

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

2018/HP/0919



BETWEEN:

**REPHIDIM INSTITUTE LIMITED****PLAINTIFF**

AND

**THE ATTORNEY GENERAL****DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 3<sup>rd</sup> DAY OF  
FEBRUARY, 2020**

*For the Plaintiff* : Mr S.C. Mwananshiku, M&M Advocates

*For the Defendant* : Major Grace Miyutu, Mr Ferico Sibanda and Mr Francis  
Mandumbwa

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

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CASES REFERRED TO:

1. ***Lloyds v Banks 1868 3 CH 488***
2. ***Bailey v Barnes 1894 1 CH 25***
3. ***Oliver v Hinton 1899 2 CH 264,***
4. ***Re the Aims Corn Charity 1901 2 CH 750***
5. ***Hunt v Lock 1902 1 CH 426***
6. ***William David Carlisle Wise v Attorney-General 1990-1992 ZR  
124***
7. ***Zambia National Holdings Limited and United National  
Independence Party (UNIP) v The Attorney-General 1994 SJ 22***
8. ***Mwenya and Randee v Kapinga 1998 SJ 12***
9. ***Nawakwi v Lusaka City Council and another Appeal No 26 of  
2001 (unreported)***
10. ***Match Corporation v Choolwe and another SCZ Appeal No 75  
of 2002***

11. ***Van Blerk v The Attorney General and another SCZ Appeal No 138 of 2002 (unreported)***
12. ***National Housing Authority v Chalitumelo Appeal No 19 of 2007***

LEGISLATION REFERRED TO:

1. ***The Constitution of Zambia, Chapter 1 of the Laws of Zambia***
2. ***The Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia***
3. ***The Lands Acquisition Act, Chapter 189 of the Laws of Zambia***

OTHER WORKS REFERRED TO:

1. ***F. Mudenda, (2007), Land Law in Zambia: Cases and Materials, Lusaka, UNZA Press***
2. ***Megarry's Manual of the Law of Real Property***

The plaintiff commenced this matter on 15<sup>th</sup> May, 2018, by writ of summons and statement of claim, in which he claims;

- i. *An order directing the defendant to compensate the plaintiff for the current commercial value of the agreed portion comprising seventy two (72) hectares of Farm 690, Lusaka.*
- ii. *Mense profits for the period the Zambia National Service has occupied the plaintiff's property.*
- iii. *Special damages for the sketch plan, valuation report and survey diagrams secured by the plaintiff.*
- iv. *Costs.*
- v. *Any other relief that the court may deem fit.*

The claim as revealed by the statement of claim is that the plaintiff is the registered owner of Farm No 690, Lusaka as evidenced by the certificate of title No 218409. It is stated that the plaintiff has diligently complied



with all the covenants and conditions stipulated in the certificate of title, and has been paying annual ground rent for the entire property.

The plaintiff states that in the 1980's, the Zambia National Service moved onto a portion of its' land, comprising approximately sixty six (66) hectares, and erected a camp purportedly to maintain the country's security. Further, over the years, the Zambia National Service has erected permanent structures on the plaintiff's land which they occupy, but have not paid rentals or contributed to the payment of ground rates for the land that they occupy.

It is the plaintiff's averment, that it has on a numerous occasions engaged the Zambia National Service to discuss the possibility of it vacating the plaintiff's land or purchasing the said property. To that effect, on 5<sup>th</sup> September, 2008, the plaintiff held a meeting with the Zambia National Service at which an agreement was reached after discussions were held for the sale of the portion of the land that the Zambia National Service occupies.

The plaintiff further states that during that meeting, the Zambia National Service requested to have the portion of land surveyed for purposes of obtaining a site plan. This the plaintiff did at its own cost, and the land comprising seventy-two (72) hectares was surveyed, and a site plan was also prepared.

The plaintiff also avers that it had the seventy-two (72) hectares valued, which was ZMW1, 600, 000.00, and copies of the site plan, and the valuation report were sent to the Zambia National Service in 2008, but they refused to proceed with the sale, but continued to occupy the plaintiff's land, despite the plaintiff's objections.

The defendant entered appearance and filed a defence on 3<sup>rd</sup> August, 2018. It is the defendant's position that it will put the plaintiff to strict proof of the allegation that it is the owner of Farm No 690, Lusaka. The defendant states that the assertions that the plaintiff has complied with the covenants and conditions stipulated in the certificate of title are within its' peculiar knowledge.

The defendant admits that it occupied part of the plaintiff's land in the 1980's, stating that the Government of the Republic of Zambia acquired part of Farm No 690, Lusaka West from Lendor Burton after the construction of the TAZARA railway, and established it as a Builder's Brigade for the Zambia National Service, more than forty (40) years ago. The defendant denies having put up permanent structures on the plaintiff's land, and having failed to contribute towards the payment of ground rent, stating that there was already established Government presence and interest in the area before 1997, when the plaintiff acquired a certificate of title to the land.

The defendant also denies that the plaintiff met the Zambia National Service on 5<sup>th</sup> September, 2008, and it was agreed that the Zambia National Service would buy the land. The defendant's position is that the plaintiff has since 2007 been attempting to sell the Government its own land, as the interest of the Government subsisted before the plaintiff acquired the certificate of title.

The assertion that thereafter the Zambia National Service asked the plaintiff to have the land surveyed for purposes of producing a site plan, and that the same was done together with a valuation report for the land, which valued the land at ZMW1, 600, 000.00 in 2008, is said to be within the plaintiff's peculiar knowledge. As regards the plaintiff's



avermment that the site plan and valuation report was presented to the Zambia National Service, but they refused to buy the land is admitted, to the extent that the plaintiff has been trying to compel the Government to purchase part of Farm No 690 Lusaka West, after it acquired a certificate of title to the land.

The defendant avers that the plaintiff was aware of the existing Government Military Unit when it acquired the land, and that the memorials on the certificate of title clearly show the history of the property.

At the trial, the plaintiff called one witness, while the defendant called two witnesses. PW1 was Maxwell Mulondiwa, the proprietor and Executive Director of the plaintiff. He told the court that he is the majority shareholder in the plaintiff, which runs a school, a farm and property development. PW1 further testified that these activities are done at Farm 690 Ferngroove, which property they bought from Lendor Burton in 1990.

PW1 also stated that they initially rented the property, and then obtained a mortgage to buy off the property. He told the court that a certificate of title for the property, which is at page 22 of the plaintiff's bundle of documents was acquired for the land. It was further PW1's evidence that when they were buying the land, they were informed that the Zambia National Service had gone there to maintain law and order, as there was a refugee camp in the area.

He added that in those days during the state of emergency, rebel aeroplanes used to bomb the refugee camp, and that is why the Zambia National Service was placed there to protect the refugee camp. PW1 still

in his testimony stated that over time, the Zambia National Service put up structures on the land, and it was difficult for them to contest due to the state of emergency.

PW1's evidence was also that the Zambia National Service did not register its interest in the land, and this could be seen from the Lands Register at page 23 of the plaintiff's bundle of documents. He stated that they engaged the Zambia National Service over the land and several meetings were held.

PW1 identified the letter at page 18 of the plaintiff's bundle of documents dated 25<sup>th</sup> May, 2008, as being one of the letters that he wrote to the Zambia National Service, over their presence on the plaintiff's land. In that letter, the plaintiff had proposed selling the land to the Zambia National Service, as opposed to just donating it, as proposed by them, and the Zambia National Service agreed to the proposal.

He went on to testify that it was agreed that a formal offer be made, and a diagram for the property be availed, as well as a valuation report. Page 21 of the plaintiff's bundle of documents was identified as the sketch plan, and page 20 as the survey diagrams that were prepared. PW1 testified that the valuation report was at pages 8-11 of the plaintiff's bundle of documents, and the value of the land was stated at page 11, as ZMW1, 600, 000.00.

PW1 also identified the letter at page 12 of the plaintiff's bundle of documents as the covering letter that delivered the documents to the Zambia National Service. However, there was no response, and follow ups were made, as well as letters written, but there was no progress.



It was PW1's evidence that in 2015, he wrote the letter at page 1 of the plaintiff's bundle of documents, and the Zambia National Service on 23<sup>rd</sup> July, 2015, called a meeting. He stated that in that meeting, the Zambia National Service had apologized for the delay, and stated that they were ready to proceed with the matter. It was agreed in that meeting that the 2008 valuation had been overtaken by events, and there was need for a new valuation to be done.

On other agreements made in that meeting, PW1 testified that the Zambia National Service asked the plaintiff to annex the land from the main certificate of title, and this was done. He stated that a new valuation was done which was given to the Commandant for action, and the purchase price was put at ZMW7, 948, 800.00, according to the latest valuation.

PW1 also testified that they received no response, and when they made follow ups, they were informed that the matter had been referred to the Ministry of Lands. Then a tripartite meeting was held, that is, between the Commissioner of Lands, the plaintiff and the Zambia National Service. In that meeting, the Zambia National Service stated that it was not prepared to pay for the land. It was PW1's testimony that the Commissioner of Lands advised the plaintiff to seek legal redress as he was a neutral party in the matter.

The plaintiff asked to be compensated for the land at a commercial value, payment of mense profits for occupation of the land, special damages relating to the survey diagrams, etc and costs. PW1 also testified that the plaintiff had been paying rates to the Ministry of Land for the entire land, and that the Zambia National Service had not contributed towards the same. It was also his evidence that the presence of the Zambia National

Service on the land had cost them, as they had not been able to utilize the land in full.

In cross examination, PW1 testified that he bought the land in 1991 from Lendor Burton, which was in excess of 1900 hectares. He agreed that the sale documents were not before court. However, the certificate of title was before court. PW1 told the court that he physically checked the land before buying it, and there were temporal structures on it. When cross examined further, he agreed that he bought an already existing farm, and there were people living on it.

PW1 stated that the issue of the occupants on the land was discussed when they were finalizing the agreement, and that he was assured that the squatters would move out soon. When asked if there were no schools on the land, PW1 could not say, but stated that there were offices made out of corrugated steel. He also could not say if there was a clinic on the land, but maintained that there were temporal structures on the land, which were being used by the security that had camped there, to provide security to the refugees. He expressed ignorance on the assertion that the Builders Brigade was set up in 1975.

The first witness called by the defendant was Colonel Alexander Kasongo Machamanda. He testified that he served in the Zambia Army as Regional Commander from 1976-1979. During that period, he was Regional Commander for Lusaka Province, and his duties included looking after the administration of the Army, Airforce and the National Service Camps. It was further his testimony that the Zambia National Service camp in Lusaka was called the Builders Brigade, and that he had visited it many times.



DW1 stated that he was briefed that most of the occupants of the camp, which was established in 1975, were workers of TAZARA, including some Chinese Technical personnel. There were over six hundred (600) people there, and structures like workshops, accommodation for both the military and civilian personnel, a school, clinic and social amenities, like canteens and officers mess were on the land. On the materials that were used to construct the hospital, offices, and houses, DW1 testified that it was corrugated iron sheets. He stated that the offices were made from blocks, as well as the school.

He testified that after retiring from service in 1981, he settled near the Zambia National Service camp, and in 2008, he was invited for the meeting by the Zambia National Service at which PW1 was present, over the land which the Zambia National Service occupied.

DW1 when cross examined, stated that he had learnt that the camp was set up in 1975 to accommodate former workers, and Zambia National Service personnel. He agreed that he had no documents to show when the camp was established, but that the structures were made of corrugated iron sheets, while some were made of concrete blocks. DW1 told the court that he settled on the land outside the camp after he acquired it from the government, and he has a certificate of title for the said land.

It was DW1's evidence that during the meeting, it was proposed that the Zambia National Service pays for the land, and the Zambia National Service said that the matter would be taken up for further discussion.

The last witness was Lieutenant Colonel Andrew Masulani Mazyopa. He testified that he first went to the Lusaka West Builders Brigade in 1988

when he was in grade 6. At the time, he was not living in the camp, but he attended school there, and he wrote his grade 7 at the Lusaka West Builders Brigade school in 1989. From there, he went to secondary school, and later university.

DW2 stated that joined the Zambia National Service in 2000, and he was posted to the Zambia National Service Kitwe Skills Centre until 2010, when he was posted to the Builders Brigade in Lusaka West, as factory manager. In November of that year, DW2 was promoted as in charge of the camp, as Officer Commanding until 2015, when he was posted to the Zambia National Service headquarters.

DW2 told the court that at the time he was at Lusaka West Builders Brigade School, there were permanent structures that housed the grade 6 and 7, and others that were made out of corrugated sheets. He further testified that permanent houses had been constructed, while others were in the process of being constructed.

It was also his evidence that as Officer Commanding, he was informed that the camp was established in 1975 after the Government constructed the TAZARA railway, and there was excess manpower and machinery, such as that for carpentry, and those who could work there, were settled there. DW2 also testified that a school and a clinic were constructed there, and the school had since been upgraded into a secondary school.

In cross examination, DW2 reiterated that the camp was set up in 1975, when the President gave the land to the Zambia National Service. He agreed that he had heard of Lendor Burton, who was a farmer, and he also stated that his children went to Rephidim school, which is on the northern side of the camp.



I have considered the evidence and the submissions. It is not in contention that the plaintiff is the legal owner of sub division A20 of Farm No 690 Lusaka, having bought the land from Lendor Burton. It is also not in contention that the plaintiff acquired a certificate of title for the said land. It is common cause that the Zambia National Service Builders Brigade Camp was established within the land that the plaintiff claims to have ownership. The question is whether the plaintiff is entitled to the reliefs sought?

The first claim is for an order for compensation at the commercial value for the agreed portion of land, comprising seventy two (72) hectares. In arguing this claim, the plaintiff submitted that pursuant to Section 33 of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia, a certificate of title is conclusive evidence of ownership of land.

The defendant on the other hand argued that the plaintiff is not an innocent purchaser for value, as it did not investigate title to discover whether the land was subject to rights vested in persons other than the vendor. It was the defendant's argument that if the purchaser fails to make enquiries with regard to third parties who happen to be in possession of the land, they are affected with notice by all the equitable interests held by them.

Reference was made the learned author **F. Mudenda, (2007), Land Law in Zambia: Cases and Materials, Lusaka, UNZA Press** where the essential features of notice are stated as;

1. Bona fide- entailing that a purchaser must act in good faith, that is, there must be no fraud of sharp practice.

2. Purchaser for value- that a purchaser includes any person who takes property by sale, mortgage, lease or otherwise, but excludes any acquisition by operation of law. That value as described in **Megarry's Manual of the Law of Real Property** at page 64 is that the words "for value" are included to show that value must have been given, because purchaser in its technical sense does not necessarily imply this. That purchaser covers persons who receive property otherwise than by operation of the law, such as under intestacy rules, and so includes donees and devisees.
3. Of legal estate- that the estate purchased must be real estate, and not a mere equitable interest. That if the purchaser has an equitable interest, then even if he has no interest, he is bound by any equitable interests, because equity operates on the principle that where the equities are equal, the first in time prevails.
4. Without notice- Under this, notice may be actual, constructive or imputed. This is broken down into;
  - (a) Actual- a purchaser has actual notice of all matters brought to their attention, and not facts brought to their attention by rumours, as was held in the case of **Lloyds v Banks** <sup>(1)</sup>. That according to **Megarry's Manual the Law of Real Property** at page 13, a purchaser is under obligation to undertake full investigation of title before completing his purchase, and they can only plead absence of notice if they made all the usual and proper enquiries. If they do not do so, or are careless or negligent, they will be deemed to have constructive notice of all the matters that they would have discovered.



Further, a person is deemed to have constructive notice of all the facts that they would have acquired actual notice of, had they made the inquiries and inspection, and the standard of prudence, being that of a man of similar business. In this regard, the case of **Bailey v Barnes** <sup>(2)</sup> was relied on

The case of **Hunt v Lock** <sup>(5)</sup> was relied on for the proposition that the purchaser should inspect the land, and make enquiries as to anything which seems inconsistent with title offered by the vendor. Also relied on was **Cheshire's Modern Law of Real Property** at page 65 which states that;

***“One object of investigating title is to discover whether the land is subject to rights vested in persons other than the vendor, and the equitable doctrine of notice orders that a purchaser is bound by any right which he would have discovered had he made ordinary investigations as sketched above. Again, if he fails to make enquiries of third persons who happen to be on the land, he is affected by notice of all equitable interests held by them, as for example, an option to purchase the fee simple that has been granted to a lessee already in possession”.***

- (b) Imputed notice- where a purchaser employs an agent, such as a legal practitioner, any notice, whether actual or constructive attributed to the agent will be imputed to the purchaser as was held in the case of **Re the Aims Corn Charity** <sup>(4)</sup>.

The defendant submitted that the burden of proof is on the person, who wishes to rely on it, and that the case of ***Mwenya and Randee v Kapinga*** <sup>(8)</sup> held that;

***“The occupation of land by a tenant affects a purchaser of land with constructive notice”.***

That this position was also stated in the case of ***Hunt v Luck*** <sup>(5)</sup>, and other cases relied on, in this regard, were ***Oliver v Hinton*** <sup>(3)</sup>, ***Nawakwi v Lusaka City Council and another*** <sup>(9)</sup> and ***Match Corporation v Choolwe and another*** <sup>(10)</sup>.

In this matter, PW1 testified that when the plaintiff was buying the land from Lendor Burton, he was informed that the Zambia National Service had settled on the land to maintain law and order, as there was a refugee camp in the area, and the rebels used to bomb it. That this was during the period of the state of emergency, and PW1 could not raise any objection to the State putting up structures for the use of the Zambia National Service.

In cross examination, PW1 agreed that when he bought the land, it was a farm, and that there were structures there. He was asked about the presence of the Zambia National Service on the land when he was buying it, and whether he had inspected it. His response was that he had only spoken with the officers from the Zambia National Service after the sale was concluded.

DW2 who lived near the land as a child, confirmed that there were permanent structures that were put up on the land for the use of the Zambia National Service.



It is clear from this evidence, that PW1 was aware of the presence of the Zambia National Service on the land when he bought it from Lendor Burton. He however did not make any enquiries from the Zambia National Service to establish whether it had any rights to the land before he bought it. PW1 therefore had actual notice of the presence of the Zambia National Service on the land, which affected the plaintiff's right to the land.

This brings me to the defendant's second limb of argument. The plaintiff testified, and which evidence was not discredited in any way, that the Zambia National Service did not register its interest in the land. The memorials on the certificate of title at page 23 of the plaintiff's bundle of documents shows that a certificate of title was first issued to Barend Jacobus Vorster as a direct lease from the State on 9<sup>th</sup> July, 1947.

The plaintiff obtained a certificate of title for the land on 17<sup>th</sup> June, 2017 for a total of 70.8588 hectares of land. The survey diagram annexed to the certificate of title which is at page 24 of the plaintiff's bundle of documents shows that the land in extent of 70.8588 hectares, was surveyed in July, 2016.

The defendant with reference to Article 16 of the Constitution as amended, stated that the article proscribes the deprivation of property. The argument was however that the article has a proviso which provides that;

***“16. (1) Except as provided in this Article, property of any description shall not be compulsorily taken possession of, and interest in or right over property of any description shall not be compulsorily acquired, unless by or under the authority of***

***an Act of Parliament which provides for payment of adequate compensation for the property or interest or right to be taken possession of or acquired.***

***(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of clause (1) to the extent that it is shown that such law provides for the taking possession or acquisition of any property or interest therein or right thereover-***

***(j) in terms of any law relating to abandoned, unoccupied unutilised or undeveloped land, as defined in such law;”***

The defendant relied on the case of ***Van Blerk v The Attorney General and another SCZ*** <sup>(11)</sup> stating that the Hon Judge in that matter, dismissed the plaintiff's claim, as the plaintiff had failed to surrender the title deeds for the farm in order to enable the State to subdivide, and get a portion of the land compulsorily acquired thereby causing the land to remain idle, and not to be used for the reasons that it was compulsorily acquired, after the President acted in good faith in acquiring the land.

The defendant argued that the plaintiff should surrender the title deeds for the land so that the State can subdivide the land, and get the portion where the Zambia National Service is based. That the Zambia National Service has been on the land for over forty four (44) years without obtaining a certificate of title for the land, as the plaintiff has neglected/ refused to surrender the title deed to the defendant, so that the land can be sub divided.

Section 3 of the ***Lands Acquisition Act, Chapter 189 of the Laws of Zambia*** provides for the compulsory acquisition of land. It states that;



**“3. Subject to the provisions of this Act, the President may, whenever he is of the opinion that it is desirable or expedient in the interests of the Republic so to do, compulsorily acquire any property of any description”.**

In terms of how land is compulsorily acquired, Sections 4-6 of the Act outlines the procedure as follows;

**“4. (1) Whenever it appears to the President that it may be desirable or expedient to acquire any land, it shall be lawful for any person authorised either generally or specially by the Minister in that behalf and for his servants and agents-**

**(a) to enter upon the land in question or any land in the vicinity thereof and survey and take levels of any such land; or**

**(b) to dig or bore under the sub-soil; or**

**(c) to do all other acts necessary to ascertain whether the land is or may be suitable for the purpose in question; or**

**(d) to clear, set out and mark the boundaries of the land proposed to be acquired and the intended line of the work (if any) proposed to be done thereon:**

**Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (except with the consent of the occupier thereof) unless he has previously given such occupier not less than seven days' notice of his intention so to do.**

*(2) As soon as conveniently may be after any entry made under subsection (1) the Government shall pay for all damage done by the persons so entering. In the case of a dispute as to the amount to be paid, either the Minister or the person claiming payment may refer such dispute to a court having jurisdiction.*

*(1) If the President resolves that it is desirable or expedient in the interests of the Republic to acquire any property, the Minister shall give notice in the prescribed form to the persons interested in such property and to the persons entitled to transfer the same or to such of them as shall after reasonable inquiry be known to him.*

*(2) Every such notice shall, in addition, invite any person claiming to be interested in such property to submit such claim to the Minister within four weeks of the publication of the Gazette notice in terms of section seven.*

*6. (1) The Minister may, by notice under section five or by any subsequent notice, direct the persons to whom notice is required by section five to be given to yield up possession of such property on the expiration of the period specified in the notice, which period shall be not less than two months from the date of service of the notice:*

*Provided that where the President certifies that the property in question is urgently required, the persons aforesaid may be required to yield up possession of the property on the expiration of such lesser period as the President may direct.*



***(2) On the expiration of the period referred to in subsection (1) the President and all persons authorised by him may take possession of such property”.***

There is no evidence on record to show that the State took up the steps stated above to compulsorily acquire the land, which is occupied by the Zambia National Service. In the case of ***Zambia National Holdings Limited and United National Independence Party (UNIP) v The Attorney-General*** <sup>(7)</sup> relied on by the defendant, the appellants brought a petition in the High Court to challenge the decision by the respondent to acquire the land compulsorily, under the Lands Acquisition Act, belonging to the appellant, being Stand number 10934 Lusaka which was also known as the New UNIP Headquarters.

The President resolved that it was desirable or expedient in the interests of the Republic to acquire this property, whereupon the appropriate Minister gave notice to the appellants of the Government's intention in that behalf, and the steps and formalities under the Act for such acquisition were commenced. The appellants wrote to the respondent suggesting a sum of money to be paid as compensation, but as it turned out, and as the parties specifically informed the learned trial judge, they wished the question of compensation to be postponed until the court had disposed of the challenge to the legality and constitutionality of the compulsory acquisition.

It was held in that case that;

***“(iii) The Lands Acquisition Act did not contravene the spirit and intent of Article 16(1) of the Constitution.***

***iv) The appellants did not discharge the burden which was on them to demonstrate mala fides on the part of the President”.***

In the case of ***William David Carlisle Wise v Attorney-General*** <sup>(6)</sup> the court stated that;

***“The silence of the Land Acquisition Act Cap 296 on the question of the purpose or purposes for which the State may compulsorily acquire property upon payment of compensation does not per se give the State a blanket right to compulsory acquisition without any cause or purpose. Furthermore, the purpose for compulsory acquisition of property upon payment of compensation must be a public one. What constitutes public use frequently and largely depends upon the facts surrounding the subject. The issue of public use is a judicial question and one of law to be determined on the facts and circumstances of each particular case”.***

In this case, the evidence on record reveals that the Zambia National Service Builders Brigade camp was established on the plaintiff's land to provide security to a nearby refugee camp during the state of emergency. That the people that were settled there were mainly former workers who constructed the TAZARA rail line, and the equipment that was used during the construction of the rail line was also taken there. It also housed officers that were in service.

The defendant argued that the plaintiff has refused to hand over the certificate of title so that the land can be subdivided, and the land where the Builders Brigade camp is, be subdivided and given to the Zambia National Service. However, it can be seen that the process of



compulsorily acquiring the land has not been instituted by the President, according to the evidence on record.

While the plaintiff had notice of the Zambia National Service being present on the land, before the plaintiff purchased the land, PW1 did not engage the Zambia National Service especially with regard to its permanence on the land. I do recognize that the situation was unique as it was during the state of emergency, which fact the defendant has not disputed.

Further, while the defendant relied on Article 16 (2) (j) of the Constitution and Section 15 of the Land Acquisition Act to argue that the land was not developed by the plaintiff, and therefore, it cannot be compensated, the certificate of title that was issued to the plaintiff, shows that the land is in extent of 70.8588 hectares, which is a very big piece of land.

PW1's evidence was that when he bought the land, there were structures on it, and they have built a school and conduct farming activities there. This evidence was not disputed, and DW2 agreed that his children even attended the plaintiff's school, which is on the land. Therefore, it is not true that the plaintiff did not develop the land.

By virtue of Section 33 of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia, the plaintiff is the owner of the land described on the certificate of title at pages 22-25 of the plaintiff's bundle of documents, which is 70.8588 hectares of land. I do however note, that there is a certificate of title that was issued to Barend Jacobus Vorster on 7<sup>th</sup> July, 1947, for 4790.00 acres of land, which was Farm No 690, at page 26 of the plaintiff's bundle of documents.

The 4790.000 acres of land translates into 1938.444 hectares of land, when the area is divided by 2,471, which is the value of one acre to one hectare. It is clear from the certificate of title that was obtained by the plaintiff, that it has been given a certificate of title for an area of land, which is smaller than that which Farm 690 had. It will further be noted that the plaintiff's land as indicated on the certificate of title at page 23 of the plaintiff's bundle of documents, is that it is subdivision A20 of Farm 690 Lusaka, entailing that this farm was subdivided. The plaintiff therefore does not have title to the entire Farm 690.

The plaintiff has not produced the contract of sale to show the extent of the land that Lendor Burton sold it. It is therefore not known how much land Lendor Burton sold the plaintiff. Further, there is no evidence to show much land Lendor Burton acquired from Barend Jacobus Vorster, who was the original owner of the land.

As the plaintiff only owns 70.8588 hectares of land, as shown on the certificate of title, and the survey which was done as shown at pages 3 and 8 of the plaintiff's bundle of documents shows that the Zambia National Service is possibly in possession of between 66.2446 to 72 hectares, this land may not be owned by the plaintiff.

The Lands Register showing the transactions that were entered on the land at the Ministry of Lands has not been produced before the court, and it would therefore be speculative to find that the State has indeed compulsorily acquired the land, or that Linda Burton sold the plaintiff the extent of land as indicated on the certificate of title at pages 26-30 of the plaintiff's bundle of documents.



The plaintiff may have labored under a mistaken belief that Lendor Burton had sold it the whole land, as it only has title to subdivision A20 of Farm 690. However, at whose instance the subdivision was done, is not known. Thus, the plaintiff has not proved on a balance of probabilities, that it is entitled to be compensated for the land by the defendant, and the claim will fail.

The plaintiff also mense profits for the period the Zambia National Service has been in occupation of its land. It relied on the case of ***National Housing Authority v Chalitumelo*** <sup>(12)</sup> which defined mense profits as;

***“The profit lost to the owner of land by reason of his having wrongfully dispossessed of the land”.***

It has been seen that the Zambia National Service is in possession of the land which the plaintiff claims it bought from Lendor Burton, and PW1 was informed that they were providing law and order in the area due to the refugee camp that was nearby. However, the plaintiff has not established that the land that it bought from Lendor Burton formed part of the land that the Zambia National Service occupies, as there is no contract of sale to show the exact extent of the land that was bought. The claim will fail on that basis.

With regard to the claim for special damages for the sketch plan, valuation report and survey diagrams, the letter at page 18 of the plaintiff's bundle of documents that the plaintiff wrote to the Zambia National Service, shows that the plaintiff proposed to subdivide and pay for the subdivision, diagrams and consent to subdivide. There is no evidence on record to show that a contrary agreement was thereafter

reached. This claim cannot even be sustained, as there is no evidence to establish that the plaintiff was actually sold the land that it claims. As such, there is no basis for the claim and it will fail.

All of the plaintiff's claims fail, and they are dismissed. However, looking at the nature of the case, I order that each party bears their own costs. Leave to appeal is granted.

**DATED AT LUSAKA THIS 3<sup>rd</sup> DAY OF FEBRUARY, 2020**

S. Kaunda

**S. KAUNDA NEWA  
HIGH COURT JUDGE**