

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

2015/HP/2059

BETWEEN:

PIO MWASIBALE

AND

BEAUTY MWAMBA



PLAINTIFF

DEFENDANT

Before: The Hon. Mr. Justice Charles Zulu.

For the Plaintiff: Ms. K. M. Chileshe, Legal Aid Counsel, Legal Aid Board.

For the Defendant: Ms. C. Jere, National Legal Aid Clinic for Women.

JUDGMENT

Case law referred to:

1. **Charles Kajimanga v Marmetus Chitemya (SCZ Appeal No. 20/2014).**

Plaintiff took out a writ of summons and an accompanying statement of claim claiming the following reliefs:

- (i) **an order that he is the bonafide owner of plot number 36855 Micheal Chilufya Sata Township SOS Lusaka;**
- (ii) **an order of injunction restraining the defendant from interfering with the plaintiff's quiet possession of plot number 36855 Micheal Chilufya Sata Township Lusaka;**
- (iii) **damages for trespass;**
- (iv) **Costs; and**
- (v) **Further or other reliefs.**

The plaintiff testified and called seven (7) plaintiff witnesses (PW). The Plaintiff kindled his testimony by stating that he was among the displaced residents of N'gombe Township in Lusaka who were relocated in 2009 to Michael Sata Compound opposite SOS Village Lusaka along the Great North Road, and offered Plot No. 36855, by Mr. Stephen Ludaka, the Chairman of the Ng'ombe Displaced Committee. According to him, the allocation was one plot per household. He explained that his plot initially measuring 40 x 25 meters, was later re-demarcated to measure 40 x 20 meters to create more plots to accommodate the defendant and others who were not present at the time the said plots were surveyed and allocated. That as a result of redesigning the land, the defendant became his neighbour, and later turned out that they were church-mates, and a godfather to the defendant's grandchild.

The Plaintiff stated that after he was allocated his plot in 2010, he started to develop the land, by constructing a one roomed structure adjacent to the main house with a built super structure. The Plaintiff said after building a single room, he sought for help from the defendant to find a caretaker for him. That from 2010 to 2013, his property was under the watch of the caretaker. He added that in December 2013, he received a letter from the Committee warning him that Beauty Mwamba, the defendant had sold Mr. Jeremiah Mwamba's property and was about to sell his property too. That upon receipt of this information he decided to evict the caretaker and took occupation of his property, living in the single room, and continued to develop his semi-detached

flats. The Plaintiff said in 2014, he applied to ZESCO for power supply, after obtaining a letter of recommendation from the Committee.

The Plaintiff recounted events leading to his dispossession of the land by the defendant. He said in 2015, he got seriously ill while living at the subject plot and was admitted to the University Teaching Hospital for over a month. He said when he was taken to the hospital; he left his property locked up without a caretaker. The Plaintiff stated that after he was discharged from the hospital, he went to live with his brother and continues to live with him in Kalingalinga. According to the Plaintiff in September 2015, he received a phone call from his neighbor, Dina Mandona, enquiring from him if he was the one that had assigned people to roof his super structure, to which he replied in the negative. The Plaintiff said the caller told him that it was the defendant that had assigned the said people. The Plaintiff said the report was verified by his brother, Jacob Kapyasha.

According to the Plaintiff, he reported the matter to Matero Police Station through his brother, Jacob Kapyasha and to his surprise the defendant was released from police custody and instead his brother ended up being arrested, tried and convicted for malicious damage to the subject property.

The Plaintiff stated that, the Defendant sold his plot to Isaac Bwalya, and when he wanted to reclaim his plot the Defendant chased him.

As earlier noted the Plaintiff called seven plaintiff witnesses (PW). PW2 was Esther Mfula, PW3 was Maybin Simukonda, PW4 was Catherine Mwale, PW5 was Dina Mandona, PW7 was Enesson Simukonda, and PW8 was Joseph Silungwe, the current Chairperson of the Ng'ombe Displaced Committee; they all respectively confirmed the testimony of the plaintiff. While PW6 was Maggy Mwila, the widow to Isaac Bwalya, reported to have bought the subject plot from the defendant.

PW6 stated that on the 17th of September 2015, she and her husband were introduced to the defendant by Mr. Ludaka with a view of purchasing a plot. She said a deal was sealed between her husband and the defendant, whereby the defendant as alleged owner of the subject plot, sold it to her husband at the price of K60, 000 000.00 (un-rebased), from the initial price of K120, 000 000.00, and a further K5, 000, 000. 00 was paid to Mr. Ludaka to process the paper work. PW6 said after making payment of the purchase price, they took possession of the plot and roofed the incomplete structure, and she dubbed the roof style - "*Nigerian Roof Type*". She explained that at the time of purchasing the plot, the defendant never showed them documents to prove that she was the owner of the plot. She also confirmed being confronted by PW5 Dina Mandona over their occupancy of the property.

The Defendant, Beauty Mwamba in her defence stated that she was part of the Ng'ombe residents who had been displaced from Ng'ombe Compound and

relocated to Michael Sata Compound opposite SOS Village Lusaka along the Great North Road together with her late husband, Francis Mponda. She said while living in Ng'ombe, she and her husband owned two separate plots, and when they relocated to Michael Sata Compound, she and her husband were separately given a plot each. According to the Defendant the subject plot claimed by the Plaintiff was allocated to her late husband. She relied on a Plot Identity Card allegedly issued to Francis Mponda, for Plot No. 36855.

The Defendant stated that, the plaintiff used to admire their plots and she explained to him how they came to acquire the plots. She added that the Plaintiff approached her and expressed interest in her portion of the land and promised to help her build if she gave him a portion of the land. She said based on the promises by the Plaintiff, she introduced the Plaintiff to the Committee Chairman, Mr. Ludaka to the effect that she had given the Plaintiff the plot which belonged to her late husband on consideration that the Plaintiff was going to help her build her house, and accordingly requested for change of ownership. The Defendant alleged that the Plaintiff did nothing on the plot he was given, and never fulfilled the promise to build her a house. She said with the passage of time cadres attempted to grab the idle land, but the Plaintiff kept promising to visit her, prompting her to repossess the plot from the Plaintiff.

The Defendant said she was the one that built the single room on the disputed land, and proceeded to build a two bed roomed house, but was stopped by the

Police when she was roofing. She denied selling the plot to Mr. Bwalya, but admitted it was occupied by the Bwalya family.

Under cross examination, the defendant said that her late husband died in 2009. She said her Plot No. was 36848, and when referred to her bundle of documents, the Land Audit Register, her Plot No. was recorded as 36888. However, she said she could not read the plot number, except her name. And when shown the plot number for her late husband in the Land Audit Register clearly bearing Plot No. 36848, the Defendant deliberately misread it to be Plot No. 36855, and claimed she had challenges with her sight, and accused the Committee to have been in the habit of changing plot numbers. According to her she replaced her late husband's name with the Plaintiff. And she was categorical that she did not sell the subject plot to Mr. Isaac Bwalya, but said Mr. Bwalya was brought by Mr. Ludaka to freely stay on the plot.

The witness for the Defendant was Ms. Alaidah Phiri. She said she was a Former Chairlady of the Committee that was formed in 2002, following the demolishing of houses in Ng'ombe Compound sitting on land belonging to the Catholic Church. According to her when they relocated, she gave plots to the defendant being Plot No. 36848 and her husband Plot No. 36855, the subject plot, located next to each other. It was also her testimony that the Defendant was the owner of the disputed land, which allegedly belonged to her late husband, and that the defendant was the one who introduced the plaintiff to

the Committee based on promises the Plaintiff made to her that, he would help her build, and that when he did not fulfill his promises to her, the Defendant returned to the Committee to have his name removed from the register, but he did not show up. In sum the witness materially supported the testimony of the Defendant.

Counsel for the Defendant, Ms. Jere filed written submissions. While Counsel for the Plaintiff opted not to file written and file submissions. Ms. Jere contended that the matter be dismissed with costs as the Plaintiff had no legal right to the property in question because he did not possess any certificate of title, reference was made to the case of **Charles Kajimanga v Marmetus SCZ 20/2014** wherein the Supreme Court held:

“It is trite law that a Certificate of Title is conclusive evidence of ownership of the property to which it relates”

Ms. Jere further argued that the plaintiff had failed to demonstrate that he had acquired a legal interest in the piece of land superior to that of anyone else for him to even commence an action against the Defendant. That it was misplaced for the Plaintiff to pray that the Court declare him the owner of the plot as it was not the role of the Court to impute ownership on persons who had not met legal requirement for land ownership.

Ms. Jere also contended that the plaintiff had failed to prove that the Defendant sold the plot in question; that PW6 said that the land was allocated to them by Mr. Ludaka, a transaction unsupported by law

I have carefully considered the evidence adduced and the submissions made thereof by the Defendant Counsel. However, I must be quick to point out that I did not find it fit to make reference to some case law Ms. Jere made reference to because their relevance to the resolution of the present matter is remote.

I am satisfied that in the near past albeit the exact date seem elusive given the conflicting dates given by the witnesses herein, some residents of Ng'ombe Compound were displaced and houses illegally sitting on land claimed by the Catholic Church were demolished. And following the ejectment of the affected residents from the said land, government intervention was sought to find alternative land to relocate the displaced people. I have no doubt that the parties hereto were part of the people displaced from Ng'ombe Compound. Indeed land was secured to accommodate some of the displaced people. The alternative land acquired the name of Michael Sata Township located in Lusaka opposite SOS Village along the Great North Road. A Committee dubbed Ng'ombe Displaced Committee was formed, which spearheaded the allocation of plots, and at that relevant time, the Committee was chaired by Mr. Stephen Ludaka. I am content that among the plots created for allocation was the plot in contention herein, namely Plot No. 36855. The parties have advanced

conflicting evidence. The Plaintiff said he was given the plot by the Committee, at the time the allocation of the plots was done on site. While the defendant claims the plot was given to her late husband, Mr. Mponda, and that it was her who introduced the Plaintiff to the Committee to include the Plaintiff on the Register following the removal of her husband's name from the Register, allegedly following an agreement she had with the Plaintiff. And apart from the only available documentary evidence on the record, the case measurably turns out to hinge on the issue of credibility.

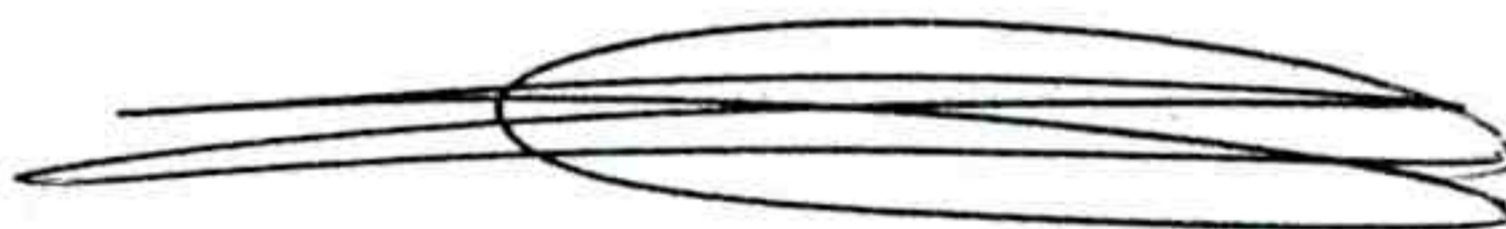
From the evidence on record, thus from the testimony of the Plaintiff supported by his witnesses: PW2, PW3, PW4, PW5, PW7 and PW8, and the available documentary evidence, it is clear that the subject plot, namely Plot No. 36855 was duly allocated to the Plaintiff. While the Defendant was allocated Plot No. 36888, neighbor to the Plaintiff. The fact that, the Plaintiff was privy as to why land had to be re-demarcated to accommodate the Defendant attest with probative value to the fact that the Plaintiff was there on the scene from the onset contrary to allegation by the Defendant and her witnesses who somewhat labeled the Plaintiff a stranger and late comer. It is evident that apart from his word of mouth, the Land Audit Register, the final one for that matter, plainly shows that the Plaintiff was allocated Plot No. 36855, while the Defendant's late husband was allocated Plot No. 36848. These numberings once again clearly represent two distinct plots. The cross examination of the Defendant based on the copy of the Land Audit Register produced by the Defendant

notice". The land did not belong to her, hence had no good title to pass on to Mr. Bwalya. It is for this reason that the Plaintiff is entitled to take possession of the plot.

In view of the foregoing, I come to the conclusion that the Plaintiff is the rightful owner of Plot No. 36855, Michael Sata Compound opposite SOS Village Lusaka along the Great North Road, hence forth entitled to possession. Concomitantly, the claim for damages for trespass to land is allowed, from the date the Plaintiff was deprived of the land to date he shall take occupation. The said damages to be assessed by the Registrar of the High Court.

The Plaintiff is hereby awarded costs to be taxed in default of agreement. And leave to appeal is granted.

Dated the 11th day of April 2019



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CHARLES ZULU
JUDGE

evidently showed not only how untruthful the Defendant was, but also demonstrated how unreliable she was and, how she defrauded not only the Plaintiff, but also the buyer of the Plaintiff's plot, Isaac Bwalya.

The Defendant chose to misread the document, the Land Audit Register, when it was plain and feigned poor sight because the document unveiled her lies, and hired Ms. Alaida Phiri who came with a motive to support the lies peddled by the Defendant. The Defendant selectively chose what to testify to and unwarrantedly placed blame on the Committee regarding the allocation of plot numbers on the register.

I find the evidence espoused by the defendant and her witness to be untruthful and unreliable, the discrepancies in the said testimonies contrasted to the testimony of the Plaintiff and documentary proof, clearly indicate that the story they put up was typically a concoction marshaled to deprive the plaintiff of his land duly alienated to him. And even when it was clear that the Defendant fraudulently sold the Plaintiff's plot to PW6's husband, she denied the transaction. The Defendant took advantage of the Plaintiff's condition at the time and without contrition to the Plaintiff's incapacitation on account of ill health sold the plot without the knowledge of the Plaintiff.

The obvious fact that PW6's presence on the subject plot as a "beneficiary" of the estate of her husband is as a result of the sale of land transaction albeit fraudulent. The blatant denial by the Defendant of the said transaction baffles

me on the one hand, and on the other hand demonstrate the Defendant's attempt to cover-up her wrong doings. The submissions made by Counsel for the Defendant can neither alter the facts of the case, the obvious outcome of the case nor deprive the Plaintiff of his remedies, simply because at present he has no certificate of title, when the process of obtaining the title deed is in progress. Machinations to alter the facts of the case in submissions is forbidden and condemned. It was therefore surprising that Counsel for the Defendant insinuated that PW6 said that her husband was allocated the plot by Mr. Ludaka, when the witness never stated so, but was categorical that they bought the subject plot from the Defendant. In fact it's paradoxical that on the one hand the Defendant claims matrimonial ownership of the plot, and on the other hand seems unconcerned with the occupation of the plot by PW6, whom she has now disowned, but has no qualms with her occupying the plot.

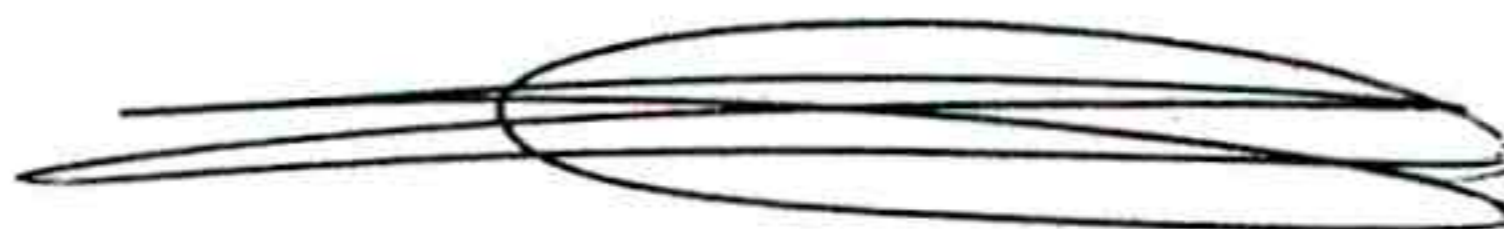
Furthermore, I am satisfied that when the Plaintiff was allocated Plot No. 36855 and took possession, he started his construction project starting with a single room, which he later occupied, and continued to build his seemly ultimate project of building some flats, which he built up to the roof level. However, he had to vacate his plot when he was taken ill. And it was during the time he was nursing his illness under the care of his brother in Kalingalinga, that the Defendant was deep in fraud. The transaction between the Defendant and the buyer, Isaac Bwalya being marred by fraud does not afford the buyer the status of being a "bonafide purchaser for value without

notice". The land did not belong to her, hence had no good title to pass on to Mr. Bwalya. It is for this reason that the Plaintiff is entitled to take possession of the plot.

In view of the foregoing, I come to the conclusion that the Plaintiff is the rightful owner of Plot No. 36855, Michael Sata Compound opposite SOS Village Lusaka along the Great North Road, hence forth entitled to possession. Concomitantly, the claim for damages for trespass to land is allowed, from the date the Plaintiff was deprived of the land to date he shall take occupation. The said damages to be assessed by the Registrar of the High Court.

The Plaintiff is hereby awarded costs to be taxed in default of agreement. And leave to appeal is granted.

Dated the 11th day of April 2019



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CHARLES ZULU
JUDGE