moyo was cancelled and Mr. Webber Sambwa is the title holder according to the Lands Register at page 14 of the Defendant's Bundle.

In **re-examination**, PW1 testified that Mr. Webber Sambwa is not the owner of the property. He also complained about the multiple offer letters to the Commissioner of Lands. According to page 13 of the Defendant's Bundle, there were two leases running on the property in respect of Mr. Sambwa and Ms. Moyo. It was his evidence that the multiple land allocations had created confusion.

The Defendant's witness was **Musamhvu Wanki** who testified as **DW1**. His evidence was that Mr. Webber Sambwa is the current owner of Stand No. 24399, Lusaka according to the Lands Registry entry no. 4. He stated that the property was offered to Ms. Moyo after it was repossessed from Mr. Sambwa. However, after Mr. Sambwa appealed to the Commissioner of Lands, Ms. Moyo's title was cancelled and the property was re-offered to Mr. Sambwa.

DW1 testified that according to the land records, there were only two offer letters issued on LUS24399, that is Ms. Moyo's and Mr. Sambwa's. Mr. Sambwa was offered the property in 2001 and it was repossessed in 2004 together with the withdrawal of his offer letter. The property was subsequently offered to Ms. Moyo who was issued title. In 2005, Mr. Sambwa appealed to the Commissioner of Lands who reversed his decision and cancelled Ms. Moyo's title. The property then reverted to Mr. Sambwa.

DW1 testified that sometime in 2014, the Commissioner of Lands received a complaint from Mr. Sambwa who informed him that PW1 was claiming ownership of LUS24399 and had sued him

for criminal trespass. It was DW1's evidence that the Commissioner of Lands deals with all complaints regarding land administration. According to DW1, Mr. Lububi's complaint to the Minister of Lands was ill-targeted because the office is not mandated to deal with land administration.

DW1 testified that the documents required for consent to assign or transfer property include an application form for consent which is filed by the vendor; a copy of the contract of sale and photocopies of the national registration cards of the vendor and purchaser, accompanied by a prescribed fee.

It was DW1's evidence that these documents are supposed to be lodged with the Commissioner of Lands. He charged that the document at page 10 of the Plaintiff's Bundle titled "*Schedule of documents lodged in the Registry of Lands and Deeds by Mr. Charles Lububi...*" is not the consent document, but a lodgment schedule, which is used by that Registry. He added that the Registry of Lands and Deeds is not responsible for receiving or granting consent to assign or transfer property.

DW1 testified that land administration matters are only dealt with by the Lands Department. As such, it is not possible for a person to solicit the aid of any other department in the operations of the Commissioner of Lands. He doubted the authenticity of the date stamp on the document at page 10 of the Plaintiff's Bundle.

At page 12 of the Plaintiff's Bundle, DW1 testified that the document is used for lodging documents that belong to the Registry of Lands and Deeds. It is not used to lodge survey diagrams with the Ministry of Lands. DW1 went on to testify that the Ministry of Lands has a customer care centre with three desks, each serving one of its departments, namely Survey, Commissioner of Lands and Lands and Deeds. He added that each department has its own date stamp. The Commissioner of Lands date stamp is engraved with the words "customer care." DW1 stated that the documents at pages 10 and 12 of the Plaintiff's Bundle belong to the Lands and Deeds Registry.

DW1 testified that the Commissioner of Lands only gives consent to assign on land that has title. It is not issued on the

basis of an offer letter. At page 3 of the Plaintiff's Bundle, DW1 read out clause 4(3) of the offer letter that: "*A lease contains the following clauses, namely prohibiting the assignment, subdivision, mortgaging or sub-letting of a stand without the prior written consent of the State.*" It was DW1's evidence that the clause made it mandatory for persons to sell land which has title. He further stated that information of land, which is not on title is available on the Land Information Management System. The physical files of the Ministry of Lands are restricted to employees. DW1 conceded that the Ministry of Lands was once closed for investigations concerning corruption. The former Minister of Lands, Rev. Gladys Nyirongo was the only person charged and convicted of abuse of office.

In **cross-examination**, DW1 stated that he was not aware of the requirements of law that obliged him to obtain a certificate of search. He did not know what happened to entry no. 3 on the Lands Register, however, it did not make the Lands Register defective. He testified that the Lands Register did not show the first owner because it only records information of persons with title.

DW1 also testified that under Lands Circular No. 1 of 1985, Councils are agents of the Commissioner of Lands. In that Circular, the procedure requires a Council to advertise land and to call for applications from members of the public. Applicants are required to fill in application forms and to pay a fee. The shortlisted applicants are then called for interviews and the successful candidates are recommended to the Ministry of Lands for land allocation. DW1 added that when the Commissioner of Lands approves the recommendation, the successful applicants are issued offer letters. DW1 testified that an application for land under the Councils cannot be submitted without a public invitation as alleged by PW1's vendor, Mr. Lububi at page 1 of his Bundle.

DW1 maintained that according to the Ministry of Lands records, only two offer letter were issued on the property. Mr. Lububi's offer letter at page 3 of the Plaintiff's Bundle did not exist in the Ministry's records.

DW1 stated that he did not have Ms. Moyo's application letter before Court but pointed to the LCC's letter in the Defendant's

Bundle dated 11th May, 2004, acknowledging her payment of service fees. DW1 did not have Mr. Sambwa's letter of recommendation in Court. He stated that while the recommendation letter was important, its absence was not fatal to his submission. He went on to testify that Mr. Sambwa's offer letter was issued in satisfaction of his application and that is why he was issued title. He clarified that Mr. Sambwa was initially issued an offer letter on 15th August, 2001 and later on 11th May, 2005 after Ms. Moyo's title was cancelled. Ms. Moyo was only issued an offer letter on 22nd October, 2004. According to DW1, Mr. Charles Lububi's offer letter dated 14th August, 2001 does not exist in the Ministry of Lands records and he could not vouch for its authenticity.

In continued **cross-examination**, DW1 testified that he did not issue PW1's letter of offer. He did not have proof to show that PW1's offer letter was not in the Ministry's records. He did not equally have the letter cancelling Ms. Moyo's letter nor the letter withdrawing Mr. Sambwa's first offer letter in Court. He stated that the Ministry of Lands receives payment from offerees of land and

once payments were received, receipts were generated. At page 5 of the Court's copy of the Plaintiff's Bundle, DW1 read out a receipt generated on 12th September, 2001 at 14.50 hours, No. C-6077 issued in respect of LUS/24594, with serial number 212074. The lease charges were stated as K113,258.00. The receipt was issued to PW1.

In the Plaintiff's Advocates copy, at page 5, DW1 read out a receipt generated on 12th September, 2001 at 14.50 hours No. C-6077 issued in respect of LUS/24399 with serial number 212074. The lease charges were stated as K112,645.00. The receipt was issued to Charles Lububi. DW1 testified that section 23 of the Lands and Deeds Registry Act requires any person conducting a search to obtain an official certificate and it includes employees from the Ministry of Lands.

At page 2 of the Plaintiff's Bundle, DW1 stated that Mrs. M. L. Haimbe wrote a letter dated 30th May, 2002 informing Mr. Lububi that he had been recommended for Stand No. LUS24399 to the Ministry of Lands. He did not know if the LCC acted as the agent

for the Commissioner of Lands on the property. He reiterated that all Councils are agents of the Commissioner of Lands. DW1 did not have the advertisement upon which Mr. Sambwa applied for the property. He could not confirm if the property was advertised prior to 2001. He did not have the application form prescribed by LCC. He also stated that there were other people who were arrested with the former Minister of Lands.

In **re-examination**, DW1 testified that the proof of cancellation of Ms. Moyo's title deed was shown in the Lands Register. The Ministry of Lands never received Mr. Lububi's letter of recommendation from the LCC. He stated that letters of recommendation for land from the LCC are addressed to the Commissioner of Lands and not the recipient.

On the receipts, DW1 testified that it was impossible for two receipts on different properties to bear the same serial and receipt numbers, and to be issued on the same date and time by one cashier.

Learned Counsels for the Plaintiff filed written submissions for which I am indebted. He submitted that the Lusaka City Council recommended Mr. Lububi to the Commissioner of Lands for the allocation of Stand No. LUS/24399, Lusaka, which he accepted. He asserted that Mr. Lububi followed the procedure in Lands Circular No. 1 of 1985, on his acquisition unlike Ms. Beauty Moyo and Mr. Sambwa who failed to show that they applied for the property through Lusaka City Council. As such, their acquisition of the property was fraudulent. Counsel cited the case of **Anti-Corruption Commission v Barnet Development Corporation Limited**¹, where the Supreme Court held that:

“1. Under section 33 of the Lands and Deeds Registry Act, a certificate of title is conclusive evidence of ownership of land by a holder of a certificate of title. However, under section 34 of the same Act, a certificate of title can be challenged and cancelled for fraud or reasons of impropriety in its acquisition.”

Counsel contended that the Commissioner of Lands erred in issuing offer letters and certificates of title to the duo when Mr. Lububi had been offered the property on 14th August, 2001, and paid lease fees by 12th September, 2001.

It was Counsel's submission that the contract between Mr. Lububi and PW1, which was executed on 18th June, 2002, gave PW1 superior title to the land and the Commissioner of Lands was bound to honour it. Counsel called in aid the case of **Jonas Amos Banda v Dickson Machiya Tembo**², , where the Supreme Court held *inter alia* that:

"We accept the principal of Halsbury's law of England that a Court will enforce a contract which, had all formalities been observed, would be binding at law, in which case it would be specifically enforced."

He also cited the case of **Saidi Chibwana and Others v Marrian Mutinta Chitauka**³, which bars a person with no interest in land from entering into a transaction. In that case, the Supreme Court at page J22 stated that:

"We thus have no difficulty in coming to the conclusion that at the time the deceased and the 1st Appellant were purporting to enter into contract of sale, the deceased had not been offered this property by the Commissioner of Lands. In the premises, he did not at the time of the purported agreement dated 13th April, 2000, have any vested interest in the property in issue, or any little at all, which he could transfer by way of sale to the 1st Appellant or any other person for that matter.... A microscopic scrutiny of all the documents constituting the record of appeal has also revealed to us, that the Commissioner of Lands never issued a letter of offer to the deceased, or any other person, in respect of Plot No. 10280 Luangwa Kabwe. The deceased, who had no beneficial interest in Plot No. 10280, which had not been offered to him at the material times, could not enter into any valid contract for disposal of the property to the 1st Appellant, which in turn he could pass on to the 2nd Appellant or anyone else. On the facts, where the Commissioner of

Lands has not yet exercised his discretion to make the offer in favour of the deceased, pursuant to the recommendation made by the Council, the 2nd Appellant cannot claim to be a bona fide purchaser for value.”

Counsel also cited the case of **Hilda Ngosi (suing as Administrator of Washington Ngosi) v the Attorney General and Another**⁴, where at page 429, the Supreme Court stated thus:

“We are of the considered opinion that the Appellant can at law lay claim to the land as Administrator because the late Washington Ngosi had an inchoate interest in the land at the time of his death. At page 886 of Black’s Law Dictionary 9th Edition, an inchoate interest is described as “a property interest that has not yet vested. The late Mr. Washington Ngosi had a property interest that was likely to vest but had not yet done so for want of registration. It therefore follows that having established that the land had been given to the late Washington Ngosi the Appellant had an inchoate interest in it even though ownership had not changed hands.....”

Counsel went on to submit that even though Mr. Lububi only had an offer letter, he developed inchoate interest in the property, which was capable of being conveyed to PW1. In consequence, PW1 acquired a good and bona fide title to Stand No. LUS/24399, Lusaka as opposed to Ms. Moyo or Mr. Sambwa. Counsel called in aid the case of **Judith Mporokoso v Kerries Mumbi**⁵, where the Supreme Court stated at page 478 that:

“As the learned Judge rightly stated, in **Lusaka City Council and National Airports Corporation v Grace Mwamba & 2 Others**, the Supreme Court found that the first Appellant was entitled to withdraw the offers to the Respondents because they were issued in

error, contrary to the directives and went on to cancel the sales and ordered a refund to the Respondents of any payments made to the Council and cancellation of certificates of titles, if issued. In this particular case, there was no evidence that the offer to the Respondent was made contrary to the guidelines.”

Counsel asserted that a legally binding contract was established between the Commissioner of Lands and Mr. Lububi, when he issued an offer letter, and it was never revoked. It mattered less that Mr. Lububi's offer letter was not found in the Lands Information Management System because it was not incumbent on PW1 to prove the authenticity of the offer letter.

Counsel cited the case of **Jean Mwamba Mpashi v Avondale Housing Project Limited**⁶, where the Supreme Court made the following observation:

“....where views were expressed to the effect that, contrary to the old attitude of the Courts based on possible equivocation, there is no general rule that payment of money cannot constitute an act of parole contract.....It is therefore, not correct to strike down such contracts out of hand nor to consider that specific performance must be refused simply for want of presidential consent at a time when a party obliged to apply for consent has not even done so yet.”

Counsel submitted that parties to a contract of sale of land, could transact even where presidential consent had not been granted. He added that the notification of approval of planning

permission from Lusaka City Council dated 25th January, 2006, for Plan No. 966/2005 belonging to Mr. Lububi further proved that his offer letter was valid and he passed legitimate interest in the land to PW1. Counsel referred me to the Urban and Regional Planning Act, where he asserted that Mr. Lububi complied with the provisions therein. PW1's structures should not have been demolished. He prayed to Court to grant PW1 compensation for the demolished structures.

Counsel challenged the Lands Register Computer printout charging that it was not binding in evidence because it was produced in the absence of an official search certificate. He cited the case of **Hilda Ngosi⁴ (suing as Administrator of Washington Ngosi)**, where the Supreme Court at page J18 stated:

“The 1st Respondent produced a computer printout to show that title had properly passed on the 2nd Respondent. Unlike a certificate issued by the Registrar under section 23 of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia, a computer printout is not conclusive proof of any matter concerning a property.”

Counsel contended that since the Lands Register computer printout was not accompanied by an official certificate of search, it

ought to be ignored. He prayed to the Court to grant PW1 the reliefs sought with costs.

Learned Counsel for the 2nd Defendant undertook to file written submissions by 7th January, 2018. However, on 15th January, 2018, I enlarged the time for Counsel to file submissions by 22nd January, 2018. Even after asking for more time, Counsel failed to file submissions until 23rd January, 2018. It suffices to state that the submissions are on record and by the time they were filed, the Judgment was already substantially drafted.

I have anxiously considered the pleadings, evidence adduced and the written submissions of the parties. It is common ground that Mr. Lububi received a letter from the Lusaka City Council informing him that he had been recommended for Stand No. LUS/24399, Lusaka. An offer letter was subsequently generated by the Commissioner of Lands on 14th August, 2001. On 18th June, 2002, he executed a contract of sale with PW1 on the property. PW1 paid him ZMW4,000.00 as consideration. Mr. Lububi paid the

lease fees and his building plans were approved by the Lusaka City Council.

On 15th August, 2001, the Commissioner of Lands offered Stand No. LUS/24399, Lusaka to Mr. Sambwa. He repossessed it sometime in 2004 and offered it to Ms. Moyo on 22nd May, 2004. She was issued a certificate of title on 11th May, 2005. In the intervening period, Mr. Sambwa appealed against the decision of the Commissioner of Lands to repossess Stand No. LUS/24399, Lusaka. The Commissioner of Lands rescinded his decision and withdrew Ms. Moyo's offer letter. Her title deed was equally cancelled according to the Lands Register Computer printout. Mr. Sambwa was re-offered the property and issued a certificate of title, which is on record. In the meanwhile, PW1 moved onto the property on the basis of Mr. Lububi's offer letter and built a house. The house was subsequently demolished by Mr. Sambwa who claimed to be the real owner of the property.

PW1 claimed that the certificates of title issued to Ms. Moyo and Mr. Sambwa were fraudulent and asserted that he holds legitimate and superior interest in Stand No. LUS/24399, Lusaka.

From the background facts, I find that the following issues fall for determination:

- (i) Whether PW1 is the bona fide offeree of Stand No. LUS/24399?
- (ii) Whether the Commissioner of Lands fraudulently issued title to Ms. Beauty Moyo or Mr. Eddie Sambwa?
- (iii) Whether PW1 is entitled to compensation for the demolished structures on the property?

As regards the first issue, PW1 contended that he is the legitimate owner of Stand No. LUS/24399, having been sold the property by Mr. Lububi. He traced Mr. Lububi's superior interest in the property from his application letter to the Lusaka City Council dated 26th January, 2000 and the response given by then Acting Director of Lusaka City Council in a letter dated 30th May, 2000. The response was that Mr. Lububi had been recommended for the allocation of Stand No. LUS/24399 to the Commissioner of Lands. Further, the Commissioner of Lands issued Mr. Lububi an offer letter on 14th August, 2001, which he accepted and paid lease

fees. In PW1's assertion, this amounted to a legally binding contract. PW1 stated that Mr. Lububi's offer letter was never revoked and he was granted presidential consent. In addition, he submitted survey diagrams to the Ministry of Lands for the preparation of lease and title.

In rebuttal, DW1's evidence was that the Commissioner of Lands never received a recommendation letter from the Lusaka City Council in respect of Mr. Lububi for the allocation of Stand No. LUS/24399. Mr. Lububi's letter is not in the Ministry of Lands Information System, which stores records of all untitled properties.

DW1 insisted that the Ministry of Lands only issued two offer letters to Ms. Moyo and Mr. Sambwa. It has no record of Mr. Lububi's offer letter. DW1 contended that Mr. Lububi disregarded procedure when he applied for land directly to the Lusaka City Council in the absence of a public invitation and he could not vouch for the authenticity of his offer letter.

DW1 stated that PW1 never lodged an application for presidential consent with the Commissioner of Lands but deposited lodgment schedules at the Registry of Lands and Deeds Department for the purported presidential consent and survey diagrams. Against that background, I shall now move to determine the issues in controversy.

In the case of **Masauso Zulu v Avondale Housing Project Limited**⁷, the Supreme Court stated that where a Plaintiff makes any allegation, it is generally for him to prove those allegations. A Plaintiff who fails to prove his case cannot be entitled to judgment whatever may be said of the opponent's case.

I take judicial notice that the Lands Circular No. 1 of 1985 designates all councils as agents of the Commissioner of Lands. The Circular also provides the procedure under which a person can acquire land through the Councils. In this respect, a Council is required to publicly advertise land, which is proposed for allocation. A respondent must fill in an application form and pay a prescribed fee. Shortlisted candidates are invited for interviews and the

successful ones are recommended to the Commissioner of Lands for land allocation. In the case of **Justin Chansa v Lusaka City Council**⁸, the Supreme Court held that:

- “(1) The Authority to consider applications for land allocation from members of the public is vested in the President of Zambia who has delegated this authority to the Commissioner of Lands.**
- (2) An applicant for land has in terms of Circular No. 1 of 1985, an option either to apply to the Commissioner of Lands or to apply through a Local Authority, which has been delegated powers to receive applications for land from members of the public.**
- (3) Where a member of the public opts the second route, a local authority is mandated to advertise any land available, receive applications from members of the public and make recommendations to the Commissioner of Lands.**
- (4) The power to allocate land and make offers to successful applicants is reposed in the Commissioner of Lands.”**

The material on record shows that Mr. Lububi received an offer letter from the Commissioner of Lands. On that basis, he executed a contract of sale with PW1. According to PW1, the Commissioner of Lands granted him consent to transfer the property from Mr. Lububi's name into his. PW1 testified that he lodged survey diagrams with the Ministry of Lands for the preparation of lease and title.

DW1 challenged the authenticity of Mr. Lububi's offer letter charging that it does not exist in the Ministry of Lands Information System. He also discredited the lodgment schedules that PW1 used in seeking presidential consent to assign or transfer property and the survey diagrams. He stated that the lodgment schedules belonged to the Registry of Lands and Deeds and could not be used for the purposes intended by PW1.

On the other hand, PW1 insisted that he had superior interest in the disputed property because Mr. Lububi complied with Lands Circular No. 1 of 1985. He did not however, produce proof of the advertisement that was issued by the Lusaka City Council. PW1 stated that even if he used the wrong lodgment schedules for presidential consent to assign and survey diagrams, the fact did not alter that Mr. Lububi had a valid offer letter. It was not for PW1 to explain the absence of the offer letter in the Ministry of Lands Information System given that the Ministry is in the habit of losing documents.

In perplexing circumstances, I observed that PW1 did not call Mr. Lububi to aid his case given that he was the original offeree and could have shed more light on how he obtained the offer letter. I also observed that PW1 produced two different receipts from the Ministry of Lands in his bundles, and he attempted to lay blame on the cashier, at the Ministry of Lands, Mr. C. K. Banda, who he did not call to explain the error.

As stated in **Masauso Zulu v Avondale Housing Project** case, the burden of proof lies squarely on the Plaintiff to prove his case. A Plaintiff cannot succeed merely because the Defendant has offered a fragile defence. PW1 insisted that he has superior interest in Stand No. LUS/24399 on the basis of an offer letter which does not exist in the Ministry of Lands Information System. This is remarkably strange.

In strange circumstances, PW1 deliberately lodged an application for presidential consent and survey diagrams using the wrong lodgment schedules. He did not produce the advertisement that Mr. Lububi allegedly responded to, which I dare say must be in

the archives of the Lusaka City Council. The different receipts produced in his bundles bearing the same receipt numbers and details for two different properties cast further aspersion on the credibility of his evidence.

PW1 tried rather unsuccessfully to conjure me into taking judicial notice of the fact that it was possible to print more than one receipt in a space of a minute, without giving an account on the efficacy of the printing machine at the Ministry of Lands. PW1 who testified to inefficiency at the Ministry could not in my view suddenly turn around to praise the printing system of the Ministry.

PW1 also attempted to persuade me to believe that computer systems are liable to failure, and there could have been mistakes in duplicating two receipts for two different properties with the same information. I find all this confusing and a deliberate attempt by PW1 to shift the burden of proof to the 2nd Defendant. Moreover, he had no faith in the Lands Register computer printout, which he stated had serious flaws and was not accompanied by an official

search certificate. By making those assertions, I find that PW1 was precluded from relying on the documents.

The glaring gaps undoubtedly affected PW1's evidence and as a result, he failed to prove his claims. If at all Mr. Lububi responded to an advertisement in respect of Stand No. LUS/24399, Lusaka as required by the Lands Circular No. 1 of 1985, then PW1 should have produced the advertisement given his early relationship with Mr. Lububi as far back as 2001. The fact that Mr. Lububi's offer letter does not exist in the Ministry of Lands Information System, is not a light matter. It invites a conclusion that his offer letter is not authentic and cannot be relied on. The continued use of wrong schedules by PW1 in lodging documents at the Ministry of Lands and the odd coincidence of the same receipts for two different properties further assails the integrity of PW1's evidence.

My firm view is that Mr. Lububi was not a bona fide offeree of Stand No. LUS/24399, and did not develop any inchoate interest in the property. There is no proof that the Lusaka City Council

recommended him to the Commissioner of Lands for the property. Further, there is no proof that his offer letter exists in the Ministry of Lands Information System. Accordingly, I find no merit in the Plaintiff's claim.

The second issue to determine is whether the Commissioner of Lands fraudulently issued title to Ms. Moyo or Mr. Sambwa?

PW1 contended that the Commissioner of Lands wrongly offered Ms. Moyo and Mr. Sambwa land when they did not comply with the requirements of the Lands Circular No. 1 of 1985. Hence, their offer letters and certificates of title were fraudulently obtained and in mistake by the Commissioner of Lands. DW1 contended that the Commissioner of Lands never acted in error or mistake because Mr. Lububi was never offered Stand No. LUS/24399.

It is trite that the Commissioner of Lands is responsible for all land allocation in the country and can allocate land to any person. He is not bound by the recommendations of his agents. The fact that DW1 did not produce the offer letters in Court issued to Ms.

Moyo and Mr. Sambwa (but their certificates of title) does not give rise to the proposition that the Commissioner of Lands issued the documents in error. The documents could be at the Ministry and he should have asked for the documents to be produced in Court.

After carefully considering the evidence on record, I find that PW1 also failed to demonstrate how fraud was transacted. There was no explanation given on how Ms. Moyo or Mr. Sambwa fraudulently induced the Commissioner of Lands to acquire Stand No. LUS/24399. There is no merit in this claim.

The third issue to determine is whether PW1 is entitled to compensation for the demolished structures on the property? Having determined that PW1 was not a bona fide offeree of Stand No. LUS/24399, it logically follows that he had no right to build structures on the property. As such, he is not entitled to any compensation.

I dismiss the Plaintiff's claim and award costs to the 2nd Defendant to be taxed in default of agreement.

Leave to appeal is granted.

Dated this 25th day of January, 2018.

M. Mapani
M. Mapani-Kawimbe
HIGH COURT JUDGE