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

2017/HP/2201

IN THE MATTER OF: **THE PROTECTION OF FUNDAMENTAL RIGHTS REGULATIONS, 1969**

AND

IN THE MATTER OF: **ARTICLES 8, 12, 13, 15, 16, 17, 21, 22, 23, 256 AND 266 OF THE CONSTITUTION OF ZAMBIA**

AND

IN THE MATTER OF: **THE LANDS ACT, CHAPTER 184 OF THE LAWS OF ZAMBIA**

AND

IN THE MATTER OF: **THE LANDS AND DEEDS REGISTRY ACT, CHAPTER 185 OF THE LAWS OF ZAMBIA**

AND

IN THE MATTER OF: **THE LANDS ACQUISITION ACT, CHAPTER 189 OF THE LAWS OF ZAMBIA**

BETWEEN:

MOLOSONI CHIPABWAMBA	**1st PETITIONER**
FEBBY KALUNGA	**2nd PETITIONER**
REGINA KALUNGA	**3rd PETITIONER**
MABEL MWAPE	**4th PETITIONER**
GILIAT MUMBA	**5th PETITIONER**
PETSON KUNDA	**6th PETITIONER**
ESMME SUNKULA KUNDA	**7th PETITIONER**
KUNDA MUSONDA	**8th PETITIONER**
PATRICK CHISENDA KUNDA	**9th PETITIONER**
CHISENGA KUNDA	**10th PETITIONER**
CHARLES KALUNGA	**11th PETITIONER**
LOVENESS KUNDA	**12th PETITIONER**
RODGERS KUNDA	**13th PETITIONER**

AND

YSSEL ENTERPRISES LIMITED	**1st RESPONDENT**
KAITE JOHN KAKUNGU	**2nd RESPONDENT**
BLUE VEIN INVESTMENTS LIMITED	**3rd RESPONDENT**
BILLIS FARM LIMITED	**4th RESPONDENT**
ABRAHAM LODEWIKUS VILEOEN	**5th RESPONDENT**
SERENJE DISTRICT COUNCIL	**6th RESPONDENT**
ATTORNEY GENERAL	**7th RESPONDENT**
THE COMMISSIONER OF LANDS	**8th RESPONDENT**

BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 30th DAY OF APRIL, 2020

For the Petitioners	:	*Mr C. Sianondo and Ms N. Siansumo, Malambo and Company and Mr B. Siachitema, Lusitu Chambers*
For the 1st Respondent	:	*No appearance*
For the 2nd Respondent	:	*No appearance*
For the 3rd Respondent	:	*No appearance*
For the 4th and 5th Respondents	:	*Mr L. Mudenda, Theotis Motaka and Sampa Legal Practitioners*
For the 6th Respondent	:	*Mr M. Sholomo, Legal Counsel, Lusaka City Council*
For the 7th and 8th Respondents	:	*Ms Mazulanyika, State Advocate, Attorney Generals Chambers*

J U D G M E N T

CASES REFERRED TO:

1. ***Salomon v Salomon & Co Ltd 1897 AC 22***
2. ***Hunt v Luck 1902 1 CH D. 428***
3. ***Baxter v Baxter 1950 ALL ER 458***
4. ***Patel v The Attorney-General 1968 ZR 99***
5. ***Raphael Ackim Namung'andu v Lusaka City Council 1978 ZR 358***
6. ***In the matter of Section 53 (i) of the Corrupt Practices Act, No. 10 of 1980 and in the matter of Articles 20 (7) and 29 of the Constitution and in the matter between: Thomas Mumba –***

Applicant and the People - respondent 1984 ZR 38

7. *William David Carlisle Wise v Attorney-General 1990-1992 ZR 124*
8. *John Modise v Botswana, Comm 97/1993*
9. *S v Makwanyane 1995 6 BCLR 665 (CC); (1995) 3 SA 319 (CC)*
10. *Mwenya and Randee v Kapinga 1998 ZR 17*
11. *Village Headman Mupwaya and another v Mbaimbi SCZ No 4 of 1999*
12. *Henry Mpanjilwa Siwale, Reverend Ewen Siwale, Kelvin Siwale, Stephen Siwale, Dr. Sichilindi Siwale, Peart Siwale, Musenga Siwale v Ntapalila Siwale SCZ No 24 of 1999*
13. *Goswami and another v the Commissioner of Lands SCZ No 3 of 2001*
14. *Nawakwi v Lusaka City Council and another Appeal No 26 of 2001 (unreported)*
15. *Still Waters Limited v Mpongwe District Council and others SCZ Appeal No 90 of 2001.*
16. *Hijrizi v Yugoslavia, Comm No 161/2001*
17. *Dogan and others v Turkey, Application Nos 8803-8811/02, 8812/02 and 8815-8819/02*
18. *Nora Mwaanga Kayoba and Alizani Banda v Eunice Kumwenda Ngulube and Andrew Ngulube 2003 ZR 132*
19. *Mpongwe Farms Limited (in receivership) and two others v the Attorney General 2004/HP/0010*
20. *Sablehand Zambia Limited v Zambia Revenue Authority 2005 ZR 109*
21. *Anderson Kambela Mazoka and two others v Levy Patrick Mwanawasa and two others 2005 ZR 138*
22. *Sudan Human Rights Organisation and Centre on Housing Rights and Evictions (COHRE) v Sudan, Comm 279/03-296/05*
23. *K.B. Davies & Company Limited (Zambia) Limited v Andrew Masunu Appeal No 181/2006*
24. *In R (on the application of Dalai and another) v Secretary of State for the Home Department (2006) EWHC 823 (Admin)*
25. *Justin Chansa v the Lusaka City Council 2007 ZR 185*
26. *Anti Corruption Commission v Barnnet Development Corporation Limited 2008 ZR 69 Vol. 1*
27. *Kingaipe and another v The Attorney General 2009/HL/86*
28. *Danwell Lishimpi v Steadfast Chombela and five others 2011/HP/1283*
29. *Mukoko v The Attorney General (36/09)[2012] ZWSC 11*
30. *Tresphord Chali Emmanuel Kanyanta Ngandu Appeal No 84/2014*
31. *Joyce Ndavuka Gondwe v Christine Ziwolilie Ngwira*

SCZ/8/002/2015

32. ***Sarrahwitz v Maritz N.O and another (CCT93/14)[2015] ZACC***
33. ***Grace Musele Mpande Maledu and 37 others v Itereleng Bakgatla Mineral Resources (Pty) Limited and another, CCT 268/17***
34. ***Kalumba Kashiwa Mwansa and another v Kenneth Mpofu SCZ No 34 of 2018***
35. ***Sailas Ngowani and 6 others v Flamingo Farms Limited SCZ No 15 of 2019***

LEGISLATION REFERRED TO:

1. ***The Constitution of Zambia, Chapter 1 of the Laws of Zambia***
2. ***The High Court Act, Chapter 27 of the Laws of Zambia***
3. ***The Lands Act, Chapter 184 of the Laws of Zambia***
4. ***The Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia***
5. ***The Lands Acquisition Act, Chapter 189 of the Laws of Zambia***
6. ***Statutory Instrument No 89 of 1996, The Lands (Customary Tenure) (Conversion) Regulations, 1996***

OTHER WORKS REFERRED TO:

1. ***Halsbury's Laws of England, Volume 16, 4th Edition***
2. ***Hanbury and Martin, Modern Equity, (London, Sweet and Maxwell Limited, 1997***
3. ***Howarth, Land Law, Sweet & Maxwell, 1994***
4. ***John Mc Ghee QC, Snells Equity, (London, Thomson Reuters (Legal) Limited, 2008***
5. ***The Nature of African Customary law by T.O Elias, Manchester University Press, Manchester, 1956***

The petitioners commenced this action by way of petition on 15th December, 2017, claiming:

i. *An order and a declaration that the taking over of the Petitioner's customary land without following the required procedure is unconstitutional and is therefore null and void.*

ii. *A declaration and an order that the Petitioners are to continue enjoying their land in accordance with the customary law of the area and its attendant rights.*

iii. *An order directed at the 3rd and 5th Respondents to cancel any allocation, assignment or certificate of title that was issued to the 1st and 2nd respondents, which covers the land that is occupied, used, and enjoyed by the Petitioners under customary tenure.*

iv. *An order for the restoration of the land back to the Petitioners of the same extent that they had historically enjoyed.*

v. *An order and a declaration that the taking, destruction of houses, fields, crops, fruit, trees, forests and closing of the roads used by the Petitioners violates their rights to dignity, life, personal liberty, protection from torture, inhuman and degrading punishment or treatment, property, not to be subjected to entry by others on their premises, freedom of association, freedom of movement and residence and not to be treated in a discriminatory manner.*

vi. *A declaration that Section 33 of the Lands and Deeds Registry Act is unconstitutional as it results in the diminishment or termination of customary land rights without the provision of adequate compensation.*

vii. *A declaration that Sections 33, 34, and 35 of the Lands and Deeds Registry Act are unconstitutional as they discriminate against the rural communities occupying, using and enjoying customary land rights and interests.*

viii. *An order and declaration that Sections 33, 34, and 35 of the Lands and Deeds Registry Act are incompatible with Section 7 of the Lands Act and are therefore invalid.*

ix. *An order and declaration that the land was acquired or obtained under fraud, mistake, and/or misrepresentation and thus null and void and should be cancelled.*

x. *In the alternative, a declaration that Sections 33, 34, and 35 of the Lands and Deeds Registry Act have been repealed by the Lands Act.*

xi. *An order for damages and compensation for the destroyed properties, houses, crops and fruit trees (both planted and from nearby forests) and for depriving the Petitioners and their families and households, access and use of their customary land for the period the 4th and 5th Respondents have been in possession and use of the property, contrary to Article 16 of the Constitution and Section 7 of the Lands Act.*

xii. *An order for damages and compensation for all the suffering that the Petitioners have been unlawfully and unjustifiably subjected to, pursuant to Articles 8, 12, 13, 15, 17, 22, 23, 28, 256, and 266 of the Constitution of Zambia.*

xiii. *An order of mandatory relief requiring the 4th and 5th Respondents to undertake reasonable and necessary remedial action in relation to the environment and other damages to land, air, water and other environmental aspects of the Petitioner's natural resources, or alternatively, damages in lieu of the same.*

xiv. *Costs.*

xv. Further or other relief that the court may deem fit.

The petition states that the petitioners are currently squatting in Musangashi Forest Reserve, following their forced displacement and eviction from their ancestral land and villages in Milumbe area, in Senior Chief Muchinda, in the Serenje District of Central Province of the Republic of Zambia. They state that they sue on their own behalf, and on behalf of their respective families and households.

The petition further states that the 1st respondent was the first registered proprietor of Farm No F/9597, Central Province, which covers all the land where the petitioners had resided and used through generations (hereinafter called the displaced land) until July, 2013 when the petitioners were displaced and forcefully evicted. It is further alleged that the 2nd respondent is a commercial farmer, who purchased Farm No F/9597, Central Province, from the 1st respondent.

The 3rd respondent is said to have bought the said property from the 2nd respondent, and the 4th respondent is said to be the current owner of Farm No F/9597 Central Province. The 5th respondent on the other hand is said to be a commercial farmer, and manages the operations of Farm No F/9597, Central Province, and is the person that personally directed and supervised the forced evictions and destruction of the petitioner's properties in 2013.

The petitioners allege that the respondents and certain provisions of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia have violated the petitioner's rights, as protected by Articles 8, 12, 13, 15, 16, 17, 22, 23, 28, 256, and 266 of the Constitution of Zambia. In this

regard, the petitioners contend that the respondents have violated their rights in the following manner;

a) *Harmed the self worth and dignity of the petitioners' contrary to Article 8 of the Constitution.*

b) *Jeopardised the petitioners' bare life necessities, including housing, nutrition, clothing, water and shelter, contrary to Article 12 of the Constitution.*

c) *Humiliated and debased the petitioners', contrary to Article 15 of the Constitution.*

d) *Took away the petitioners' rights and interests in the disputed land without providing them with compensation, contrary to Article 16 of the Constitution.*

e) *Entered the petitioners' properties and premises without the petitioners' consent, and destroyed houses, properties, assets, crops and uprooted fruit trees, contrary to Articles 16 and 17 of the Constitution.*

f) *Demolished and destroyed houses and properties, assets, crops and uprooted trees and forcefully evicted the petitioners from their habitual residence contrary to Article 22 of the Constitution.*

g) *Fenced off the disputed land, employed security guards to prevent the petitioners' access to the disputed land, thereby serially restricting their ability to associate with their relatives and friends from Milumbe area, contrary to Articles 21 and 22 of the Constitution.*

h) Denying the petitioners as rural residents on customary tenure, the legal protections and privileges that are offered to those on State land, contrary to Article 23 and 266 of the Constitution.

i) Indirectly discriminated against the petitioner's wives, as rural women who have to bear the disproportionate impact of the loss of the land and social networks, contrary to Articles 23 and 266 of the Constitution.

j) Denied the petitioners and the long term rural residents, adequate protection of their legal customary land rights and privileges contrary to Article 7 of the Lands Act.

As regards the violation of the petitioners' dignity, it is contended that the respondents have;

i. Subjected the petitioners to uncompensated displacements and forced evictions;

ii. Rendering the petitioners homeless, landless and destitute, forcing them to spend months sleeping in the open during the cold and rainy seasons;

iii. Subjecting them to a number of negative social, economic and political impacts;

iv. Jeopardized the petitioners' ability to meet the bare necessities of life, including food, nutrition, clothing, shelter and water;

v. Discriminated against them and their wives as rural residents;

vi. Denied them adequate protection of their customary land rights;

vii. *Turned them into squatters at the mercy of the 4th and 5th respondents now considered as the owners of the disputed land, which is the petitioners' ancestral customary land;*

viii. *Subjecting the petitioners to the mercy of the Forest Management of Zambia for their continued squatting in the Musangashi Forest Reserve;*

ix. *Completely destroying their social identity by clearing the disputed land and turning their villages on the disputed land into soya beans and wheat fields;*

x. *Subjecting them to anguish and grief as they watched the graves and burial sites of their deceased parents and ancestors razed, and in some cases, bones exhumed as the burial sites were turned into soya beans and wheat fields.*

The petitioners further contend that their forced evictions and displacements from the disputed land into the Musangashi Forest Reserve has resulted in the petitioners' suffering illnesses, and even death, as after their displacement, the petitioners' and their families spent months sleeping in the open and the cold during the rainy season. Further, they have continued to struggle with chronic water and food shortages, ill health, very bad housing, lack of livelihood options and public services since 2013.

This they contend, has violated their right to live with dignity, contrary to Articles 8 and 12 of the Constitution. The petition also alleges that the respondents acts and or omissions have violated the petitioners' right to liberty and protection of the law by denying them the ability to enjoy and use the land as they please, contrary to Article 13 of the Constitution. It

is also contended that the petitioners' rights under the said article have been further violated by the respondents fencing off, blocking, and closing the routes and roads, and planting of crops on the disputed land, making it impossible for the petitioners to move freely.

The petitioners further allege that in fear of the destruction of their properties, temporal houses and tents in the Musangashi Forest Reserve, they have been forced to stay home, in watch over their properties, assets and families.

The violation of the petitioners' rights under Article 15 of the Constitution is stated as being due to the taking over of their land, destruction of their properties, houses, food, crops and fruit trees, and the eventual forced eviction by the 4th and 5th respondents, and subjecting the petitioners to both psychological and physical torture, and inhuman and degrading treatment (involving intimidation, coercion and violence).

On the violation of the petitioners' rights under Article 16 of the Constitution and Section 4(3) (c) of the Lands Act, they state that it is due to the allocation or alienation of the petitioners' customary land to the 1st respondent, and/or conversion of the petitioners' customary land into state land, without consulting them and obtaining their consent, which amounts to compulsory acquisition. The petitioners further state that the 7th and 8th respondents did not follow the mandatory procedural requirements for compulsorily taking of customary land.

Still on compulsory acquisition, the petitioners' allege that the compulsory acquisition of their customary land without providing them with adequate compensation, and the subsequent assignment of the

disputed land to the 1st to the 4th respondents, makes the compulsory acquisition, not for a public purpose, and it was therefore contrary to Section 3 of the Lands Acquisition Act.

The petitioners also allege in the alternative, that the allocation of the land to the 1st respondent was done by fraud, mistake and misrepresentation, and was thus null and void. The particulars of the alleged fraud, mistake and misrepresentation are stated as;

i. *The 6th respondent not inspecting the disputed land and not filing any report to confirm that the entire 2040 hectares of the now property number F9597 Central Province was free of village settlements.*

ii. *The 1st and 6th respondents' representation to the Commissioner of Lands that 1300 hectares of the disputed land was free of village settlement was misleading, as the disputed land has always been occupied, owned and utilized by the petitioners.*

iii. *That the 8th respondent mistakenly allocated the 1st respondent 2040 hectares when the 6th respondent's submission for numbering specifically stated that the 6th respondent approved the 1st respondent's application for farm land in Luombwa area of 1, 300 hectares.*

iv. *The 8th respondent mistakenly allocated property number F/9597 Central Province to the 1st respondent despite the fact that there was no consent from Senior Chief Muchinda authorizing the 1st respondent to settle in his Chiefdom. It is further stated that the authorization from Senior Chief Muchinda that was submitted together with the sketch map were in favour of an individual known*

as Mr P.L. Yssel and not the 1st respondent, which is an incorporated company limited by shares.

The petition further states that their rights under Article 17 of the Constitution have been violated as the 4th and 5th respondents entered on their properties and premises and destroyed their houses, shelters and crops, without their consent, thereby violating their rights not to be subjected to entry by others on their premises without their consent.

That the 4th and 5th respondent further violated the petitioners' rights to freedom of movement and residence, under Article 22 of the Constitution, by taking their customary land and destroying their houses, fields, crops, fruits and forest. The petitioners contend that Section 33 of the Lands Act and Deeds Registry Act has created a situation whereby rural residents who have occupied customary land for generations can lose their legitimate customary land rights and their interests without compensation.

They allege that this results in such residents becoming squatters on their own land, once a certificate of title for their land is issued to another person, thereby violating Article 16 of the Constitution of Zambia and Section 7 of the Lands Act. It is further alleged that the existence of Sections 33 and 34 of the Lands and Deeds Registry Act creates and perpetuates situations whereby persons living on state land enjoy security of tenure over the tenure provided to rural communities, who enjoy occupancy and user rights under customary tenure, and violates Article 23 of the Constitution.

The petitioners also contend that Sections 33, 34 and 35 of the Lands and Deeds Registry Act create and perpetuate a situation that makes it

difficult for rural communities living on customary land to seek legal redress, where their customary land is claimed by a person who has acquired a certificate of title, as compared to oral testimonies by persons occupying unregistered customary land.

Further, that Sections 33, 34 and 35 of the Lands and Deeds Registry Act have created real risks for the petitioners, and the majority of the rural Zambian communities, especially with the increasing demand for customary land, as it facilitates the diminishment of customary land rights by both the national elite and foreign investors, thereby violating Article 16 of the Constitution and Section 7 of the Lands Act.

The contention is also that Section 33 of the Lands and Deeds Registry Act is contrary to, and inconsistent, with Section 7 of the Lands Act, which is subsequent legislation that, by implication, repeals earlier legislation that is inconsistent with its provisions. In this regard, the petitioners state that Section 33 of the Lands and Deeds Registry Act neither acknowledges customary land rights, nor makes the registered proprietor subject to prior unregistered customary land rights. It only makes the registered proprietor subject to the interests of a proprietor claiming under a current prior certificate of title.

The petitioners also claim that Section 35 of the Lands and Deeds Registry Act is contrary to, and inconsistent with Section 7 of the Lands Act, which is subsequent legislation, that, by implication, repeals earlier legislation that is inconsistent with its provisions. The petitioners state that Section 35 of the Lands and Deeds Registry Act provides for the restriction on ejectment after issuance of a certificate of title, and it does not acknowledge prior customary land rights among the permitted exceptions for bringing an action for possession or recovery of land.

In the affidavit filed in support of the petition, which is deposed to by the 1st petitioner, he states that he is the Secretary of the community that the 4th and 5th respondents evicted and displaced, hereinafter called the displaced community. The 1st petitioner further deposes that he was born in 1964 in an area known as Milumbe near the Mulembo river, which is now called Billis Farm, and is the disputed land. He exhibits as 'MC1', a copy of his national registration card.

The 1st petitioner avers that his house and that of the displaced community were on the disputed land along the Mulembo river, and that his parents and many of his relatives going back generations, and those of the displaced community, lived and are buried on the disputed land. He states that the disputed land was traditional land, which was regulated and administered in accordance with Lala tradition.

It is stated that from the time the 1st petitioner became of age until sometime in 2012, he had not heard anyone claim their customary land or challenge their customary land rights in any way. He further states, that however, in 2001, the 8th petitioner, Kunda Musonda, who had established and owned villages on the other side of the Mulembo river together with the 5th petitioner, Giliat Mumba, the 6th petitioner, Petson Mumba and the 7th petitioner, Esmme Sunkula Mumba informed them that they had seen some government officials and an investor that they came to know as Pieter Yssel holding a location/mapping device walking around the disputed land at the edge of his field.

The deponent states that in order to understand what was going on, they approached the government officials and Mr Pieter Yssel, and they were informed that Mr Yssel had bought some land near their area, from their

Chief. Thus, they were inspecting the area so that they could mark out and demarcate Mr Yssel's land.

The petitioners being wary as the government officials did not explain anything other than the fact that Mr Yssel had bought some land, and they were walking near the 5th to 8th petitioners land, sent the late headman Kunda to go and find out from the Chief whether indeed some land had been sold to Mr Yssel. It is averred that the headman reported back that the Chief had denied the allegation that he had sold the disputed land to Mr Yssel, stating that the Chief had stated that he had just given a small piece of land to Yssel, which was unoccupied, and far away from the disputed land.

It is stated that two (2) months later, Mr Yssel moved onto the small piece of land along the Luombwa river, and he started constructing houses and he cleared the land. However, they observed that Mr Yssel was expanding his land clearing from the Luombwa river towards the fields of the 5th to 8th petitioners who were on the other side of the Mulembo river. Thus, they invited the Chief to a meeting so that he could clarify the issue of the land to the displaced community.

However, the Chief did not attend, but instead sent his retainer with a letter explaining the issue, and the Chief also sent another letter to Mr Yssel. It is stated that the meeting was held at Mr Yssel's office, and present in that meeting was Mr Yssel, headman Kunda, the Chief's retainer and a teacher from Ntenga school who was invited by the headman to read the letter from the Chief.

The averment is that members of the displaced community waited outside, and the teacher from Ntenga school read the letter from the

Chief in the 1st petitioner's presence, as well as in the presence of Mr Yssel, the Chief's retainer and the headman. It is deposed that the Chief's letter stated that he had not sold the disputed land to Mr Yssel but that he had authorized him to find and occupy a small portion of vacant land along the Luombwa river, which was far away from where the displaced community lived and farmed.

Further, that the land given to Mr Yssel did not include any of their land. The 1st petitioner also states that during the meeting, police started threatening some members of the displaced community, especially the women with tear gas. The 1st petitioner deposes that some members of the displaced community became upset and told the police to shoot them, and as a result, after the letter from the Chief was read, the meeting ended. Then within a month of that meeting, another meeting was held at which Mr Yssel stated that he would like to live in peace with the displaced community as neighbours.

He had further added that he appreciated the security barrier that their villages provided against potential thieves. At that meeting, Mr Yssel had even asked members of the displaced community that were willing to work for him to do so, so that they could earn some extra income. It is also deposed that towards the end of 2001, Mr Yssel had approached the displaced community asking that he be allowed to assess the value of the fruit trees around their houses, their fields, crops as well as their houses, so that he could pay them money, and find them alternative land as compensation, if they agreed to move from the disputed land.

The 1st petitioner deposes that they specifically told Mr Yssel that they did not ever want to move from the land, as it was part of their identity, and that their parents and grandparents were buried there, and they

would like to die and be buried there too. He states that Mr Yssel respected their views, and he never bothered them again. The 1st petitioner goes on to depose that sometime in 2002, they stopped seeing Mr Yssel on the disputed land, where he had constructed houses and cleared the fields. In the same year, a man named John Kaite who was based in Kasama started visiting the houses and fields that Mr Yssel had constructed and occupied.

The 1st petitioner further states that in 2003, Mr Kaite went to the area and he called a meeting, which was attended by members of the displaced community. He deposes that at that meeting, Mr Kaite informed the members of the displaced community that he was the new owner of the land that was occupied and used by Mr Yssel. He further informed the displaced community that he would visit them within a short period to see their villages and fields, and discuss how they would be expected to live as neighbours.

Then after a week of that meeting, Mr Kaite visited and toured all eleven (11) villages, and after the tour, Mr Kaite asked that they should not increase the number of villages in the area. He had also requested that the four (4) villages that were already established on the other side of the Mulembo river be moved to the side where the other seven (7) villages were established. The 1st petitioner avers that Mr Kaite attributed this as being to enable him expand and clear the land that was left by Mr Yssel from the Luombwa river to near the Mulembo river.

Further, that Mr Kaite had promised to compensate the four (4) villages if they agreed to move. However, members of the displaced community who owned the four (4) villages that were established on the other side of the Mulembo river refused to allow Mr Kaite to expand and clear the land

from the Luombwa river to near the Mulembo river, as they all depended on the forest between the Luombwa and Mulembo rivers to access forest based resources.

The 1st petitioner states that following the refusal by the owners of the four (4) villages, Mr Kaite informed them that he would call another meeting so that they could discuss how they would live as neighbours, but he did not do so, when he visited the fields and houses later in 2003. The averment is that from there, they did not hear from Kaite, and in 2004, they heard rumours that Mr Kaite had left the area, and that another person would go and take over Mr Kaite's small area.

It is deposed that the person who took over Mr Kaite's land did not call any meeting, and neither did they request to expand the area that was originally occupied by Mr Yssel. Further, that person did not request the displaced community to move, and neither did they engage in farming and they did not bother the displaced community until 2012, when the 4th and 5th respondents went to the disputed land.

The contention is that neither Mr Yssel, Mr Kaite or the person who took over from Mr Kaite occupied, or used any part of the disputed land where the displaced community resided, farmed and accessed forest products. It is deposed that the displaced community continued with their way of life using the displaced land as they had done from the time that they inherited it from their parents, without any disturbance or disruption of any kind. To that effect, they continued cultivating different crops for food, including maize, wheat, cassava, sweet potatoes, beans, groundnuts, and green leafy vegetables.

The 1st petitioner deposes that they grew sufficient food to enable them have three (3) meals in a day and they sold the surplus to earn income. Further, they continued accessing the forest's natural resources, such as ntungulu, masuku, maundu, fungo, barks, seeds, roots, leaves and other plants for food and sale in order to earn their living. They also hunted small animals and birds, caught caterpillars from the forest and fished from the Mulembo river.

That from those activities, they made reasonable income to meet their basic needs, and also bought bricks and roofing sheets for their houses, cooking oil, sugar, salt, soap and washing detergents, clothes and even paid school fees for their children. The 1st petitioner contends that it was only in 2012 when the 4th and 5th respondents went to the disputed land when the problems started. He avers that in August, 2012, the 5th respondent called the displaced community to a meeting and informed them that he did not want people on the disputed land and he asked the displaced community to vacate the said land.

They however told him that they would not vacate the disputed land as it was their ancestral land where they had been born, and they had lived and farmed there going back generations. Further, that their parents and grandparents were buried on the land, as well as their other relatives. It is also stated that in September 2012, the displaced community held another meeting with the 5th respondent during which he had asked for the village books.

When shown the said village books, the 5th respondent threw them away, claiming that they revealed nothing, and that he was paying ZMW5, 000.00 every month to the 3rd respondent, Blue Vein Investments, and ZMW10, 000.00 to the government every year. On being asked how much

the displaced community was paying as rent for the land that they occupied, they had told the 5th respondent that they paid nothing other than ZMW.10 for a village book, as they had inherited the land as per Lala tradition.

Then on 4th June, 2013, the 5th respondent went to the disputed land with bulldozers and told the displaced community to leave the land, as it was his, and he had paid a lot of money to acquire it. It is deposed that when they refused to leave, the 5th respondent's workers destroyed the houses, fruit trees, cassava and other crops and fields for the 5th to 8th petitioners using two bulldozers, as the petitioners watched helplessly.

The 1st petitioner alleges that there was no consultation, notification, compensation, provision of alternative land or housing or opportunity to seek legal redress, as provided, before the 5th respondent forcefully evicted the 5th to 8th petitioners and their families from the disputed land. Further, the 5th respondent and his workers did not seek and never obtained the displaced communities' consent or permission before entering their properties to carry out the forced eviction and destruction of their properties.

It is contended that the 5th to 8th petitioners and their families were treated unfairly and inhumanely, as if they are not Zambian nationals, and the displaced community was traumatized and shocked, as they observed their property and nearly everything that owned being completely destroyed, as the 5th to 8th petitioners and their families were not given opportunity to get their assets or their household goods.

To the contrary, they had to run away from their houses, in fear for their lives, and they were unable to get their assets and household goods, as

they were not given any notification, and they lost everything, save for the few articles that they were able to pick.

The affidavit goes further to state that the 1st to 4th and the 9th to 13th petitioners and their families who were established villagers on the other side of the Mulembo river further away from the Luombwa river, thought that the land they occupied was not part of the disputed land. However, they were also forcefully evicted from their land by the 5th respondent's workers, without notice, who carried them on a tractor and left them by the roadside outside the disputed land.

Their households, goods, fruits, trees, assets, fields and the crops therein were destroyed, leaving them homeless, landless and destitute, as they had nowhere to go with their families. The averment is that they sought the help of Serenje District Commissioner's office, where they saw the District Commissioner, Mr Charles Mwelwa. The said District Commissioner even went to see the area, and they showed him the completely demolished houses and properties, and they informed him that they did not know how they were going to live.

It is deposed that the District Commissioner got into his vehicle with the 5th respondent after telling the displaced community that he would go back, but unfortunately, he did not go back. That is how the displaced community went into Musangashi Forest to seek refuge, but they did not have food, water or shelter. Further, they had very few tools for building their homes, and they were forced to sleep out in the open for several months during the cold and later the rainy season.

The 1st petitioner states that the oldest member of the displaced community, Sam Mumba had his house demolished, and he was

forcefully displaced into the Musangashi Forest Reserve, where he sadly died whilst he was trying to build another house during the rainy season. He also deposes that when they first went into the forest, they made some temporary shelters out of grass where they would sleep with their children.

However, despite settling in the Musangashi Forest Reserve, the displaced community did not stop pursuing the issue of the land, and the 1st petitioner went to the District Commissioner's office and asked him to consider their plight. The District Commissioner told him that he would report to the relevant government institutions in Lusaka, as well as to the Permanent Secretary in Central Province.

The 1st petitioner deposes that thereafter, in September, 2013, the District Commissioner went to Musangashi Forest Reserve in the company of the Permanent Secretary for Central Province, Mrs Edwidge Mutale and the Serenje District Agricultural Officer, Mr George Chisebuka and the displaced community was given opportunity to explain their plight, through the 1st petitioner.

The displaced community at the request of the Permanent Secretary took her and District Commissioner to Musangashi Forest Reserve where they were living, and to a place about five (5) kilometres away where they were drawing water, which was yellow in colour, and both the Permanent Secretary and the District Commissioner took photographs of the bad water and the temporary shelters.

It is averred that during that interaction, the Serenje District Agricultural Officer informed the District Commissioner and the Permanent Secretary, as well as the members of the displaced community that the records that

were available at his office, indicated that the 5th respondent's farm was originally 360 hectares, but it was now 2000 hectares, which hectarage included the displaced community's land.

The Serenje District Agricultural Officer had further stated that when the government was establishing the Luombwa Farm Block in 1997, the persons that were on the disputed land were left because it was considered to be customary land, as shown on the extract from the Zambia Daily Mail dated 13th September, 2013 exhibited as 'MC2' titled ***"Displaced Serenje Families in Anguish"***.

It is also deposed that the Permanent Secretary advised the displaced community to keep in contact with the office of the District Commissioner at Serenje District. She had further told them that their case was serious, and she promised to send them some tents, and that she would also keep in touch with them, and would continue advising them on how they would stay in the area, and have access to clean water.

That as promised by the Permanent Secretary, maize and tents were sent to the displaced community in the Musangashi Forest Reserve after one week. However, no meeting was held with the Chief, the 6th respondent, the Serenje District Council, or representatives of the government to inform them that the Chief wanted to give the land to the state or the 1st respondent, and neither were the displaced community asked if they wished to give the disputed land to the state or the 1st respondent.

The petitioners deny having consented to the disputed land being given to the state or the 1st respondent, and their contention is that they were

not consulted by anyone, and that any allocation of the said land was done compulsorily.

Further, that no one went to the disputed land to inspect it or assess the displaced communities' properties and assets before the land was allocated to the 1st respondent or the state. It is also deposed that as by 2017, the petitioners were living in the Musangashi Forest Reserve for almost five (5) years without any remedy or compensation, they decided to investigate to find out how their land was forcefully taken away from them, and given to the 4th and 5th respondents, and they were mercilessly evicted.

It is deposed that the investigations revealed that on 22nd January, 1996, the 1st respondent had applied for Farm No 26 Luombwa in Serenje District, as shown on the Annexure C form, dated 22nd January, 1996, which is exhibited as 'MC3' to the affidavit. Then on 24th January, 1996, the 3rd respondent's Works, Development and Social Services Committee approved the 1st respondent's application for farming land in the Luombwa area in Serenje District.

The 1st respondent deposes that the application was adopted during the 13th ordinary Council meeting of the 6th respondent on 28th March, 1996, as evidenced by the minutes of that meeting, which are exhibited as 'MC4' and 'MC5' to the affidavit. The deponent goes further to aver that they discovered that on 10th December, 1997, Senior Chief Muchinda authorised Mr PL. Yssel to settle as a commercial farmer along the Luombwa river near the Mulembo River Block, and he was given 2000 hectares of land, as shown on letter from the said Chief dated 10th February, 1999, exhibited as 'MC6' to the affidavit.

The averment is that both Senior Chief Muchinda and the 6th respondent endorsed on the sketch map exhibited as 'MC7' to the affidavit, which relates to Farm No 26, Luombwa Farm Block, which was prepared in January, 1997, and was endorsed by the 6th respondent on 11th March, 1997, and by the District Agriculture Office on 10th March, 1997.

The 1st petitioner further deposes that the 1st respondent completed an application form for Farm No 26 Luombwa, Serenje District, which was approved by the Serenje District Council Secretary on 27th March, 1997, and the said Council Secretary certified that the application was approved by the full Council meeting under item No PWD113/96(48) on 28th March, 1996.

It is averred that the District Council Secretary for the 6th respondent stated that the land was free from village settlements, and the applicant had shown interest to develop the land. That this is evidenced by a copy of the Annexure C form dated 27th March, 1997, exhibited as 'MC8' to the affidavit. It is further deposed that the investigations also established that the 6th respondent submitted eight (8) copies of sketch maps for numbering in order to enable the Council recommend the 1st respondent's application for a lease.

That as shown on exhibit 'MC9', a copy of the letter to the Commissioner of Lands dated 27th March, 1997, the 6th respondent advised the 8th respondent that it had approved the application for the 1st respondent for farm land in Luombwa in extent of 1300 hectares. The averment is that on 9th September, 1997, the Assistant Lands Officer wrote to the 1st respondent advising that only 250 hectares of the land had been approved out of the 2040 hectares, and that it had to apply to the Minister for the remainder.

The letter exhibited as 'JK10' to the affidavit is said to be evidence of the advice that was given by the Assistant Lands Officer to the 1st respondent. Then on 26th December, 1997, the Acting Commissioner of Lands sent a letter to the Minister advising that the 1st respondent had applied for the remaining 1790 hectares of land of the 2040 hectares, after 250 hectares had been approved, as shown on exhibit 'MC12' dated 18th December, 1997.

The Acting Commissioner of Lands had no objection to the application as evidenced by the letter dated 26th December, 1997, exhibited as 'MC11'. The 1st petitioner states that on 28th May, 1998, the Deputy Permanent Secretary in the Ministry of Lands wrote to the 8th respondent, advising that the Minister of Lands had approved the remainder of the 1790 hectares of land, as evidenced by the letter exhibited as 'MC13'. The 8th respondent then issued a letter of offer to the 1st respondent relating to Farm No F/9597, Serenje District for a period fourteen (14) years from 1st May, 1998.

Exhibit 'MC14' is a copy of the letter of offer, dated 29th May, 1998. It is stated that the 1st respondent was issued with a certificate of title relating to Farm No F/9597, Central Province on 30th July, 1998, as shown on the print out of the Lands Register, exhibited as 'MC15', at entry number 2. The 1st respondent then sold the property to the 2nd respondent on 11th December, 2001, who was issued with a certificate of title.

It is averred that the 2nd respondent also sold the property to the 3rd respondent who equally acquired a certificate of title to the said land, as shown on the entries 3, 4 and 7 of the Lands Register, exhibited as 'MC15'. The 1st petitioner further avers that the 3rd respondent

surrendered the certificate of title, and was offered a ninety nine (99) year lease for the property on 25th August, 2009, as evidenced from the letter of offer exhibited as 'MC16'. The averment is that exhibit 'MC17' shows that the 3rd respondent was issued with a certificate of title for ninety nine (99) years on 18th March, 2011.

Then thereafter, the 3rd respondent applied for consent to assign the property to the 4th respondent on 16th January, 2012, which was granted on 26th January, 2012. This is evidenced by exhibits 'MC18' and 'MC19', and the 4th respondent bought the property, and was issued with the certificate of title exhibited as 'MC20'.

The 1st petitioner contends that they were not aware that the 1st respondent had applied for the land, and had even acquired a certificate of title to the said land. He states that all they knew, and reasonably believed, based on the information that they had received from the Chief, was that the 1st respondent was given a small piece of vacant land, which was far from the land that the displaced community occupied and used.

He further contends that this belief was even confirmed by the Serenje District Agriculture Officer, Mr George Chisebuka, in the presence of the District Commissioner and the Permanent Secretary, as evidenced on exhibit 'MC2' to the affidavit. The 1st petitioner also contends that even though the 1st respondent kept his application for the disputed land secret, he had actual notice that the displaced community was in actual possession of the land, before he started applying for it, and during the process of the said application.

Further, that even the 2nd to 4th respondents as subsequent purchasers equally had notice of the displaced community's occupation and use of

the land under customary tenure. He further states that the displaced community even disclosed their interest to all those who visited the land and enquired from them.

The 1st petitioner further contends that their living conditions plummeted when the 2nd respondent and his workers forcefully evicted them from the disputed land. That since then, they have continued to struggle with bad housing and shelter, chronic food and water insecurity, ill health, lack of options for income, livelihood, inability to send their children to school and inability to redress.

That prior to the 2nd respondent evicting them and destroying their houses, most of the displaced community members lived in houses that were made of bricks, and were properly roofed with iron sheets. He deposes that from the time of their forceful eviction, they have had to live in tents and temporary structures made of sticks, and they cannot make proper walls, because there is no water, and they are not permitted to cut trees to use for building.

It is further deposed that the temporary structures leak during the rainy season, and wind blows through them, making them dusty and cold inside. That when it rains, they are forced to leave their houses and stay under big trees. Exhibited as 'MC21-28' are photographs of their structures and tents that were taken in January and July, 2017.

The averment is that the respondents acts and omissions have seriously jeopardised their food security, as before the displacement and forced eviction, the petitioners had abundant fertile land that enabled members of the displaced community to practice shifting agriculture to grow food sustainably. They would have three (3) meals in a day, and they planted

a lot of fruit trees such as mulberry, mango, guava, banana, oranges and others, that they ate, and from which they earned income.

Further, the displaced community had unrestricted access to the forest and the nearby river for hunting, foraging and fishing. However, they now squat in the Musangashi Forest Reserve, and they are not permitted to engage in agricultural activities. The 1st petitioner deposes that even if they were permitted to engage in agricultural activities, the soil is poor compared to that on the disputed land. Besides, there is no water in the Musangashi Forest Reserve that they would use to irrigate their crops and gardens with.

It is also contended that the displaced community has lost forest products, game and fish that were part of their diet, and was a source of income, because they cannot be found in the dry Musangashi Forest Reserve, through which no river passes. The 1st petitioner states that the nearby forest near the Musangashi Forest Reserve has been fenced off by the commercial farmers, thereby blocking the displaced community's access for hunting and foraging.

Further, the commercial farmers have warned the displaced community that they will be arrested for criminal trespass, should they enter the fenced areas. Thus, the displaced community has been forced to buy food to eat, which is expensive, and they have no money, and they have lost all their means of earning income. They therefore have to skip meals, and often go for days without eating.

The 1st petitioner further avers that they have chronic water insecurity, which has affected their lives, with a disproportionate negative impact on the women and girls. He states that this is unlike before the evictions, as

they had unrestricted access to water for drinking, farming, for their households through out the year from the Mulembo and the Luombwa rivers, which could be accessed in less than five (5) minutes.

Now the women who have the responsibility of drawing water and cooking for the family have to walk long distances, and at multiple times to fetch water, the nearest point being about five (5) kilometres away. It is further averred that the 2nd respondent attempted to dig a well for the community, but abandoned it without finding water, as can be seen from the photographs exhibited as 'MC29-30'.

The 1st petitioner states that clinics where the sick can be taken, as well as the markets, are all very far away from the Musangashi Forest Reserve. Therefore, those who go there, are gone the whole day, and there is no one to draw water to use for cooking and drinking the whole day, leaving the families hungry and thirsty. The 1st petitioner deposes that this has impacted negatively on the girl children, who have in some cases been withdrawn from schools, so that they can assist their mothers to fetch water.

The 1st petitioner states that this has also affected their environment, as they are now dirtier than before, as they do not have water for bathing, cleaning and even washing dishes. He avers that the sanitation for women and girls during menstruation is challenging without water, and that in terms of their health, they spent months sleeping in the open air during the cold season, after their evictions.

As a result, a number of children fell sick, with one child who was suffering from tuberculosis (TB) dying after spending about four (4) months in the open air during the cold season. The 1st petitioner also

deposes that they suffered emotional anguish and grief after being forced to leave their land, and the burial grounds for their parents, relatives and ancestors. Further, they continue experiencing extreme stress and anxiety as they wait for the government to tell them where to go, and they cannot sleep as they think about the same.

That this has especially impacted on the children who still need to go to school, and there is no school near the Musangashi Forest Reserve. He states that some children have as a result, stopped school, while others continue to endure long distances to access their education. Further, the girl children have been withdrawn from school so that they can help their mothers to draw water, and also to look after the infant children, whenever their mothers go to the clinic or the market.

It is deposed that the displaced community publicly complained through the Zambia Information Services (ZANIS) about their problems resulting from the forced evictions, and exhibit 'MC31' is a copy of the media report that was issued on 16th August, 2013. The 1st petitioner contends that they are not opposed to developmental projects, but that their forced eviction is unbearable. Further, they have not been compensated for the land and the developments that they made to it, as well as their fruits and crops.

The 1st petitioner ends by deposing that he signed the letter at page 3 on number 30, which is exhibited as 'MC32', which was written to the President of Zambia on 15th June, 2016, among 128 other people from Ntenga area in Chief Muchinda's area, seeking his intervention. However, the letter was not delivered due to logistical challenges. Further, that some members of the displaced community are very old widows who are weak, and are unable to clear land, and build new structures. He states

that the fear is that they may not survive as a result of the conditions that they have been subjected to.

The 4th and 5th respondents filed their answer and an affidavit in opposition on 6th February, 2018. It is stated in the answer, that the 4th respondent on 6th December, 2011 entered into a contract of sale with the 3rd respondent for the sale of Farm No F/9597, Central Province, with a hectarage of 2071 hectares. It is further stated it was a term of the sale that the 3rd respondent was selling the property as a beneficial owner, and that it was free from any encumbrances.

The answer further states that that notwithstanding, a search was conducted at the Lands and Deeds Registry, which showed that the 3rd respondent had a state lease for ninety nine (99) years for the property. Subsequently, the conveyancing documents to complete the sale of the property were executed, and the 4th respondent obtained a certificate of title for the property.

It is also the 4th and 5th respondents answer that when they moved onto the property, they found twelve (12) people on site, who included a foreman, that had previously worked for the 3rd respondent. The said persons on the property were the remnants of the workers that had worked for the former owner of the property, and were on the property as caretakers, under the supervision of the foreman.

The 4th and 5th respondents' position is that the locals who were on the property signed an agreement with the director of the 3rd respondent, that allowed them to stay on the property until the development works commenced. Thereafter, the 5th respondent held a meeting at which the locals were reminded of the agreement that they had, which they duly

acknowledged. It is also stated that the locals were informed that the 4th respondent had acquired ownership of the property and was going to develop it.

The averment is that the locals did not raise any objection to the development, but only expressed concern that they had planted some crops, and they requested for a period of six (6) months to enable them complete the harvest of their crops. The 4th and 5th respondents granted the said request, and that by the time the 4th respondent started clearing the property, most of the locals had already cleared their fields and their temporal housing units.

It is stated that for those that had not completed their harvest, the 4th respondent gave them time to do so, and even provided transport to them, as they moved to their preferred destinations. The 4th and 5th respondents deny having forcefully evicted the locals or the petitioners from the property or destroying their crops and houses. Therefore, the 4th and 5th respondents deny having violated any rights of the petitioners as alleged.

With regard to the assertion that Sections 33 and 34 of the Lands and Deeds Registry Act contravene the spirit of Section 7 of the Lands Act and Article 16 of the Constitution, the answer by the 4th and 5th respondents is as follows;

i. Sections 33 and 34 of the Lands and Deeds Registry Act speak to the effect of the issuance of a certificate of title of registered land. That with similar effect, the administration of customary law is provided for under Part II of the Lands Act. Thus, in each case, the

law provides adequate protection for the two tenure systems without disadvantaging the other.

ii. Similarly, Section 33 of the Lands and Deeds Registry Act cannot be said to be inconsistent and contrary to Section 7 of the Lands Act, as Section 7(2) provides a rider to the effect that the rights and privileges of a person under customary are recognised at law, but the same should not infringe any other law. Thus, the provisions are in consonance.

In the affidavit in opposition, which is deposed to by the 5th respondent, the 4th and 5th respondents state that they have not at any time displaced any persons, and as such, there is no community that can correctly be referred to as a community that was evicted by them. The 4th and 5th respondents allege that the petitioners were on sundry occasions employed by the previous owners of the land in dispute as farm workers.

Thus, all the allegations relating to the claims of ownership to the disputed land, and the violation of the petitioners' rights on the basis of the alleged forceful eviction in the affidavit in support of the petition are denied, stating that they do not relate to the 4th and 5th respondents.

As regards the assertion that the problems started around July, 2012, when the 4th and 5th respondents went to the disputed land, and the 5th respondent called a meeting, and informed the petitioners that he did not want people on the land, but the petitioners said that it was their ancestral land, and that the 5th respondent threw away the village books, stating that they showed nothing, the response is that the 4th respondent bought the land from the 3rd respondent as reflected by the contract of sale, which is exhibited as 'ALV1-6' to the affidavit.

The 4th and 5th respondents reiterate that the 3rd respondent sold the land as beneficial owner, and that it was free from any encumbrances. They further reiterate that a search at the Ministry of Lands showed that the 3rd respondent held the land on a ninety nine (99) year lease, and the Lands Register exhibited as 'ALV7-12' shows this. The 4th and 5th respondents also state that a certificate of title was acquired for the land, which is exhibited as 'ALV13-17'.

The 5th respondent avers that when he moved onto the property, he found only twelve (12) people, who were previously employed by the 3rd respondent, and who were caretakers of the property under the supervision of the foreman of the 3rd respondent. The affidavit also reiterates the answer to the petition that a meeting was held with the locals, who were reminded of the agreement that they had with the 3rd respondent.

Further, that the locals did not object to the development of the land, and that by the time the 4th respondent started clearing the land with a view to developing it, most of the locals had cleared their crops from the fields. That those who had not completed the clearing were given time to do so, and that the 4th respondent provided them transport to move to their preferred destinations.

It is deposed that when the 4th respondent was clearing the land, they were visited by government officials from Serenje District, as a result of a broadcast on Serenje radio station that houses were being pulled down, and they established that the allegations were false. The officials then proceeded to meet the locals.

The 6th respondent filed an answer to the petition on May, 2018. They deny having violated the petitioner's rights as protected by the Constitution, stating that its actions were in accordance with the law and other regulations, that guide their duties as agents of the 7th respondent in land administration. The 6th respondent further states that the eviction of the petitioners should not have taken them by surprise, as they were merely squatters, as acknowledged in paragraph 1 of the petition.

Therefore, they occupied the land in dispute at the mercy of the 1st to the 3rd respondents, and that their occupation of the land was based on an agreement that their stay was temporal. It is also stated that when the application to convert the land from customary into statutory tenure was made, the 6th respondent conducted an inspection of the land in question, in order to establish whether it was free from occupation by indigenous villagers.

The 6th respondent in the affidavit in opposition deposed to by David Sakala, a Water and Sanitation Coordinator of the 6th respondent, deposes that according to their records, the 4th respondent obtained the subject property legally, and followed the due process to acquire land in Zambia. Further, that Mr Yssel, the proprietor of the 1st respondent who first owned the disputed land, was allowed to settle on the same land by Chief Muchinda as a commercial farmer, and allocated him the land in question.

He states that later, Mr Yssel converted the land into state land, and it was bought by the 4th respondent. It is averred that the 6th respondent at its' sitting on 24th January, 1996, under minute number PWD/113/96/12 of the Plans, Works, Development and Social Services

Committee Meeting held in the Council Chamber, approved Mr Yssel's application for land, in extent of 1, 300 hectares, which was allocated to him after inspection of the land was conducted, to ensure that it was free of any indigenous villagers.

He also deposes that the 1st respondent applied for extra land from the remaining 1790 hectares of the 2040 hectares, of which 250 hectares was approved, as per Land Circular No 1 of 1985. The allegations with regard to the violation of the petitioner's rights are said to be within their own peculiar knowledge. The 6th respondent reiterates that the 1st respondent acquired the disputed land free from indigenous village settlers. As such, it did not see it fit to issue a public notice or seek permission from the villagers to approve the 1st respondent's application.

Moreover, Senior Chief Muchinda recommended that the 1st respondent be assisted to acquire a certificate of title. The allegations that the petitioners have been living in Musangashi Forest Reserve without any compensation after their forceful eviction, is said to be within the petitioners' peculiar knowledge.

The 6th respondent admits the assertion that Senior Chief Muchinda authorised Mr Yssel to settle as a commercial farmer along the Luombwa River near the Mulembo river, and that he was given 2000 hectares of land. The 6th respondent further avers that it is in possession of a letter from Senior Chief Muchinda asking the 6th respondent to render assistance to the 1st respondent, as well as a sketch map endorsed by Senior Chief Muchinda showing the exact demarcations of the land, separating the land that was allocated to the 1st respondent, and that occupied by the indigenous villagers.

The 6th respondent admits having approved the 1st respondent's application to convert the land from customary into statutory tenure, and that it made a recommendation to the Commissioner of Lands that the 1st respondent be given the land, submitting seven (7) copies of the sketch map for numbering. The rest of the averments in the affidavit in support of the petition are said to be within the petitioners' peculiar knowledge.

The 7th respondent filed an answer on 6th March, 2018. The allegations relating to the violation of the petitioners' rights are denied, and it is stated that the records at the 7th respondent show that Chief Muchinda on 10th February, 1997, recommended the allocation of the land to the 1st respondent, and that the said Chief endorsed the site plan. Thereafter, the 6th respondent recommended that the 1st respondent be allocated the land on 17th April, 1997, and indicated that there were no village settlements on the farm.

That based on that information, an initial title was granted in favour of the 1st respondent for Farm No F/9597, Central Province, with a right of occupancy for 2040 hectares, and the 1st respondent obtained a certificate of title on 30th July, 1998. Later, the 1st respondent assigned the property to the 2nd respondent who was issued with a certificate of title on 11th December, 2001.

The answer further states that the 2nd respondent on 14th October, 2004 assigned the property to the 3rd respondent who surrendered the title deed in 2007. The 3rd respondent obtained a title deed for ninety nine (99) years in 2011, when the land was surveyed, and thereafter conveyed the land to the 4th respondent on 2nd February, 2012. It is further stated

that the 4th respondent mortgaged the property to First National Bank Limited in 2012, and in 2013, it obtained a further charge.

Then, in 2017, the 4th respondent secured an agricultural charge with Cargill Zambia. With regard to the assertions relating to Sections 33, 34 and 35 of the Lands and Deeds Registry Act having the effect of diminishing customary land rights, and taking away security of tenure of such rights, and that Sections 33 and 35 of the said Lands and Deeds Registry Act are inconsistent with Section 7 of the Lands Act, these are denied.

The 7th respondent states that the provisions in the Lands and Deeds Registry Act do not discriminate against persons in rural areas or those enjoying customary land rights, but rather enable every individual to register customary land and obtain certificates of title. Further, that Section 8 of the Lands Act empowers every holder of customary land to convert it into statutory tenure, and that under Section 8(2) any conversion of customary land into statutory tenure, shall only have effect after the Chief approves, and the Local Authority in the area in which the land is situated, also approves.

Thus, in this matter, Chief Muchinda approved the conversion of the land by the 1st respondent and he endorsed the site plan. Further, the 6th respondent, being the Serenje District Council recommended the 1st respondent to the Commissioner of Lands, indicating that there were no village settlements on the farm. That based on that recommendation, the 1st respondent was issued with a right of occupancy for 2040 hectares, and it proceeded to obtain a title deed.

The affidavit in opposition that was filed on 16th March, 2018, which is deposed to by Musamvu Wanki, a Senior Lands Officer at the Ministry of Lands, repeats what is stated in the answer. He further states that on 30th August, 2004, Graham Rae through Sharpe and Howard Legal Practitioners, placed a caveat on the property claiming his interest as being an intending purchaser. He, however, withdrew the caveat in October, 2004.

The allegations relating to the forced eviction and the violation of the petitioners' rights are said to be within their peculiar knowledge.

In the affidavit in reply to the affidavits in opposition that were filed, the petitioners deny that the entire 2040 hectares of land on F/9597, Central Province, was free of village settlement. They reiterate that there were houses and fields on the land, going back generations, as seen from the site plan exhibited as 'MC7' to the affidavit. That the site plan shows that property F/9597, Central Province, covers land on both sides of the Mulembo river.

The petitioners further depose that the aerial images and records from the 1960's, 1980's, 1990's and 2000's show the existence of the villages, agricultural cultivation, and lots of small scale clearance activities along the Mulembo river, on what is now F/9597, Central Province. The averment is that the first edition of Topography Sheet Number 1329 B2 dated 1969, which was prepared in 1981 by the British government's Ministry of Overseas Development, under the Common Africa Assistance Plan, and which is based on air photographs taken by the Fair Survey Limited in 1965, Field Completion by Ministry of Lands and Mines, Lusaka, marked as 'MFPGEKCLM1', clearly indicates the existence of

villages, and agricultural activities along the Mulembo river on what is known as F/9597, Central Province.

It is deposed that the above mentioned document shows that Mwelwa Fiweme and Mwamfuli villages are opposite each other along the Mulembo river, and are separated by the said river on what is now property F/9597, Central Province. Further, it shows two unnamed villages and some scattered agricultural activities along the Mulembo river on what is now known as F/9597, Central Province. The averment is also that this activity is also shown on the later edition of the Topography Sheet No 1329 B2 dated 1983, as an update of the Topography Sheet of 1968, and is marked as 'MFPGEKCLM2'.

The petitioners further depose that the Geological map for the Ndabala Area that was complied and drawn in Geological Survey Department of Zambia by Director D. Mulela in 2000, marked as 'MFPGEKCLM3' confirms that there have always been villages on what is now F/9597, Central Province. That the villages of Maimba Chikponda, Wilson Mwamfuli, and Mwewa Fiweme are indicated. It is stated that Maimba Chikponda and Mwewa Fiweme were relatives of the 2nd petitioner.

The petitioners further refer to 'MFPGEKCLM4-10' as copies of the enrolment register at Ntenga Primary School for the period 1992-1997, which show that the school had pupils from Mulembo, who were born in the 1980's and enrolled at the school. They state that the children indicated as Mambwe Mwape and Cecilia Mwape in the 1992 register are the children of the 2nd petitioner, Febby Kalunga, while Cynthia Mwape and Sydney Mukosha indicated in the 2004 and 2007 registers are the 1st petitioner's children.

Others are Kunda. P. Smart and Iness Chabala indicated in the 2004 and 2007 registers, who are grandchildren of the 7th petitioner, Esmme Sunkula Kunda. There is also Mambwe Chileshe indicated in the 2004 register, who is the daughter of the 3rd petitioner, Regina Kalunga. The averment is that these children lived in the Mulembo river area, with their parents, on what is now known as F/9597, Central Province. It is stated that Ntenga Primary School was established as a community school in the 1980's, and it became a government school in 1992.

It is deposed that 'MFPGEKCLM11' which was captured from 1990-2002 shows images of the villages, cultivation, and lots of small scale forest clearance activities along the Mulembo river on what is now F/9597, Central Province. The petitioners deny that the respondents followed the procedure for allocation and/or conversion of the land into statutory tenure. This is because the petitioners were neither consulted or informed by their Chief, the 1st to the 6th respondents or any government representatives before the land that they occupied and used to access forest resources, was allocated to the 1st respondent, and converted into statutory tenure.

The petitioners further depose that the 6th respondent admits that it did not issue any public notice or advertisement before the land was offered to the 1st respondent, and neither did it communicate the intended allocation or seek the permission of any person who may have been affected by such allocation. That as seen from exhibits 'MC4' and 'MC5' to the affidavit in support of the petition, the 6th respondent through the PWD on 24th January, 1996, approved the 1st respondent's application, for farming in the Luombwa area.

Further, on 28th March, 1996, when the full Council meeting adopted the 1st respondent's application, Senior Chief Muchinda had not yet allocated the disputed land to the 1st respondent. They also contend that exhibit 'MC6' to the affidavit in support of the petition, which the Chief wrote, is very specific as to the location of the land that the 1st respondent was to settle on as a commercial farmer, which is in the Luombwa river near the Mulembo river. That contrary to the authorisation letter by the Chief, on the site plan 'MC7', the Mulembo river is in the middle of what is now known as F/9597, Central Province.

Further, exhibit 'MC9' to the affidavit in support shows that only 1300 hectares were approved for the 1st respondent, after inspection was done, and neither the Chief nor the 6th respondent can approve land in excess of 250 hectares. It is averred that there is no inspection report for the entire 2040 hectares of what is known as F/9597, Central Province, other than the alleged inspection of 1, 300 hectares. There is also no inspection report for the additional 1740 hectares.

It is the petitioner's contention that endorsement of the site plan by their Chief, was not a substitute for conducting a physical inspection of the land, and neither was the use of remote sensing to detect patterns on the land. The petitioners reiterate that they were mercilessly evicted from the disputed land by the 4th and 5th respondents. That this is a notorious fact, as it is confirmed by exhibit 'MC2' to the affidavit in support of the petition.

All the petitioners deny that they were employed as farm workers by the previous owners of F/9597, Central Province, and in this regard, they state that they had properly established villages, about 500 metres from each other, in accordance with their customary way of establishing

houses. Reliance is placed on the documents 'MFPGEKCLM12-67' being the photographs showing the established villages in February, 2018.

They depose that the technology and satellite images from the 1990's up to 2013, show that the land was occupied and used for generations, until the petitioners were displaced by the 4th and 5th respondents. Further, that 'MFPGEKCLM68-88' show that the petitioners engaged in farming, while 'MFPGEKCLM89-90' are photographs of the uncleared forest between the village establishments.

It is contended that the site at which the 1st to the 3rd respondents established their operations and cleared the fields was near the Luombwa river, and not the Mulembo river, where the petitioners' houses and fields were established. The petitioners admit that there was a caretaker and a few workers on the site that was left by the 1st to the 3rd respondents at the time the 4th respondent became the owner of the land, that is now known as F/9597, Central Province.

However, they allege that none of those persons included the petitioners, who had their own villages far away from the site left by the 1st to the 3rd respondents. It is further contended that none of the workers who were left on the site by the 1st to the 3rd respondents were from Mulembo area, but they were from other areas, and merely went there to work. That among them were Daniel Kutashane, System Mwape and Patrick, who were not from Mulembo or nearby Ntenga.

Therefore, none of the petitioners were registered as workers for the 1st to 3rd respondents, and it is denied that they signed an agreement with the director of the 3rd respondent allowing them to stay on the land, now known as F/9597, Central Province. They state that they were unaware

of that agreement, as they were not parties to it. Further, at no time did the 5th respondent remind them of the agreement, and they acknowledged the existence of the said agreement.

It is the petitioners' averment that the 5th respondent may have been mistaken as to which locals he met, who acknowledged the existence of the agreement that they had with the 3rd respondent. The petitioners however admit having met the 5th respondent who informed them that he was the new owner of F/9597, Central Province, and that he had demanded that they vacate the property.

They contend that the 4th and 5th respondents did not enquire about their rights or interest in the land before they purchased it, and only approached them after they had purchased the same, and told them to vacate it. It is also the petitioners' contention that they objected to vacating the land or developing that land, as they had occupied it for generations, and they did not give the 4th and 5th respondents' permission to develop the said land.

The petitioners further deny that 4th and 5th respondents allowed them to stay on the land for a period of six (6) weeks or any other period, so that they complete their harvest of the crops. They deny that they had cleared their fields and temporary housing by the time the 4th respondent started clearing the land, stating that their cassava was still in the fields at the time the 5th respondent cleared the land, and destroyed their properties.

They further deny that the 5th respondent stopped clearing the land after he reached the first house, but allege that he continued, and destroyed the fields, crops and houses for the 5th to the 8th petitioners, who were on the other side of the Mulembo river. It is stated that 1st to the 4th and 9th

to 13th petitioners who initially remained, and thought they were outside the land that was claimed by the 4th and 5th respondents, were later forcefully evicted without notice by the 5th respondent's workers, who put them on a tractor, and left them by the road side outside F/9597, Central Province.

They depose that had they completed the harvest, there would have been no need for the government to provide them with food after the Permanent Secretary and the District Commissioner visited them in Musangashi Forest Reserve, where they sought refuge. That the forced eviction was reported by the Zambia Daily Mail and ZANIS, as shown on exhibits 'MC2' and 'MC31' to the affidavit in support of the petition.

At the trial, three of the petitioners testified, and they called no other witnesses, while the 1st three (3) respondents did not appear or call any witnesses. The 4th and 5th respondents called two (2) witnesses, and the 6th respondent called one (1) witness, as did the 7th and 8th respondents.

PW1 was Febby Kalunga, the 2nd petitioner. Her evidence was that she was born in Mulembo and her parents died there. The 2nd petitioner further testified that she had lived in Mulembo until the white man went there, adding that initially all was well with the first group of white people that went there, and the group thereafter. It was stated that when Vickas went there, they heard that he planned to chase the people away.

The next thing they heard was that trees were being cut, and on going there, they found a bulldozer that was bringing down the trees. The 2nd petitioner still in her testimony stated that after two (2) days, the houses below were demolished, and Vickas sent his workers to tell Mambwe

Kunda that what had happened was not the end. He had further told his workers to tell Mambwe Kunda that they should remove their maize.

The 2nd petitioner told the court that they harvested the maize which was not yet ready and it went bad. Then Vickas sent his workers with a tractor in May, who told them to remove their things, and on doing so, they put them on a tractor. She testified that they were asked to choose where they should be taken, and they opted to go to the forest.

The evidence was further that the goods on the tractor were damaged and on being offloaded, they were placed under some trees. They started sleeping on the ground, and later officers from the government went there to see how they were living. The 2nd petitioner stated that the government workers took them tents, that they put up to sleep in, but the rain water would enter inside the said tents, and drench their beddings.

The 2nd petitioner further testified that they would shiver as a result of the cold, and in November, her grandchild died, as a result of the cold. Her husband also died on 1st January, due to exposure to the cold, and in August, her first born child also died due to the cold. On other help that they had received, the 2nd petitioner testified that they were given two (2) bags of maize each. She also stated that she was sick, and she thought about her dead husband, child and grandchild.

The 2nd petitioner went on to highlight the challenges that they were facing, stating that they had no food, and water, and that the children had stopped going to school. Further, there was no hospital, and they could not cultivate on the land as it belongs to other people. She stated that at no point did they give their land to any person, and she also

testified that Wilson Mwamfuli was her grandfather, although she called him as her uncle.

Her testimony was that Wilson Mwamfuli used to live in Mulembo where she also lived, and that Mambwe Mwape was her son who was born in 1986. Further in her testimony, the 2nd petitioner stated that in 1996, she was staying in Mulembo, and that she was not consulted on any person wishing to obtain the land. By way of concluding her testimony, the 2nd petitioner told the court that she had not been compensated for being dispossessed of the land, and that she had not been allowed to go back to Mulembo.

When cross examined by Counsel for the 4th and 5th respondents, the 2nd petitioner reiterated that she was born in Mulembo, even though she had no documents to that effect. She stated that there was a headman for the village who kept the village register, and she agreed that the village register was not before the court. It was further the 2nd petitioner's evidence that they were a given one (1) week to vacate the land, and that they put their belongings on a tractor.

She explained that the 4th and 5th respondents told them to choose where they should be taken, and that most of the goods were damaged as they were being transported. The 2nd petitioner maintained that her husband, child and grandchild died due to exposure to the cold, and that she was told that they had malaria, at the clinic.

In cross examination by Counsel for the 6th respondent, it was the 2nd petitioner's evidence that when they were asked to leave the land, they had complained to the government in Serenje. She agreed that she did not travel to the government offices, but that it was the men in the group

that did so. The 2nd petitioner also stated that they were not allowed to cultivate in the forest by government officials.

The 2nd petitioner again reiterated that she did not give authority that any person be given the land, and she agreed that the government has power to give land. It was the 2nd petitioner's evidence that they have a Chief, but that they did not go there when they were told to vacate the land, as he had died. She also testified that the children had stopped going to school, as the school that is in Mulembo, is far away from the forest where they live. She was not cross examined by Counsel for the 7th and 8th respondents.

Esmme Mwape Kunda Sunkulu, the 7th petitioner, was PW2. She testified that she used to live with her husband Kunda Pini in a village near the Mulembo stream. Her evidence was that her husband died in the same village, and that when her husband married her, he had worked for her parents for three (3) years, and thereafter, he took her to Mulembo where they had lived.

It was her evidence that she bore children, and later she was blessed with grandchildren, and upon her husband's demise, she continued living in the village, and no one chased her. The 7th petitioner added that then some white people started going to the area, with one called Pierre, who went to the farm called Luombwa. It was stated that Pierre had called for a meeting, but he only allowed seven (7) people to go in. That is how the 7th petitioner's husband who was the headman of the village went in with seven (7) other people, who included Chisenga Musonda, Mambwe Sam and Morrison Chipabwamba.

Continuing with her testimony, the 7th petitioner testified that when her husband and the others had returned, they had informed them that Pierre had bought the land, and he had asked them if they were ready to leave the said land. However, they had told him that they were not ready to leave as their parents had lived and died there. They had signed that they would live in peace, and from there they lived well until he left. She stated that another white man went to the land and they had no problems with him, and he also left.

The 7th petitioner told the court that thereafter Billis went to live on the farm and he never talked to them. Then one day, the 7th petitioner heard a noise that sounded like an aeroplane, and when she went outside to see with her children, they found two bulldozers cutting down the trees. She also stated that the grave for her late husband was dug up, as well as those for her children.

The next day, the workers continued clearing the land, and when they reached the area around the 7th petitioner's house, she had asked Billis workers if they did not know that she lived there, but they had responded stating that he had bought the Mulembo area. Billis told his workers to remove the things from the 7th petitioner's house, and the 7th petitioner and her children cried in protest, stating that they had nowhere to go.

However, the clearing continued, and when they reached 7th petitioner's house, she grabbed her beddings, some mealie meal and a few other items. They saw their friends, Febby Kalunga, Molosoni Chipabwamba also standing by as their houses were brought down and items destroyed. Her evidence was that they went to Musangashi forest, and there they had challenges finding water as it was far away. She testified

that she approached Billis workers and asked them to dig them a well, and they started doing so, but later abandoned the works.

When the 7th petitioner and her children returned to Mulembo with a view to getting food, they found that all the cassava, maize, and sweet potatoes had been removed. That is how the 7th petitioner's son Smart Kunda, their neighbour Giliat Mumba and Chisenga Mumba went to the Boma to report what had happened, but they were asked to call their parents. The 7th petitioner explained that she went to the Council, and they were directed to go and see the District Commissioner and they were given a letter.

Thereafter, the District Commissioner went to the forest and took them tents to sleep in, and he later took them maize twice. From there, the 7th petitioner saw that the people who lived near Mulembo had also been chased, and they were taken further than where the 7th petitioner and others were.

She identified the picture at page 81 of the petitioner's bundle of pleadings as the well that Billis workers had failed to dig. Like the 2nd petitioner, the 7th petitioner told the court that they are suffering in Musangashi Forest Reserve, and that there are no schools and clinics there.

The 7th petitioner when cross examined by Counsel for the 4th and 5th respondents testified that she was born in Malupenga and Mulembo, but that the two villages are in the same area. She agreed that she moved to Mulembo because she got married, and that her husband was born in Mulembo village. The 7th petitioner also testified that it is part of the

tradition to have village registers, but that the village register does not contain the names of all the people in the village.

Her evidence was the village register symbolises that the person is living in their village, and that they paid a fee to be maintained in the village register. The 7th respondent agreed that the Chief allowed the 1st respondent to settle in the village, and that the 1st respondent discussed with them. She told the court that the 5th respondent did not discuss with them, although she recalled that in 2012, the 5th respondent had called a meeting, at which he had asked for the village register.

When referred to paragraph 36 of the affidavit in support of the petition at page 18 of the petitioner's bundle of pleadings, the 7th respondent could not say if the meeting took place, stating that she did not enter the yard, and she did not attend the meeting. She went on to state that, therefore, she could not say if a period of nine (9) months elapsed from the time the meeting was held, to when they were chased. The 7th petitioner agreed that the 5th respondent's workers sank the well, and that a tractor ferried the villagers, although she did not know who owned the tractor.

When cross examined by Counsel for the 6th respondent, the 7th petitioner told the court that she moved to Mulembo after she got married. That according to Lala tradition, a man moves to his wife's village upon marriage, and that her husband was supposed to move to her village when he married her. She went on to explain that the tradition is that after staying at his wife's village, a man could ask her parents if he could move her to his village, and if they agreed, then the married couple could move to the man's village. That in this case, her parents allowed her to go to her husband's village.

The 7th petitioner agreed that if one wanted to settle in a village that was not theirs, they had to obtain consent from the Chief. She stated that the Chief allowed her to settle in the village as he entered her in the village register. Still in cross examination, the 7th petitioner testified that she had no evidence to prove that her late husband was born in Mulembo village. She further told the court that she had no evidence to show that she went to the Council in Serenje where a meeting was held.

She however maintained that they were given a letter at the Council to take to the District Commissioner, and that the said letter remained with the District Commissioner. It was also the 7th petitioner's evidence in cross examination that she did not know the size of the land that the 1st respondent was given after the Chief allowed him to stay in the area. She however agreed that he was given land around the Luombwa river, and that the Mulembo river is in the area, subject of dispute. That according to paragraph 14 of the petitioner's pleadings, the land was vacant.

In cross examination by Counsel for the 7th and 8th respondents, the 7th petitioner stated that Luombwa and Mulembo villages are separated by a bush, although she did not know the distance between them. She told the court that both villages fall under Chief Muchinda.

The last witness for the petitioners was the 1st petitioner. He testified that he used to live in Mulembo area at his parent's farm, having been born in 1964. The 1st petitioner also stated that in 1997, he was called by the neighbours to go and see the visitors who had gone there. When he went there, the 1st petitioner and his friend Sam Mambwe found some government officials who had some equipment to measure land.

They were informed that the government officials were measuring Pieter Yssel's land. Then after a week, the 1st petitioner was informed by the children that someone was building near the Luombwa river, and when he went there, he found people, who said that a white man had bought the land. It was his evidence that after four (4) months in 1998, houses had been built, and the white man moved there.

Further, cows and sheep were taken there which started grazing on the 1st petitioner's crops, and the digging extended to the 1st petitioner's neighbours. He told the court that he was Secretary to the headman at the time, and the headman asked him to write a letter to the Chief, asking the Chief to go and address them over what was happening. The 1st petitioner stated that Headman Kunda took the letter to the Chief, and on his return the next day, he was with the Chief's retainer with a letter in reply for Mr Yssel.

It was explained that they looked for a representative who spoke English at the nearby Ntenge School, and found the 1st petitioner's cousin, Mukaka James, who they asked to be their representative as they met Mr Yssel. The 1st petitioner stated that only seven (7) people were allowed into Mr Yssel's premises, being the 1st petitioner, the Chief's advisor, James Mukaka, Kunda Phiri and Sam Mambwe.

He went on to testify that after they entered, a police land rover went there, and a police officer who had a gun and tear gas remained outside manning the premises, while the officer in charge joined the meeting. The 1st petitioner stated that the teacher read out the letter which said that the Chief had told Mr Yssel not to go where his people were, and that Mr Yssel was only given a small place near the Luombwa river. Further, that

the land had not been sold to Yssel, but was given in exchange for an engine for a land rover.

The 1st petitioner testified that after the letter was read, Mr Yssel had asked for forgiveness, stating that his workers would take the animals to where the villagers were, and that he had not said that the villagers were stealing his animals, but rather, that they should help him keep them. In the meantime, the officer who was manning the premises began disturbing the people who were outside and he said that he would spray tear gas, and noise started outside. The 1st petitioner told the court that the meeting was closed with the officer in charge asking that they should live in peace with Mr Yssel, whose land was far from theirs.

His testimony was that they lived in peace, and then in 2001, Mr Yssel called them stating that he wanted them to count all the plants and houses that they had in the village, and he would give them money to relocate. However, they refused the offer, and from that time they stopped seeing Mr Yssel, and only his workers remained. Then in 2002, a guard at the farm called Patrick, told them that Mr Yssel had sold the land. He stated that a man called John Kaite, the 2nd respondent herein, went to the farm in 2002, and he called a meeting.

The 1st petitioner's evidence was that the 2nd respondent told them that he had bought the farm, and he asked to be shown the villages. That is how the 1st petitioner and Sam Mambwe went with the 2nd respondent and showed him the villages starting with Kunda Musongo, Patson Kunda, Giliat Mumba and Kunda Pini which were nearest to Mulembo. He told the court that they passed through the water and the 2nd respondent had to take off his shoes to cross the river as they headed to Sam Mambwe's village.

From there, they went to Rodger Kunda's village, Charles Kalunga, the 1st petitioner's village, Chisenga Kunda, and Patrick Mukosha's village. He stated that at that point, the 2nd respondent told them that he was tired and they went back to his farm. There, the 2nd respondent had said that the four (4) villages that were near his farm should move to where the 1st petitioner was. However, they refused, stating that they had been there for many years, and the 2nd respondent said that he would meet them later, but they never saw him again, and he left.

Still in his testimony, the 1st petitioner testified that in 2004, Patrick told them that the 2nd respondent had sold the farm, and the 3rd respondent moved onto the farm. The 3rd respondent did not call them and his workers continued working, and in 2010, the 3rd respondent sold the farm, to the 4th respondent whose owner is the 5th respondent. He explained that the 5th respondent called a meeting, where he had informed them that he had bought the farm, and he wanted to cultivate more than the previous owners. He stated that they had explained to the 5th respondent that the farm that he had bought ended near the Luombwa river and not in Mulembo village.

It was stated that the 5th respondent had asked for the village register and when he was availed the same, and he was told that they bought them at K25.00 each, he threw the books stating that he was losing money with the government, and he wanted to leave. Thereafter, the 5th respondent started working with a bulldozer and when he reached near the 7th petitioner's homestead, her son Smart Kunda had raised concern.

However, they had assured Smart Kunda that everything would be okay as they are Zambians, and the State would protect them. To their surprise, however, the 1st petitioner heard that the 7th petitioner's home

had been destroyed by the bulldozers and they were crying. The 1st petitioner went and verified that the 7th petitioner's home had been demolished by the bulldozer.

The next day, the 1st petitioner called the District Commissioner, Charles Mwelwa, and explained what had happened. The District Commissioner that afternoon around 15:00 hours called the 1st petitioner and told him to cross the Mulembo river, as he had gone there. However, the sun set and there were trees all over, and the District Commissioner was unable to reach the 7th petitioner's home. The District Commissioner however said that he had seen, and he would know where to take the issue, and he asked them not to do anything so that they do not destroy the matter.

It was also the 1st petitioner's testimony, that the next day, workers from the District Commissioner's office passed through Mulembo village stating that the white man had said that those who were across the stream should leave, as he would go there the next day with a tractor that would carry their things, and take them to where their friends were, and that he would take a bulldozer.

That is how the next day, the tractor was taken there, and the petitioners packed their things, and their houses were destroyed. He further testified that as the trailer was small, they were unable to carry the blocks and the crops, and they were taken to where the 7th petitioner was in Musangashi Forest Reserve. They lost their goats and chickens and some household goods.

The 1st petitioner went on to testify that he made a hut out of trees, and after three (3) weeks, Sam Mambwe who had a phone told them that the District Commissioner was going there, and he went with there with the

Permanent Secretary from Kabwe, and the District Agricultural Coordinator George Chisebuka, and two (2) other persons. It was stated that at that meeting, the 1st petitioner was chosen as the spokesperson for the group, and he had explained the difficulties that they were going through, the toughest being water, which was found about five (5) kilometres away.

He stated that they walked there, and the District Commissioner had observed that the water was coloured, and they led him to Helena Chola to see where they sleeping. The District Commissioner told them that he had never seen such a thing, and he promised that tents and maize, would be given to them by the Permanent Secretary, as they had no food. The 1st petitioner testified that after a week, sixty five (65) tents were taken there, and a week later, they were given maize.

From there, they started waiting for the government to find a solution and they would wake up very early in the morning to go and fetch water. As time went by, they sat down to chart the way forward, and they decided to go and see the Chief. There, they were given documents to show that the 5th respondent had bought the land, and they were told that they should know. The 1st petitioner stated that among the documents they were shown was a map showing Mwamfuli village, and that Mwamfuli is his mother's name.

He identified page 158 of the petitioner's bundle of pleadings as the map showing the villages, dated 1969, and the one at page 159, dated 1983. With reference to page 159, the 1st petitioner testified that the fields were below the Ntenge river between the latitudes 14 and 16. Still on the maps, the 1st petitioner testified that the map at page 160 of the petitioners' bundle of pleadings shows Mwamfuli village. He told the

court that at page 1 of the Notice to Produce was the map for 2012, with the date stamp for Senior Chief Muchinda.

The 1st petitioner further testified that at on that document is Farm No 26, which is owned by the 5th respondent in the top right corner in the Luombwa area, and it did not reach them. He also stated that on page 2 of the Notice to Produce was another map dated 2012, and it also had his grandfather's farm, Mwamfuli village which was next to Farm 26.

He explained that on the last map, the farm numbers had entered their farm at Wilson Mwamfuli. In conclusion, the 1st petitioner stated that he had children in school, namely Sydney Chipabwamba, Cynthia Mwape, David Mwape and Lydia Mwape, and that he had been keeping them since his first wife died. He referred to the school register at page 165 of the petitioner's bundle of pleadings as showing Cynthia Mwape at No 18.

The 1st petitioner asked to be given back his grandfather's farm, and the three houses that he built. He also asked to be given back the fields and to be shown the graveyard, and to be compensated for the suffering.

The 1st petitioner when cross examined by Counsel for the 4th and 5th respondents stated that he was born in Milumbe near the Mulembo river. When referred to his national registration card at page 33 of the petitioner's bundle of pleadings, he stated that the Chief that is indicated on that national registration card is Muchinda, while the village is Kabundi. He agreed that apart from himself, there are twelve (12) other petitioners, and that they were removed from four (4) other villages.

He stated that whilst they paid K10.00 for a village book, there were no receipts before the court to prove so. The 1st petitioner agreed that he had no documents to show the size of the land that his grandfather was

given. The 1st petitioner further told the court that the letter that they wrote to the Chief over Mr Yssel remained with the Chief, and that he also did not have the letter that the Chief wrote to Mr Yssel. He agreed that paragraph 36 of the petition shows that they met the 5th respondent in September, 2012, and that paragraph 38 of the said petition shows that the 5th respondent went to the land with bulldozers on 4th June, 2013.

Still in cross examination, the 1st petitioner agreed that the 5th respondent went with the bulldozers eight (8) months after he had met them, and that a day before he went there with the bull dozers, he had sent his workers to inform them. He also agreed that they used the 5th respondent's tractor to move. When referred to the map at page 159 of the petitioner's bundle of pleadings, he agreed that the village Wilson Mwamfuli was not indicated, but that the fields were, which included those for the 2nd to the 13th petitioners.

He could not answer if he is the administrator for Wilson Mwamfuli's estate. The 1st petitioner agreed that at page 1 of the notice to produce is Blue Vein Farm, for the 3rd respondent.

In cross examination by Counsel for the 6th respondent, it was the 1st petitioner's evidence when referred to paragraph 5 of the affidavit in support of the petition at page 12 of the petitioner's bundle of pleadings, that Milumbe, Mulembo and Wilson are the same. He stated that Mr Yssel sold the land to another man, but they did not talk to the new owner as they did not know him. They did however discuss the boundary of the land with Mr Yssel. He told the court that the extent of Wilson Mwamfuli's land was shown on the map at page 1 of the Notice to

Produce, but when referred to the said map, he agreed that the extent of the land is not indicated.

Further in cross examination, the 1st petitioner stated that the 1st respondent obtained a certificate of title indicating the extent of the land as 1, 300 hectares, which the Chief agreed to, and that this was the land that was sold to the 3rd respondent, and the 4th respondent. It was his evidence that the Chief even wrote to Mr Yssel telling him that he should not reach Mulembo. He told the court that the said letter was at page 44 of the petitioner's bundle of pleadings.

When referred to the said letter, the 1st petitioner agreed that it states that Mr Yssel was given 2000 hectares of land, and not 1, 300 hectares as he had stated. He was not cross examined by Counsel for the 7th and 8th respondents, and that marked the close of the petitioners' case.

RW1 was Leonard Kanunka, who was called by the 4th and 5th respondents. His testimony was that he had stayed at the 4th respondents farm for eight (8) years. RW1 further testified he knew that the 1st petitioner came from Kabundi to near the Ntenge river, and he married in RW1's village and his wife died. From there, the 1st petitioner went to marry in Mulembo village, where his in law Samson lived.

RW1 further in his evidence stated that Wilson Mwamfuli village had been there for a long time, and that it was there when he was born in 1971. This witness also testified that there are village books, which state who owns what village, and that the people who were within the 4th defendant's farm were given time to harvest their crops, and some even requested for transport after doing so, after the 5th respondent had started clearing the land.

When cross examined by Counsel for the 6th respondent, RW1 testified that he was from Kanunka village, which is apart from the 1st petitioner's village. It was further RW1's evidence that when the 1st petitioner's wife died, he went to marry in Mulembo village, which is inside the 4th respondent's farm.

RW1 in cross examination by Counsel for the 7th and 8th respondents stated that the 4th respondent's farm starts from Luombwa and goes up to the Mulembo river. He told the court that Mulembo has no people living there, although a few people used to live there. His evidence was further that the 4th respondent owned part of Mulembo village, and that he had heard of Mwamfuli village from his parents, but that it does not show, as it had changed to Mulembo village.

RW1 did not know if Mwamfuli village is near Mulembo village, but he maintained that the 1st petitioner went to his grandfather Belt Kalunga's village Kanonko, where he married his first wife in 1989. He also told the court that the 1st petitioner left in a year that he did not know as he was in Mkushi. He insisted that the 1st petitioner came from Kabundi, when he went to marry in Belt Kalunga's village.

When cross examined by Counsel for the petitioners, RW1 agreed that he signed a petition that Jackman got his land in Ntenge, where he came from, and that he had told the court that he came from Kanunka village. He further agreed that Jackman and Billis are commercial farmers. He also agreed that he had never lived in Mulembo, but that he had seen the 1st petitioner's mother in Kabundi, and not in Mulembo. RW1's evidence was that the 1st petitioner went to Mulembo to marry a second wife a long time ago, and that it was before RW1 went to the 4th respondent's farm.

He clarified that he was in Mkushi at the time. Further in cross examination, RW1 agreed that when they were clearing the farm, they found people there, as well as houses and trees. He recalled having heard of Febby Kalunga, Mable Mwape, Giliat Mumba, Pepson Kunda and Kunda Musonda, but not Esmme and Patrick Chisenga. When cross examined further, RW1 testified that Loveness Kunda and Rodgers Kunda were there, and he got to know them when he joined the 4th respondent.

He further stated that he knew them before he went to the 4th respondent's farm, and even before he went to Mkushi in 1991. RW1 also in cross examination testified that he had filed a complaint against Jackman because of the way they were staying after their land was grabbed.

RW2, George Biljoen also testified on behalf of the 4th and 5th respondents. It was his testimony that he had been working for the 4th defendant since 2012. He explained that the 4th respondent engaged a lawyer to investigate the title to the land, as they were investing a huge sum of money. Upon finding that everything was clear, the 5th respondent bought the land covering 2070 hectares from the 3rd respondent.

He identified page 4 of the petitioner's bundle of pleadings as the contract of sale between the 3rd and 4th respondents, dated 16th December, 2011. He went on to further identify pages 110-113 of the petitioner's bundle of pleadings as the Lands Register, which shows that the 1st respondent owned 2040 hectares of land, and that at page 12 was an assignment to the 3rd respondent for 2040 hectares of land on a

ninety nine (99) year lease, and they were given a certificate of title for 2071.35 hectares.

It was RW2's testimony that there were people on the farm when they bought it, and a meeting was called with the previous owner, the 3rd respondent's foreman. That at that meeting, at which RW2 was present, the people were told that the previous owners had allowed them to stay on the farm, until it was developed, and that is how the people had asked RW2 if they could be allowed to stay up to the time that they harvested their crops, and they were allowed to do so.

He further testified that they cleared what they could, leaving the people's crops, and when the people had completed their harvest, they asked to be assisted with transport, and RW2 allocated a driver with a tractor and trailer to help them move. That from there, there were no permanent structures, but just huts, and they started planting. He denied that any crops were destroyed, stating that the people were given ample time to harvest their crops.

With reference to the certificate of title at page 116 of the petitioner's bundle of pleadings, RW2 testified that Farm No F/9597, Central Province had never shifted at any point, and that the beacons are as on the map.

In cross examination by Counsel for the 6th respondent, RW2 testified that when the 4th respondent bought the land from the 3rd respondent, the 3rd respondent had cleared 300 hectares of the land, and they started clearing more of the land. He told the court that they found about eighteen (18) people there, who to his knowledge had been on the farm, and they had agreed to move once the farm was developed. He added

that they even employed one (1) of those people, who worked for a while before he left.

RW2 further in cross examination, testified that the local people cultivated on about 3 hectares of the land, and that there were about seven (7) to eight (8) mud structures. It was stated that there is a dambo river in the northern direction, which turns left into the farm as a boundary. RW2 told the court that no one lives on the dambo, but further away, and that the only people in the area, were those that they asked to move, and they each signed a document.

He stated that the people agreed to move as they would not have signed the document, and he denied that the people were moved by force. RW2 clarified that they agreed to move after the foreman met them, and that he did not see any animals that the people kept.

RW2 was not cross examined by Counsel for the 7th and 8th respondents, but in cross examination by Counsel for the petitioners, he agreed that when the 4th and 5th respondents moved onto the farm, there were people there. That whilst his evidence was that the people signed a document, that document was not before court. He maintained that the document exists, although he was not sure in whose possession it was, as it was previously in the 3rd respondent's foreman's possession.

He stated that the 4th respondent engaged lawyers to conduct a search on the land, and he expressed ignorance on the assertion that the land was initially customary land. His belief was that the land was commercial from the 1950's. RW2 agreed that at page 44 of the petitioner's bundle of pleadings was a letter from the Chief dated 10th February, 1997. RW2 further agreed that what he had called the dambo is the Mulembo river,

and that Mr Yssel was allocated land in the Luombwa river, near the Mulembo river.

He also agreed that the Mulembo river is now part of the land that they claim ownership of. RW2 told the court that the foreman was Humphrey, but that he was not sure where he was. He further stated that he was not at the meeting, but was at the farm working, when the foreman met the people. It was also his testimony in cross examination that he kept the documents at the farm, and that he had photocopied them, but they had moved three (3) times, so he had been unable to find the document.

RW3 Musamvu Wanki, is a Senior Lands Officer at the Ministry of Lands, and he was called by the 7th and 8th respondents. He testified that Farm No F/9597, Central Province is located in the Luombwa farming block in Serenje District. It was further his evidence that the farm was numbered after it was converted from customary tenure in Chief Muchinda's area.

This witness took the court through the conversion process, testifying that the first step in the conversion process, is that the person applying to convert the land approaches the Chief, who accepts the application, and writes a letter to the Council. The Council on receiving the letter sends its officers to go and inspect the land, to ascertain that there are no settlers on the land, who will be displaced as a result of the Commissioner of Lands approving the conversion.

RW3 testified that the letter at page 44 of the petitioner's bundle of pleadings was the letter that the Chief wrote. He also referred to 57 of the said bundle of pleadings, testifying that it was the Lands Register, with the first entry dated as 30th July, 1998, showing that the President of Zambia was the lessor, and the 1st respondent as lessee, of 2040

hectares for Farm F/9597, Central Province, that the Chief had authorised.

RW3 further in his testimony stated that the 1st respondent was initially given 250 hectares as the internal procedure within the office of the Commissioner of Lands, is that the Commissioner of Lands can only approve 250 hectares of land for conversion. That above 250 hectares, the Minister approves the difference. He referred to page 55 of the petitioner's bundle of pleadings stating that it was a letter dated 28th May, 1998 approving 1790 hectares of the land, as the difference from the 2040 hectares.

RW3 also testified that page 59 of the petitioners' bundle of pleadings on the third entry shows that 2, 071.35 hectares of the land was registered. He explained that when the person was initially given the land, it was based on a sketch plan, meaning that the property was not surveyed, and the extent of the land was therefore an approximation. However, when the land was surveyed in 2007, it actually measured 2, 071.35 hectares.

He stated that the Commissioner of Lands followed the procedure for converting the land, based on the authority of the letter from the Chief, as well as the recommendation by the Serenje District Council, who inspected the land to ensure that there were no settlers on the land.

RW3 when cross examined by Counsel for the 4th and 5th respondents agreed that from the documents at pages 57-60 of the petitioners' bundle of documents, the ownership of the land had changed between at least three (3) people. He stated that when a property is surveyed, the hectarage will change, and therefore the size of land that it is not

surveyed, is just an approximation. He added that the size of the land is only confirmed once the Surveyor General approves the survey diagram.

In cross examination by Counsel for the 6th respondent, RW3 testified that he was not aware of any other procedure that was used to allocate farms in the area, other than by conversion. He was not sure whether the Luombwa was designated as a farm block, although it is land under customary tenure. He however stated that he was aware of Nansanga farm block, stating that he was aware of it, as he was in charge of Central Province for five (5) years.

When cross examined further, RW3 testified that there was no need for the Chief to authorise as the land was designated as a farm block, and that he was aware that people went to the Chief even though the area was designated as a farm block. He told the court that he was not aware that Chief Muchinda had signed off Luombwa as a farm block, but he stated that the consent of the Chief had to be obtained before an area was designated as a farm block, and that there was need for proof to that effect.

Further in cross examination, RW3 testified that where the Chief consents to conversion, the rights of the settlers with regard to the use of the land will change, as it will become State land, and it will belong to another person. He told the court that he was not aware that where the Chief consents, there will be no settlers, or that there will be alternative land for the settlers. He added that where the Chief consents, the Council has to go around the land, and confirm whether there are any settlers. RW3 agreed that the Council just recommends to the Commissioner of Lands, who has power to approve the allocation of the land.

When cross examined by Counsel for the petitioners, it was stated that the first step in converting land to statutory tenure from customary tenure is to get the authority of the Chief. That thereafter, one goes to the Council with a sketch plan that the Chief has endorsed on, and fills in an application. From there, the Council sets a date for which inspection of the land is to be done, and an inspection report is produced on the inspection being done.

After that, the Council sits to approve the application and the sketch plan, and once approved, the property goes for numbering. When referred to pages 35-39 of the petitioners' bundle of pleadings, RW3 stated that page 35 shows that the application was made on 22nd January, 1996. Then at page 40, the PWD sat on 24th January, 1996, and approved the application. He further stated that page 41 shows that the land is in Luombwa, and that at page 42, the Council on 28th March, 1996 adopted the minutes of the PWD.

He went on to further testify that page 44 was the letter from the Chief dated 10th February, 1997. He agreed that when the Council sat to consider the application, there was no letter from the Chief, as it is dated 10th February, 1997. Further, that when the Council sat in January, 1996, there was no sketch plan from the Chief as well as the letter. He agreed that to inspect land, one needs to have a sketch plan so that they can set the parameters of inspection.

RW3 still in cross examination agreed that it was not possible to inspect 2040 hectares of land within hours, unless there are roads everywhere. He further agreed that page 51 of the petitioner's bundles of documents states that the approval was for 1300 hectares, and that it was free of villagers. RW3 agreed that according to page 45 of the petitioner's bundle

of pleadings, the source of the data was the topographical maps being 1329B1 and 1330A1.

He also agreed that the last part of page 68 of the petitioner's bundle of pleadings, which is the survey diagram attached to the certificate of title, that was issued to the 3rd respondent, states that the reference was 1329B2. He told the court that he could not comment on why the numbers were different from that on the sketch plan.

RW3 agreed that if the Council sat without the documents being available, then procedure was not followed. He could not recall when the Luombwa farm block was established, although he had worked in Central Province. RW3 however testified that the Ministry of Agriculture goes on the ground and obtains data, but that he had no competence in that area. Still in cross examination, RW3 stated that the Ministry of Lands has a department for maps, and that documents had to be attached for approval of a farm block.

When referred to the map at page 2 of the Notice to Produce, RW3 stated that it indicates Luombwa farm block, and that it was done in August, 1997. He told the court that he was not involved in the setting up of the farm block. RW3 agreed that the topographical map at page 158 of the petitioner's bundle of pleadings indicates villages, but he told the court that he had not testified that once the Chief consents, then the villagers lose their rights.

His evidence was that if there are people on the ground, the Commissioner of Lands is not supposed to approve the conversion. That where it is discovered that there are people on the ground, the Commissioner of Lands will request for resettlement, before the approval

is done, as once the approval is done, it becomes state land, and the settlers become squatters. He also told the court that mere declaration of a farm block converts it into state land, and also where the Chief consents to the conversion.

RW3 agreed that he had no letter showing that the Serenje District Council approved the conversion of 2040 hectares of land to the 1st respondent. Whilst testifying that Serenje District Council availed an inspection report to the Commissioner of Lands, RW3 testified that he did not have the said document before court. He testified with reference to page 110 of the petitioners' bundle of pleadings, being a portion of the Lands Register, that the first entry on that document, gave a right of occupancy, which is attached to certificates of title in areas under customary tenure, which is a lease.

He concluded his testimony by stating that at page 44 of the petitioners' bundle of pleadings, the Chief allowed Mr Yssel, and not the 1st respondent to settle on the land as a commercial farmer.

The last witness who was called by the 6th respondent was Soft Tembo. He is a town planner with the Serenje District Council. In his testimony, he told the court that he was responsible for developmental control within the district and townships. Further, that he handles land administration issues, including applications for conversion of land, as well as offers advice on land issues.

His evidence was that Farm F/9597, Central Province is in the Nansanga Farm block, which was established in the 1980's. He further told the court that the Council is an agent of the Commissioner of Lands, and that applications are handled by the Council, with a view to making

recommendations to the Commissioner of Lands for allocation of the land. It was his evidence that the farm is in the Luombwa farm block under Chief Muchinda, and that they received applications for farm blocks which are under state land, as there is a lay out plan, and the Council forwards the applications to the Commissioner of Lands.

He further testified that the applicant fills in an Annexure C application which is submitted to the Commissioner of Lands together with a recommendation letter from the Council, a site plan and the minutes of the Council meeting with the resolution. He identified page 35 of the petitioner's bundle of pleadings as the Annexure C form, stating that the applicant fills in the first part, and that the Council fills in the next part after approval by the full Council meeting.

Continuing with his testimony, RW4 testified that the PWD meeting handles all the applications for land, and on consideration, they forward the application to the full Council meeting for approval. He stated that page 40 of the petitioners' bundle of pleadings were the minutes of the full Council meeting, and that it dealt with approval of an application for land in a farm block, and not for conversion of land held under customary tenure into statutory tenure.

He clarified that where the application is for conversion of land held under customary tenure, the initial point of contact is the Chief, where they obtain the consent of the Chief, and site plans are prepared. The applicant then fills in a form that has a part for the Chief to sign, and that in part 1, the applicant fills in their details, and submits it to the Council. The Council on checking the application will establish if the Chief has given consent, and has endorsed the site plan.

From there, the Council will establish if the land is a forest, township or district, or one of sensitive national interest, and they conduct inspection of the land, and forward the application to the relevant committee. From there, it goes to the full Council meeting, and the Council fills in part 2 making recommendations. He also testified that Annexure C is also filled in, and the application is forwarded to the Commissioner of Lands, who numbers the parcel of land.

That where the land is state land, and it is not numbered, they send the land for numbering to the Commissioner of Lands. That for farm blocks, they are numbered by the Commissioner of Lands, and the Council makes the recommendation, based on the number of the farm. RW4 added that where there is a provisional number, they make the recommendation based on the provisional number.

Further in his testimony, RW4 told the court that according to the documents, the application was for land in a farm block, and not for conversion, as seen at page 40 of the petitioner's bundle of pleadings. It was his evidence that the applicant submitted a site plan with a number at page 45, which is 26, the farms having had administration numbers. He also testified that the site plan had the farms in the area, and that the map was already in existence. Therefore, the Council when recommending to the Ministry of Lands submitted an extract of the map, and according to the document, the extract came from the original map.

Still in his evidence, RW4 testified that as an agent of the Commissioner of Lands, the 6th respondent handles state land, which they recommended to the Commissioner of Lands. He further told the court that when it comes to mappings and site plans, the application goes to the Commissioner of Lands, and that the site plan is an estimate of the

land, but that the shape of the land is specific. Like, RW3, his evidence was that the size of the land is only known after the survey is done.

However, the shape of the land is maintained on the survey diagram. Continuing with his testimony, RW4 told the court that a farm block can be state land or under customary tenure, and that in order to develop a farm block, one needs to agree with the Chief, so that the farm block is created within the Chiefdom. He stated that the letter at page 44 of the petitioner's bundle of pleadings was a letter from the Chief to the Council authorising the settlement of a commercial farmer.

It was stated that such documents go the Council, as the Chief earmarked the farm blocks, or there is already a farm block in the area. RW4 stated that the document moves with a site plan, and that in this case, the Chief recommended a person who was already in farm block. He went on to testify that where such an application is received by the Council, it undergoes the processes already explained, and that where the land is held solely under customary tenure, the applicant is referred back to the Chief to fill in forms 1, 2 and 3, and cause an application for conversion.

Still in his testimony, RW4 told the court that page 45 of the petitioners' bundle of pleadings was a site plan showing an approximation of the land as 2040 hectares. Further, that page 51 reflects 1300 hectares, but what was cardinal was consistency in the shape even after the cadastral survey was done.

By way of conclusion, RW4 stated that he was not aware that there were people on the farm, until they were sued, and that the 6th respondent as

a local authority followed the procedure in recommending the applicant to the Commissioner of Lands.

When cross examined by Counsel for the 4th and 5th respondents, he stated that page 40 of the petitioner's bundle of pleadings shows that the application was for farm land and not for conversion. He added that he did not come across forms 1,2, and 3, and therefore it was not an application for conversion. It was further his evidence, that consequently, the letter from the Chief had no basis.

Still in cross examination, RW4 testified that the letter at page 55 of the petitioners' bundle of pleadings shows that the Commissioner of Lands approved the allocation of the land. He also testified that a purchaser looking at the Lands Register would not tell the procedure that he had explained.

In cross examination by Counsel for the 7th and 8th respondents, RW4 stated that site plans are prepared by the 6th respondent's officers who are specialised in mapping, if the land is situated in farm block, and in a township, as the 6th respondent has a general plan. It was further his evidence that where the land is in a chiefdom, the applicant sources anyone to do the site plan, who may include officers from the 6th respondent on a private basis.

He however agreed that whether an application relates to state land or customary tenure, it has to be accompanied by a site plan. That for conversion, the first form is 1,2 and 3, and the site plan signed by the Chief, and that it does not include Annexure C. When cross examined further, RW4 stated that Annexure C is present in both statutory tenure, and on conversion, but at different stages. He continued testifying,

stating that for conversion, inspection of the land is conducted and the findings put in an inspection report.

He agreed that page 51 of the petitioners' bundle of pleadings states that the farm was free from any village settlement. RW4 also agreed that the purpose of inspection is to verify the location of any land, and whether there are settlers, or any development or activity on it. His evidence was also that the 6th respondent inspects land which is a farm block on an application being made, and they make recommendations in excess of 250 hectares, as everything is based on the site plan.

That in this case, the Chief authorised 2000 hectares, which was an approximation. However, he clarified that they were not dealing with conversion of the land, even though the Chief had authorised the 2000 hectares.

In cross examination by Counsel for the petitioners, RW4 testified that inspection is done by the Ministry of Agriculture before a farm block is created. He stated that the Ministry of Agriculture did not inspect Luombwa. On being asked when he went to Serenje, RW4 testified that it was in 2017. He changed his position that the Ministry of Agriculture did not inspect the land, when cross examined further, stating that it did inspect the land, before the farm block was created.

RW4 agreed that where the procedure for conversion or land allocation is not followed, the end product is irregular. He also agreed that the 6th respondent's answer at page 36 of the petitioner's bundle of pleadings was filed in 2018, when he was already working there. That in paragraph 6 of the answer, the 6th respondent had stated that the application was for conversion from customary land into statutory tenure.

RW4 agreed that David Sakala, the deponent of the affidavit in opposition is his work mate. It was further his evidence that three (3) forms are filled in when converting land from customary into statutory tenure, with the first one being filled in by the applicant, showing the area of the location of the land, as well as the size of the land, and the plan number. He admitted that forms 1, 2 and 3 were never filled in.

Still in cross examination, RW4 testified that when an application is tabled at the Council, it is together with the site plan. He agreed that page 51 refers to the site plan at page 45, and that the hectarage indicated on the two documents differs. He told the court that the one at page 45 was created or extracted in 1997.

RW4 also agreed that the minutes of the Council at page 40 are dated 24th January, 1996, while page 42 is dated 28th March, 1996. He agreed that there are no minutes after 10th February, 1997, showing that the site plan at page 45 passed through the Council. Continuing with cross examination, RW4 agreed that when converting land from customary tenure, an inspection report is done, showing whether there are people on the land.

He stated that there was no such report before the court, and that the survey diagram at page 119 of the petitioners' bundle of pleadings shows that Farm F/9597, Central Province is in between customary land, and it is dated 2005. RW4 when referred to the notice to produce at page 2 of the petitioners' bundle of documents, stated that he could see the boundary for Farm 26 on the map, as well as Wilson Mwamfuli farm. That to the right, was the boundary where farm 26 ended.

He agreed that on the site plan at page 45, there was a variation of the boundary on the map, from those at pages 1 and 2 of the Notice to Produce. Further, that pages 119-120 of the petitioner's bundle of pleadings extended to pages 1-2 of the Notice to Produce. RW4 also told the court that page 158 was drawn in 1969, and it showed William Chisenga, Mwewa Fiweme, and Wilson Mwamfuli villages, and that there were also parts for cultivation and plantation, and the Mulembo river.

His evidence was also that page 160 is dated 2000, and has the Luombwa farm and Wilson Mwamfuli village. Further in cross examination, RW4 stated that page 3 of the notice to produce which has a date stamp for 2012 for the Provincial Planner who is more senior than him, indicates Wilson Mwamfuli Village. He stated that while the map for 1969 has villages, there are no villages on the 1983 map. He said that the Ministry of Agriculture conducted inspection before the farm block was created.

When referred to page 34 of the petitioners' bundle of pleadings, he agreed that it states that Serenje Families Displaced, and that the District Agricultural Coordinator Chisebuka said that Vicker's land was 360 hectares, but he now had 2000 hectares of land. Further, that the article states that when the farm block was created in 1997, the people who were found there, were left, as the land was considered as customary land. RW4 testified that the disputed land is between Farms 25 and 27, and that Farm 26 is between Farm 25 and 27.

He also agreed that the boundary for Farm No 26 does not include Wilson Mwamfuli village, and that the Council must advertise land that is available, so that any persons can raise objection. RW4 also stated that paragraph 9 of the 6th respondent's affidavit in opposition at page

141 of the petitioners' bundle of pleadings, states that the Council did not issue a public notice. He agreed that an advert can be taken to be a public notice.

I have considered the evidence and the submissions. It is common cause that the 1st respondent was the first non-indigenous settler on the land in dispute, and it proceeded to acquire a certificate of title. It is also not in contention that the 1st respondent subsequently sold the land in dispute to the 2nd respondent, who also sold it to the 3rd respondent, who acquired a ninety nine (99) year lease for the said land. It is also not in dispute that the 3rd respondent sold the land to the 4th respondent, who through the 5th respondent removed the petitioners from the said land. The question is whether the petitioners are entitled to the reliefs sought?

The petitioners allege violation of their human rights following their eviction from the disputed land. They have brought the petition challenging the violation of their rights pursuant to ***Article 28 of the Constitution, Chapter 1 of the Laws of Zambia*** which provides that;

> ***"28. (1) Subject to clause (5), if any person alleges that any of the provisions of Articles 11 to 26 inclusive has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply for redress to the High Court which shall-***
>
> ***(a) hear and determine any such application;***
>
> ***(b) determine any question arising in the case of any person which is referred to it in pursuance of clause (2);***

and which may, make such order, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of Articles 11 to 26 inclusive".

The first claim is for an order and declaration that the taking over of the petitioners' customary land without following the required procedure is unconstitutional, and therefore null and void. The petitioners in the submissions argue that the mandatory procedure for alienation and conversion of land in a customary area was not followed as:

1. No consent and approval from Senior Chief Muchinda were obtained.

2. The petitioners, as persons who were likely to be affected were never consulted, and they did not give their consent, and/or concurrently were unable to raise objection before the disputed land was allocated to the 1st respondent, contrary to Section 3 (4)(b)(c)(d) of the Lands Act. The petitioners refer to Section 3(4) of the Lands Act, Chapter 184 of the Laws of Zambia, as providing for the procedure for alienating land that is held in a customary area.

It is their argument that the undisputed evidence on record shows that the disputed land was held under customary tenure before the certificate of title No L5161 relating to Farm No F/9597, Central Province was issued to the 1st respondent in 1998, as shown on the Lands Register at page 57 of the petitioners' bundle of pleadings. Reference is also made to the evidence of RW3, the Senior Lands Officer at the Ministry of Lands who in cross examination explained that the 1st respondent was issued with a right of occupancy, which is given when an applicant obtains title

in an area under customary law, which is a lease attached to a certificate of title.

Further, that this witness in examination in chief told the court that Farm No F/9597, Central Province was numbered, after it was converted from customary into statutory tenure in Senior Chief Muchinda's area, and that the correct procedure was followed for the conversion, as the Chief gave his consent, and the 6th respondent, being the local authority recommended the allocation of the land to the 1st respondent.

The 4th and 5th respondent's position are that indeed the right procedure was followed in acquiring title to the land. The 6th respondent in its answer and affidavit in opposition also alleges that the right procedure was followed in converting the land. However, as rightly observed by the petitioners, at the trial, the 6th respondent gave evidence to the effect that the land in issue was in fact under a farm block, and therefore state land, and consequently, there was no need to follow the procedure for conversion from customary into statutory tenure, as it was already state land.

The petitioners submit that they objected to that line of evidence being led, as it was not pleaded, which objection is sustained. Reliance is placed on the case of ***Anderson Kambela Mazoka and two others v Levy Patrick Mwanawasa and two others*** [21] where the Supreme Court held inter alia that;

> ***"The function of pleadings, is to give fair notice of the case which has to be met and to define the issues on which the court will have to adjudicate in order to determine the matters in dispute between the parties. Once the pleadings***

have been closed, the parties are bound by their pleadings and the court has to take them as such.

In case where any matter not pleaded is let in evidence, and not objected to by the other side, the court is not and should not be precluded from considering it. The resolution of the issue will depend on the weight the Court will attach to the evidence of unpleaded issues".

That matter was commenced by way of petition challenging the election of the 1st respondent, as republican president, and this matter has also been commenced by way of petition. Therefore, going by the holding in the above matter, the 3rd respondent is bound by its pleadings, and it cannot depart from them, especially that the petitioners raised objection to evidence being led on the unpleaded matters.

In any event, the petitioners have by their testimony and the topographical maps at page 158 of the petitioners' bundle of pleadings dated 1969, shown the existence of Wilson Mwamfuli village where the 1st and 2nd petitioners state that came from, as well as Kunda Pini village where the 7th petitioner, testified that she came from.

Kunda Pini village along with other villages is also reflected at page 159 dated 1983, while the Ndabala area map that is dated 2000 at page 160 shows both Kunda Pini and Wilson Mwamfuli villages on the land in dispute, which is located in a customary area. Further, these maps show areas of cultivation around the villages.

There is also the map at page 1 of the Notice to Produce which has a date stamp for the department of field services in Central Province for February, 2002, as well as the date stamp for Senior Chief Muchinda

dated 12th March, 2002. That map has farm numbers as well as villages, and as can be seen in the top right corner of that map, Farm 26 shares a boundary with Wilson Mwamfuli village to the left, and at the top with Farm 27.

This scenario is also reflected at pages 2 and 3 of the notice to produce which even give a clearer view of the location of Farm 26 in relation to Wilson Mwamfuli village. As rightly submitted by the petitioners, all maps made under the authority of the government or any public municipal body shall be admitted in evidence without further proof. This is provided for in ***Order 5 Rule 8 of the High Court Act, Chapter 27 of the Laws of Zambia*** which states as follows;

> ***"8. All maps made under the authority of any government or of any public municipal body, and not made for the purpose of any litigated question, shall prima facie be deemed to be correct, and shall be admitted in evidence without further proof".***

Therefore, the maps establish the existence of the villages as alleged by the petitioners. When one goes to the Lands Register which is at page 57 of the petitioners' bundle of pleadings, the first entry on that document shows that the 1st respondent was granted a right of occupancy on 30th July, 1998 for 2040 hectares.

On the same date, the 1st respondent was issued with a certificate of title No L5161 for Farm No F/9597, Central Province. RW3 testified in cross examination that a right of occupancy is issued to a person who acquires a certificate of title to land held under customary tenure, which is equivalent to a lease. This evidence was not discredited in any way.

The evidence on record as given by the 2nd, and 7th petitioners is that they were born on the disputed land, were married on the disputed land, and they inherited the land from their parents. Therefore, Farm No F/9597, Central Province is in a customary area.

It has been seen that a certificate of title was issued for the said land. RW3 took the court through the procedure for converting land from customary into statutory tenure. In this regard, he testified that the first step in the conversion process is that the person applying to convert the land approaches the Chief who accepts the application, and writes a letter to the Council. The Council on receiving the letter sends its officers to go and inspect the land to ascertain whether there are no settlers on the land, who will be displaced as a result of the Commissioner of Lands approving the conversion.

RW4 also ran the court through this procedure when he stated that the initial point of contact is the Chief, where they obtain consent of the Chief, and site plans are prepared. The applicant then fills in a form that has a part for the Chief to sign, and that in part 1, the applicant fills in their details, and submits it to the Council. RW4 also testified that the Council on checking the application will determine if the Chief has given consent, and has endorsed the site plan.

From there, the Council will establish if the land is a forest, township or district, or one of sensitive national interest, and they will conduct inspection of the land, and thereafter, forward the application to the relevant committee. He also testified that from there, the application goes to the full Council meeting, and the Council fills in part 2 making recommendations. He also testified that Annexure C is also filled in and

the application is forwarded to the Commissioner of Lands, who numbers the parcel of land.

In terms of conversion of land from customary into statutory tenure, ***Section 3(4) of the Lands Act, Chapter 184 of the Laws of Zambia*** provides as follows;

> ***"(4) Notwithstanding subsection (3), the President shall not alienate any land situated in a district or an area where land is held under customary tenure-***
>
> ***(a) without taking into consideration the local customary law on land tenure which is not in conflict with this Act;***
>
> ***(b) without consulting the Chief and the local authority in the area in which the land to be alienated is situated, and in the case of a game management area, and the Director of National Parks and Wildlife Service, who shall identify the piece of land to be alienated;***
>
> ***(c) without consulting any other person or body whose interest might be affected by the grant; and***
>
> ***(d) if an applicant for a leasehold title has not obtained the prior approval of the chief and the local authority within whose area the land is situated".***

Statutory Instrument No 89 of 1996, The Lands (Customary Tenure) (Conversion) Regulations, 1996 provides for the procedure for converting customary land into statutory tenure. Regulations 2 and 3 of

the said statutory instrument allow a person to apply for conversion and it provide as follows;

"2. (1) A person-

(a) who has a right to the use and occupation of land under customary tenure; or

(b) using and occupying land in a customary area with the intention of settling there for a period of not less than five years;

may apply, to the chief of the area where the land is situated, in Form I as set out in the Schedule, for the conversion of such holding into a leasehold tenure.

(2) The Chief shall consider the application and shall give or refuse consent.

(3) Where the Chief refuses consent, he shall communicate such refusal to the applicant and the Commissioner of Lands stating the reasons for such refusal in Form II as set out in the Schedule.

(4) Where the Chief consents to the application, he shall confirm, in Form II as set out in the Schedule.

(a) that the applicant has a right to the use and occupation of that land;

(b) the period of time that the applicant has been holding that the land under customary tenure; and

(c) that the applicant is not infringing on any other person's rights;

and shall refer the Form to the Council in whose area the land that is to be converted is situated.

3. (1) The Council shall, after receiving the Form referred to in sub-regulation (4) of regulation 2, and before making a recommendation to the Commissioner of Lands, consider whether or not there is a conflict between customary law of that area and the act.

(2) If the Council is satisfied that there is no conflict between the customary law of that area and the Act, the Council shall make a recommendation to the Commissioner of Lands in Form III as set out in the Schedule".

(3) The Commissioner of Lands shall accept or refuse to accept the recommendation, and shall inform the applicant accordingly".

Regulation 4 of the said regulations also empowers Councils to apply for conversion of land from customary into statutory tenure. It states that;

"4. (1) Where a council considers that it will be in the interests of the community to convert a particular parcel of land, held under customary tenure into a leasehold tenure, the council shall, in consultation with the Chief in whose area the land to be converted is situated, apply to the Commissioner of lands for conversion.

(2) The council shall, before making the application referred to in sub-regulation (1),-

(a) ascertain any family or communal interests or rights relating to the parcel of land to be converted; and

(b) specify any interests or rights subjects to which a grant of leasehold tenure will be made".

In this case, the evidence showing the procedure outlined above as shown at pages 35- 39 of the petitioners' bundle of pleadings, is that the 1st respondent filled in the Annexure C application for Farm No 26 Luombwa, Serenje on 22nd January, 1996. Page 39 shows that the full Council meeting on 28th March, 1996 ratified the PWD's approval of the 1st respondent's application under item PWD 113/96 (48). The minutes of that meeting are at pages 42-43 of the petitioners' bundle of pleadings.

The minutes of the PWD meeting which are at pages 40-41 of the petitioners' bundle of pleadings show that the meeting was held on 24th January, 1996. At page 44 of the petitioners' bundle of pleadings is a letter from Senior Chief Muchinda dated 10th February, 1997, addressed to the Council Secretary stating that Mr P.L. Yssel had been authorised to settle as a commercial farmer in the Luombwa river near the Mulembo river, and that he had been given 2000 hectares of land.

At page 45 is a sketch plan, that has a date stamp for Senior Chief Muchinda with a date that is not clear, and one from the Ministry of Agriculture dated 15th March, 1997, and another from the Serenje District Council with an unclear date, but in March, 1997. It indicates that it is a sketch plan for Farm 26 Luombwa Farm Block, for Mr Yssel dated January, 1997, and it has a map for Farm No 26 for 2040 hectares.

At 51 of the said bundle of pleadings is a letter from the Serenje District Council dated 27th March, 1997 to the Commissioner of Lands submitting the sketch plan for numbering of Farm No 26 for the 1st respondent, having approved the 1st respondent's application for farm land in Luombwa area of 1300 hectares. The letter states that the farm is free of village settlements. Then at page 54 is the letter that Mr Yssel wrote to the Minister of Lands applying for 2040 hectares of land on 10th December, 1997.

The Commissioner of Lands on 26th December, 1997 wrote to the Minister of Lands advising that Mr Yssel was applying for the extra 1790 hectares of land, out of the 2040 hectares, as per the Lands Circular No 1 of 1985, as he had 130 heads of cattle and 200 heads of sheep, as seen at page 54 of the petitioners' bundle of pleadings. Page 55 of the said bundle of pleadings is the approval by the Minister that was communicated by the Deputy Permanent Secretary on 28th May, 1998.

It is clear from the documents mentioned above that the procedure as stipulated in ***Section 3 (4) of the Lands Act*** and ***Statutory Instrument No 89 of 1996, The Lands (Customary Tenure) (Conversion) Regulations, 1996*** was not followed, as when the 1st respondent applied for the land on 22nd January, 1996, the consent of the Chief had not been obtained. However, the PWD went ahead to approve the allocation on 24th January, 1996, two days after the application was made. The full Council meeting ratified the decision of the PWD on 28th March, 1996.

Then on 27th March, 1997, the Council wrote to the Commissioner of Lands submitting the site plan for numbering as they had approved Mr Yssel's application for a farm in the Luombwa area. In fact, the site plan at 45 of the petitioner's bundle of pleadings was only prepared in

January, 1997, after the full Council had ratified the PWD's approval of the 1st respondent's application, when there was no consent from the Chief and no sketch plan to show the land.

It can therefore be concluded, that the Council did not even do any inspection of the land before the PWD approved the application, as there was no sketch plan in place, identifying the area that the 1st applicant was applying for. It can further be concluded that the sketch plan was only drawn later in January, 1997 to facilitate the conversion process of the land.

Section 3(4) of the Lands Act requires that the Commissioner of Lands shall no alienate any land in customary without consulting any persons who are likely to affected by the alienation process. The petitioners rely on the case of ***Henry Mpanjilwa Siwale, Reverend Ewen Siwale, Kelvin Siwale, Stephen Siwale, Dr. Sichilindi Siwale, Peart Siwale, Musenga Siwale v Ntapalila Siwale*** [12] where it was stated that;

> ***"We have already made reference to the fact that this land when it was given to the deceased was on what was then called native trust land. Tenure in these lands was governed by the Northern Rhodesia (Native Trust Land) Orders in Council, 1947 to 1963 as amended by the Zambia (Trust Land) Order, 1964 repealed and replaced by the Lands Act of 1995. These orders in Council provided for customary tenure of such land and the learned trial Judge was in error when he held that the deceased did not have title to the land in question at the time of his demise. Following from that is the fact that the appellants had as much right to that land as the respondent being all children of the deceased. Further there***

were restrictions in the alienation of land held under customary tenure in the Order 5 in Council which are now to be found in section 3 (4) (c) of the Lands Act which provides as follows:

3(4) Notwithstanding subsection (3), the President shall not alienate any land situated in a district or an area where land is held under customary tenure :

(c) Without consulting any other person or body whose interest might be affected by the grant;

Quite clearly the appellants were persons who were affected by the grant of the title deeds to the appellant and they were not consulted before this was done".

Other cases relied on in this regard are ***Village Headman Mupwaya and another v Mbaimbi*** [11] and ***Still Waters Limited v Mpongwe District Council and others*** [15]. The petitioners have further relied on the case of ***Sailas Ngowani and 6 others v Flamingo Farms Limited*** [35] stating that the Supreme Court in that matter pronounced on the effects of circumventing the procedure for alienation of land held under customary tenure when it stated that;

"We have already pointed out earlier that the failure to follow the procedure could render the whole acquisition process null and void, as we stated in the Still Water Farms v Mpongwe District Council and other..... the effect of such a finding is that a certificate of title is liable to be cancelled".

I have already stated that when the 1st respondent applied for the land now known as F/9597, Central Province, and it was approved by the 6th

respondent, the Chief had not consented to the alienation of the land, and neither was there a sketch map to show the land that the 1st respondent was given. The documents in the notice to produce show that the Ministry of Agriculture only did the sketch map in January, 2002 which shows that Farm No 26 had been created, and the map has a date stamp for Chief Muchinda.

Further, the petitioners who were on the land were not consulted when the 6th respondent approved the allocation of the land to the 1st respondent in January, 1996, which was ratified by the full Council meeting of 28th March, 1996, as there are no documents to show that any inspection of the land was done, or indeed that the petitioners were consulted.

When one goes further, they will note that the petitioners allege that the survey diagram which is attached to the certificate of title for Farm No F/9597, Central Province, which is at page 68 of the petitioners' bundle of pleadings, used the map 1329 B2 as a reference for the diagram, when the sketch map which was used to survey the land, which is at page 45 of the petitioner's bundle of pleadings, which was approved by the Ministry of Agriculture, used the reference map 1329 B1 and 1330A1, and the map 1329 B2, has not been produced before this court.

Further, the sketch plan at 45 was extracted from the main lay out map for Luombwa Farm Block, which RW3 in cross examination admitted was that at pages 1-2 of the notice to produce, and this diagram was only produced in August, 1997, way after the sketch map at 45 was produced in January 1997. The Chief only endorsed the lay out map for Luombwa Farm block in 2002, signifying his consent that the farm block be created.

The petitioners also submit that RW4 in cross examination agreed that the farm numbers on the main lay out plan were just provisional for administrative purposes only. They further contend that the creation of the farm block in 1997 was corroborated by DACO, Mr Chisebuka in the newspaper article at page 43 of the petitioners' bundle of pleadings, when he stated that when the farm block was created, the villagers on the disputed land were left because the area is customary land.

Further anomalies highlighted by the petitioners' in the conversion of the dispured land into statutory tenure, relate to the fact that the farm block was created in 1997, and the farms were given numbers, yet in January, 1996, when the 1st respondent applied for the land, it had referenced the farm as being No 26. They further contend that the main lay out plan at page 2 of the notice to produce shows that the Luombwa river is the boundary for Farm No 26 on the east, and a section of the Mulembo river on the north before the boundary of the farm turns north.

However, when one looks at the sketch plan at page 45 of the petitioners' bundle of pleadings, the boundary for Farm 26 extends past the Mulembo river up to the Ntenge river, covering 2040, hectares. That RW4 in cross examination agreed to this variation on the maps. They further argue that as can be seen on the map at page 158 of the petitioners' bundle of pleadings, the Luombwa river is shown where it passes on sheet 1329 B2, but it is not shown on Sheet No 1330A1 and sheet No 1329 B1, which were used as the source for the sketch plan for Farm No 26.

The petitioners also state that the Luombwa river passes between the vertical grids 814 and 815 at the bottom, and vertical grids 823 and 824 at the top of sheet No 1329 B2. Thus sheet no 1330A1 and sheet No

1329 B1 indicate the wrong location for purposes of the sketch plan for Farm No 26, and when the Ministry of Agriculture, the Chief and the 6th respondent were approving the sketch map, they should have used Sheet no 1329B, where the villages, Wilson Mwamfuli, Mwewa Fiweme and the other two unnamed villages and cultivation are indicated.

They submit that as Sheet No 1330A1 and Sheet No 1329 B1 on the sketch plan are different areas, the purported physical inspection was done in the wrong area, where the inspector could not see the villages and cultivation activities on Sheet No 1329 B2. The submit that the sketch plan at page 45 of the petitioner's bundle of pleadings does not show any surrounding features on the map, apart from the Luombwa and Ntenga rivers.

However, when looks at the survey diagram at pages 68 and 69 of the petitioners' bundle of pleadings, they will note that when Farm F/9597, Central Province was surveyed in 2005, there was already Farm No 8982 on title, which is adjacent to the boundaries ED and DC. This farm No nor its' provisional number is not indicated on the sketch plan, despite them being contained on the general lay out plan from which it was extracted.

They also submit that RW4 in cross examination stated that the survey diagrams attached to the certificate of title for Farm F/9597, Central Province at pages 119-120 of the petitioners' bundle of pleadings were made with reference to the maps at pages 158 and 159 of the petitioners' bundle of pleadings. That RW4 when referred to the map at page 158 agreed that it has symbols for villages at the vertical grid 817 and the horizontal grid 8554. The petitioners state that this witness in re-

examination testified that the survey diagram was made with reference to the 1983 map at page 159, which has village and cultivation symbols.

However, RW4 claimed that the villages were far away from the land in dispute, but the sketch plan at page 45 does not show any areas of cultivation by the nearby villages around Farm 26. That as already seen, the source of information for the sketch map being Sheet No 1330A1 and Sheet no 1329 B1 do not show the said areas, and the stakeholders were therefore looking at the wrong areas.

It is also submitted by the petitioners that as the sketch plan at page 45 has so many anomalies, the whole process of approval for Farm No 26 was tainted, and even the last minute claim that the land was a farm block does not help the situation. Further, that even where the Chief has consented that a farm block be created, the legal requirements to convert such land from customary into statutory tenure must be complied with, and that regulation 2 of the Lands (Customary Tenure) (Conversion) Regulation which prescribes the conversion of customary tenure into leasehold tenure applies.

The petitioners state that Regulation 4 of the Lands (Customary Tenure) (Conversion) Regulation applies to conversion of customary land into statutory tenure by the Council. It is further submitted that regulation 4 was considered in the case of ***Danwell Lishimpi v Steadfast Chombela and five others*** [28]. The trial Judge in that matter noted that the regulation states that where the Council wishes to convert land under customary tenure into statutory tenure, they must consult the Chief before making the application, to establish whether there are any family or communal interests or rights relating to the parcel of land to be converted.

The submission is that it was noted in that case, that a representation was made to the Chief that there were no villagers on the land, and that it was all in Mwalilinda Village, yet in reality there was someone on the land, and it also encroached on land belonging to another headman. The court found that the misrepresentation was the basis of the grant of the certificate of title, and therefore, the Chief's consent and approval by the Council were null and void, on account of the misrepresentation. It is stated that the court accordingly ordered that the certificate of title be cancelled on that account.

The petitioners contend that just like in the above case, the 1st respondent gave incorrect data sources on the sketch plan, which was for different locations far away from Farm F/9597, Central Province. Further, the 1st respondent did not disclose that the petitioners were in occupation and use of the land. The sketch plan does not even indicate the existing physical features like Wilson Mwamfuli village, which has been constantly indicated on the maps produced by the government.

Further, the Commissioner of Lands was advised that the land was free of village settlements, yet no inspection of the land was conducted before the land was approved, and the 6th respondent deliberated and approved the application, even before the Chief gave the land to Mr Yssel and before the sketch plan was drawn.

The petitioners also submit that had Senior Chief Muchinda and the Commissioner of Lands been informed that the petitioners were in occupation of the land and used it, they would not have approved the allocation of the land. Therefore, the 1st respondent with the help of the 6th respondent, obtained Senior Chief Muchinda's consent, and the

approval of the Commissioner of Lands after making misrepresentations on the status of the land.

Thus, the failure to disclose that Farm No 26 was located on Sheet No 1329 B2, and that the petitioners were in occupation and in use of it, as well as the failure to involve headman Pini under whom the land fell, was highly irregular and fraudulent, and the approval should be declared null and void, on account of the fraudulent misrepresentation.

It is also contended that the allocation of the disputed land to the 1st respondent by the 8th respondent was by mistake. This is on account of the fact that when the 6th respondent submitted the recommendation to the 8th respondent, it stated that it had approved 1300 hectares, but the 8th respondent mistakenly granted 2040 hectares of land.

Reliance is placed on the case ***Justin Chansa v the Lusaka City Council*** [25] which 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 Number 1 of 1985, an option either to apply directly 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 public opts for the second route, a Local Authority is mandated to advertise any land available,***

receive applications from members of the public and make recommendation to the Commissioner of Lands".

That in this case, the 1st respondent applied for the land through the 6th respondent, the local authority, who only recommended the allocation of 1300 hectares, which it said had no village settlers. The petitioners contend that the 6th respondent did not recommend the extra 700 hectares, or write a report that there were no settlers on that extra 700 hectares.

It is also contended that there is no separate application for the 1790 hectares of land to the Commissioner of Lands, but a letter directly to the Minister of lands, as it was a conversion of customary land, and required the involvement of the 6th respondent, whose is only authorised to recommend 250 hectares, as provided under the Land Administration Circular No 1 of 1985.

The petitioners submit that RW3 in his testimony explained this, when he testified that the Commissioner of Lands can only approve 250 hectares, and the Minister of Lands approves anything above that. That as under Section 3(4)(b) of the Lands Act, the President has no authority to alienate land in customary area without consulting the local authority in whose area the land is located, and therefore, the allocation of the extra 700 hectares of land to the 1st respondent was done by mistake.

This is because the 6th respondent only recommended 1, 300 hectares and not 2040 hectares, and the 6th respondent was not consulted on the extra 700 hectares, to ascertain if it was free from any village settlement. Further, Senior Chief Muchinda only authorised Mr Yssel and not the company, who is the 1st respondent to settle as a commercial farmer. The

petitioners submit that a company has separate legal personality from the individual, as espoused by the case of ***Salomon v Salomon & Co Ltd*** [2].

It is also submitted that on the application at page 49 of the petitioner's bundle of pleadings, Mr Yssel had completed Section C which is the part for non- Zambians. He had indicated that he was bringing his wife to settle in Zambia and would invest 200, 000 Rands. That under ***Section 3 (1) of the Lands Act***, the land acquisition requirements for foreign companies and foreign individuals are different, and it was therefore a serious mistake to treat the authorization of Mr Yssel as the authorisation for 1st respondent, who are different persons at law, and who were also subject to different legal requirements under Section 3(1) of the Lands Act.

Thus, it was fraudulent for the 1st and 6th respondents to use the letter of consent to Mr P. Yssel as the Chief's consent in favour of the 1st respondent, when making recommendation to the Commissioner of Lands for allocation of the land. It is also the petitioners' contention that the Commissioner of Lands also mistakenly approved the allocation of the land to the 1st respondent based on the letter of consent from the Chief to Mr P. Yssel, as letter from the Chief should have been sought for the 1st respondent.

The 4th and 5th respondents however argue that Section 33 of the Lands and Deeds Registry Act provides for the effect of the issuance of a certificate of title. This is that, a certificate of title is irrefutable evidence of ownership of land. The case of ***Anti Corruption Commission v Barnet Development Corporation Limited*** [26] is relied on, stating that it was held in that case that;

> ***"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 for impropriety in its acquisition".***

They contend that the evidence that was adduced in this matter does not suffice to prove any of the exceptions stated in Section 33 of the Land and Deeds Registry Act. That RW3 and RW4 established that the certificate of title to the land in dispute was acquired by the former owners of the property, before the 4th respondent followed procedure in acquiring the title. Thus, the claim for acquisition of the certificate of title by fraud, cannot be sustained.

They also rely on the case of ***Sablehand Zambia Limited v Zambia Revenue Authority*** [20] to argue that allegations of fraud must be specifically pleaded and proved on a higher standard than a mere balance of probabilities, because they are criminal in nature. That this position was reiterated in the cases of ***Kalumba Kashiwa Mwansa and another v Kenneth Mpofu*** [34] and ***Baxter v Baxter*** [3].

The 4th and 5th respondents contend that in this case, fraud has not been pleaded, or distinctly proved, and the petitioners only tried to elicit this evidence of fraud through cross examination of RW3 and RW4. Therefore, the allegations must fail, and the petitioners cannot call to aid the provisions of Sections 33 and 34 of the Lands and Deeds Registry Act, yet in another, allege that they are unconstitutional.

In the case of ***Anti Corruption Commission v Barnnet Development Corporation Limited*** [26] it was held that a certificate of title may be cancelled on the ground that it was fraudulently obtained or due to any impropriety in its acquisition. This position was reiterated in the case of ***Sailas Ngowani and six others v Flamingo Farms Limited*** [35]. I do entirely agree that allegations of fraud must be specifically pleaded setting out the particulars of the fraud.

Further, at trial, evidence must be specifically led to prove the allegations of fraud, and the standard of proof for fraud, is on a higher standard than a balance of probabilities, the allegations being criminal in nature. In this case, the petition alleges fraud, and as can be seen, the particulars of the fraud that are alleged relate to the procedural improprieties in the manner that the disputed land was converted from customary into statutory tenure.

Moreover, fraud is not the only ground upon which a certificate of title may be cancelled, as any other reasons for impropriety in the acquisition, suffice. These reasons are varied, and include irregularities relating to breach of procedural requirements, among others. The petitioners have shown that the procedure for converting the land from customary into statutory tenure was not followed.

This is because, not only was the Chief's consent not obtained before the 1st respondent made the application, as there was no sketch plan at the time the application was made or the consent of the Chief. Further, the petitioners who were on the land and who were affected by the allocation of the land, were not consulted as required by Section 3 (4) of the Lands Act. The letter from the Chief authorising Mr Yssel to settle as a farmer and he was given 2000 hectares of land, as well as the sketch plan

showing the land allocated was done post facto, in 1997, after the 6th respondent had approved the allocation of the land to the 1st respondent.

Thus, it can be said that the land that the 6th respondent approved for allocation to the 1st respondent was not known, and whether the approval affected the local community, and who were obviously not consulted before the land was approved for allocation to the 1st respondent.

Clearly, the 6th respondent did not comply with regulations 2 and 4 of ***Statutory Instrument No 89 of 1996, the Lands (Customary Tenure) (Conversion) Regulations, 1996***, as they did not work in consultation with the Chief to establish if there were any village settlers on the land, and the maps used to draw the sketch plan used to make the recommendation to the Commissioner of Lands was erroneous.

The Chief was just used as a rubber stamp to legitimise the process, and he did not care to check if his subjects had been affected by his recommendation, and authentication of the sketch plan. Other irregularities relate to the hectarage of the land that the 6th respondent recommended for allocation, but the 8th respondent approved a higher hectarage.

There is no evidence to show that there was consultation with the 6th respondent to ensure that there was no village settlement on the extra hectarage of land that was approved. The 8th respondent did not even address the issues relating to Section 3 of the Lands Act which sets out the requirements for foreign individuals and foreign companies when it comes to ownership of land in Zambia.

In the case of ***Sailas Ngowani and 6 others V Flamingo Farms Limited*** [35] the Supreme Court noted as follows;

> ***"We agree therefore with Counsel for the appellants that fraud as prescribed in Section 33 of the Lands and Deeds Registry Act does not provide the only pathway of the law as circumvention of the procedure prescribed in law, which would render null and void, the allocation of land would be just as fatal".***

Therefore, the Chief did not validly consent to the land being allocated to the 1st respondent, and the 8th respondent accordingly could not validly approve the allocation as there was breach of the procedural requirements. On that basis, there having been irregularity in the acquisition of the certificate of title, it was not validly obtained. I will return to this issue later.

The petitioners' evidence was that they have always lived on and used the land, which evidence was confirmed by RW1 who hails from the area. It is on record that the 4th and 5th respondents visited the land in 2011 before they bought it. They therefore had notice of the petitioners' presence on the land. The petitioners' contend that RW2, the 5th respondent did not enquire about the petitioners' interest in the land, although he was aware that there was an agreement with the 3rd respondent who was the previous owner of the land to the effect that the settlers had agreed to leave the land, once it was developed.

However, this agreement was not produced before the court, and they state that RW2 contradicted himself as he initially stated that the agreement was with the foreman of the previous owner, but later said

that it was lost. It is submitted that the failure to produce the agreement should work against the 4th and 5th respondents, pursuant to the case of ***K.B. Davies & Company Limited (Zambia) Limited v Andrew Masunu*** (23).

That on the basis of the cases of ***Hunt v Luck*** (2) and ***Mwenya and Randee v Kapinga*** (10), the 4th respondent cannot be said to be an innocent purchaser for value, as it had notice of the petitioners' occupation of the disputed land. It is contended that the 4th respondent had a duty to enquire about the petitioners' interest in the disputed land, since they were in occupation of the land.

In this regard, reference is made to ***Howarth, Land Law, Sweet & Maxwell, 1994*** where it is stated that;

> ***"A purchaser is under obligation to undertake full investigation of title before completing his purchase. He can only plead the absence of notice if he made all the usual and proper enquiries. If he does not do so, or is careless or negligent, he is deemed to have constructive notice of all matters he would have discovered. A person has constructive notice of all facts of which he would have acquired actual notice, had he made those enquiries and inspections, which he ought reasonably to have made, the standard of prudence, being that of a man of business under similar circumstances. The purchaser should inspect the land and make enquiries as to anything which appears inconsistent with the title, offered by the vendor".***

It is stated that this position was reiterated in the cases of ***Nawakwi v Lusaka City Council and another*** [14] and ***Nora Mwaanga Kayoba and Alizani Banda v Eunice Kumwenda Ngulube and Andrew Ngulube*** [18] and ***Joyce Ndavuka Gondwe v Christine Ziwolilie Ngwira*** [31]. Further, ***Hanbury and Martin, Modern Equity, (London, Sweet and Maxwell Limited, 1997***, at page 27 states that;

> ***"Thus, prior equitable interest in land can only be defeated by a bona fide purchaser, and without notice, then the equities are equal, and his legal estate prevails. If he took with notice, the position is otherwise, as the equities are not equal. If he does not acquire a legal estate, then the first in time, i.e the prior equitable interest prevails, as equitable interests rank in order of creation."***

John Mc Ghee QC, Snells Equity, (London, Thomson Reuters (Legal) Limited, 2008 in paragraph 4-22 at page 65-66 states that:

> ***"The doctrine is most easily understood by an example taken from a disposition of unregistered land. A legal estate, or interest was generally enforceable against any person who took the property, whether, or not he had notice of it. This followed from the basic rule of priority that interests in property rank in the order in which they were created. If V sold to P land over which W had a legal right of way, P took the land subject to W's right even if he was ignorant of it. But historically, it was different for equitable rights: a bona fide purchaser for valuable consideration who obtained a legal estate at the time of his purchase without notice of a prior equitable right, was entitled to priority in equity as well as at***

law. He took free of the equitable interest. In such a case equity followed the law. The purchaser's conscience was in no way affected by the equitable right. So, there was no justification for invoking the jurisdiction of equity against him where there was equal equity the law prevailed. The onus lay on the purchaser to prove that he was a bona fide purchaser for value, and also that he took without notice of the equitable interest."

The evidence on record shows that the 4th respondent was aware of the petitioners' presence on the land. While RW2 testified that he was aware that there was an agreement that the locals who were on the land signed with the foreman of the 3rd respondent, that they would leave the land when it was developed, he did not establish that any of the petitioners had actually signed the said agreement.

The cross examination of RW2 established that there were workers on the farm who lived there, and the agreement signed may have related to them. He did not establish that any of the petitioners actually worked for the previous owners of the farm. Rather, the testimony of the 1st, 2nd and 7th petitioners shows that they were born on the land and they lived there, having inherited it from their parents under customary law. Even the maps at pages 158-159 of the petitioners' bundle of pleadings, as well as those in the notice to produce, show that the villages where the petitioners state they hailed from, existed.

The Nature of African Customary law by T.O Elias, Manchester University Press, Manchester, 1956 states that;

"A member's right to his holding is in the nature of a possessory title which he enjoys in perpetuity and which confers upon him powers of user and of disposition scarcely distinguishable from those of an absolute free-holder under English law. His title is, therefore, in a sense that of a part-owner of land belonging to his family. He is not a lessee; he is not a licensee; he is not as is often said, an usufructuary. He pays tribute to nobody, is accountable to no one but himself, and his interests and powers transcend those of the usufructuary under the Roman law..... Again, the individual's holding does not come to an end at his death, it is heritable by his children to the exclusion of all others. In short, he is a kind of beneficial part-owner with perpetuity of tenure and all but absolute power of disposition".

While there was an allegation that the 3rd petitioner came from Kabundi, which was explained as being his father's village, the 7th petitioner testified that under Lala customary law when a man marries, he goes to live in his wife's village, although he may later seek permission to take his wife to his village. The 1st petitioner told the court that Wilson Mwamfuli was his grandfather, and therefore, he had customary rights to the land, which evidence was not disputed in anyway.

Under customary law, the 1st petitioner had rights to the land, and so did the 2nd petitioner who also testified that Wilson Mwamfuli was her grandfather, although she called him uncle. The 7th petitioner testified that her late husband was the headman in the area, again which evidence went unchallenged.

Section 3 (4) of the Lands Act, Chapter 184 of the Laws of Zambia allows the President to alienate land in a customary area, after taking into account the customary law prevailing there. Therefore, in converting the disputed land into statutory tenure, Lala customary law had to be considered.

With regard to notice, ***Halsbury's Laws of England, Volume 16, 4th Edition*** in paragraph 1322 at page 887 states that;

> ***"Notice may be actual or constructive, and where the said notice is imputed on the subsequent purchaser, then the plea of the purchaser for value without notice is defeated".***

Going by what has been seen above, the 4th respondent had a duty to enquire about the petitioners' interest in the land, and not rely on the word of a foreman for the 3rd respondent, who is said to have signed an agreement with the workers on the farm, who did not include the petitioners. Further, RW2 conceded in cross examination that he was not at the actual meeting where the 3rd respondent's foreman addressed to local settlers, although he was at the farm working.

He therefore had no first hand knowledge of what was discussed, and not having conducted enquiries, the 4th respondent is deemed to have had notice of the petitioners' interest in the disputed land. As such, it cannot be said to be an innocent purchaser for value. As such the irregularity in the procedure that was adopted for converting the disputed land from customary into statutory tenure, affects the 4th and 5th respondents.

It is not in contention that around June, 2017, the 4th respondent through the 5th respondent asked the petitioners to leave Farm F/9597, Central Province, with the 1st and 2nd petitioners being among those who

were allocated a tractor to help move them to Musangashi forest where the 7th petitioner, who had been evicted had been taken. The evidence on record shows that the petitioners' homes were demolished by a bull dozer and their properties, animals and crops destroyed.

The evidence given by the three (3) petitioners who testified, which largely went unchallenged, was that the petitioners were born on the land, and had grown up on the land and inherited it from their parents. The 1st petitioner gave elaborate testimony with regard to what had happened from the time the 1st respondent settled on the land, testifying that they had written to the Chief to ask what was happening when the 1st respondent cleared that land, and approached that belonging to the 8th petitioner with a view to clearing it.

His testimony was that the Chief had sent a letter through his retainer addressed to Mr Yssel, stating that the 1st respondent's land was away from the petitioners'. That from there, Mr Yssel had called for a meeting where he had asked that the 8th petitioner, and the three (3) other families who were on that side of the land should move. However, they had declined to do so, and that was how they continued living in peace with the 1st respondent and Mr Yssel until he left, after he sold the land to the 2nd respondent.

The 1st petitioner had also testified that the 2nd respondent upon buying the land, had asked to be taken round the villages, and he had also requested the 8th respondent and the other families to relocate, but they had declined.

What this evidence establishes is that the 1st and 2nd respondents were aware of the petitioners' presence on the land, and further that the Chief

had given land to the 1st respondent that did not include where the petitioners and their families had settled. I have found that the 1st respondent converted the disputed land from customary into statutory tenure without following the procedure that is laid down, and proceeded to obtain a certificate of title for the said land.

The effect of issuance of a certificate of title is seen in ***Section 33 of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia,*** which provides that;

> ***"33. A Certificate of Title shall be conclusive as from the date of its issue and upon and after the issue thereof, notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the President or otherwise, which but for Parts III to VII might be held to be paramount or to have priority; the Registered Proprietor of the land comprised in such Certificate shall, except in case of fraud, hold the same subject only to such encumbrances, liens, estates or interests as may be shown by such Certificate of Title and any encumbrances, liens, estates or interests created after the issue of such Certificate as may be notified on the folium of the Register relating to such land but absolutely free from all other encumbrances, liens, estates or interests whatsoever:***
>
> ***(a) Except the estate or interest of a proprietor claiming the same land under a current prior Certificate of Title issued under the provisions of Parts III to VII; and***

(b) Except so far as regards the omission or misdescription of any right of way or other easement created in or existing upon any land; and

(c) Except so far as regards any portion of land that may be erroneously included in the Certificate of Title, evidencing the title of such Registered Proprietor by wrong description of parcels or of boundaries".

Thus, upon the 1st respondent obtaining a certificate of title for F/9597, Central Province, the petitioners became squatters on the land. The effect was that there was a violation of their rights under ***Section 7 of the Lands Act, Chapter 184 of the Laws of Zambia***, which guarantees the petitioners land rights under customary tenure. The Section provides, and I quote;

"7. (1) Notwithstanding subsection (2) of section thirty-two but subject to section nine, every piece of land in a customary area which immediately before the commencement of this Act was vested in or held by any person under customary tenure shall continue to be so held and recognised and any provision of this Act or any other law shall not be so construed as to infringe any customary right enjoyed by that person before the commencement of this Act.

(2) Notwithstanding section thirty-two, the rights and privileges of any person to hold land under customary tenure shall be recognised and any such holding under the customary law applicable to the area in which a person has settled or intends to settle shall not be construed as an

infringement of any provision of this Act or any other law except for a right or obligation which may arise under any other law".

The petitioners' contend that the District Agriculture Coordinator for Serenje, Mr Chisebuka in the newspaper article that was published in the Zambia Daily Mail in 2013, which is at page 34 of the petitioners' bundle of pleadings, explained that when the Luombwa Farm block was being established in 1997, the settlers on the disputed land were left, as it was considered as customary land.

It is contended that the petitioners have shown that they lived and cultivated on the said land, as did their parents before them. Further, their children even attended school at the nearby Ntenge School, as shown in the school registers. The petitioners rely on the case of ***Dogan and others v Turkey*** [17] stating that in that matter, a complaint was taken before the European Court of Human Rights, following the forced eviction of the applicants from their villages and destruction of their properties.

The applicants moved to an area where they lived in poor conditions, and the court in that matter, noted that it was not in dispute that the applicants had lived in Boydas until 1994. That although they had not registered the property, they had constructed houses on the land, or lived in the houses that were owned by their fathers, and they had cultivated on the said land. The court further stated that the applicants had unchallenged rights over the common lands in the village, such as pasture, grazing and the forest land, and that they earned their living from stock breeding and tree felling.

In this matter, the petitioners allege that their forced eviction from the disputed land violated their right to personal dignity as protected by ***Article 8 of the Constitution as amended by Act No 2 of 2016***, which provides that;

> ***"8. The national values and principles are—***
>
> ***d. human dignity, equity, social justice, equality and nondiscrimination;"***

The case of ***Kingaipe and another v The Attorney General*** [27] is relied on, where Hon Mrs Justice E.N.C Muyovwe with reference to the ***African Charter on Human and People's rights*** stated that ***Article 118 of the 2016 Constitution*** guides the courts that in the exercise of its judicial authority, the values and principles of the Constitution shall be upheld. Also relied on, is the case of ***S v Makwanyane*** [9] where it was stated that;

> ***"Recognizing the right to dignity is an acknowledgement of the intrinsic worth of human beings: human beings are entitled to be treated as worthy of respect and concern. This right therefore is the foundation of many of the rights that are specifically entrenched in the Bill of Rights"***

The petitioners allege that their right to dignity was violated when they were forcibly evicted, and their homes and properties were destroyed leaving them homeless, landless and destitute. Further, they have been forced to spend sleepless nights in the Musangashi Forest Reserve, in tents, where they have no access to readily available water and food.

That in the case of ***John Modise v Botswana*** [8] it was held that exposing victims to personal suffering and indignity violates the right to human

dignity. This position was echoed in the South African cases of ***Sarrahwitz v Maritz N.O and another*** [32] and ***Grace Musele Mpande Maledu and 37 others v Itereleng Bakgatia Mineral Resources (Pty) Limited and another*** [33] where the petitioners were evicted from customary rural communities.

The petitioners further allege that their right to life as enshrined in ***Article 12 (1) of the Constitution*** has been violated. The article states that;

> ***"12. (1) A person shall not be deprived of his life intentionally except in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted....".***

In arguing the violation of this right, the petitioners contend this right has been violated, as they have to spent nights in the Musangashi Forest Reserve, in tents, which are damaged. They have no readily access to water and food, and they have to travel long distances to access the same. They submit that this has made them to be subjected to dirt, due to the scarcity of water. Further, there are no health services readily available them, yet when they were on the disputed land, they had access to water, and grew crops such as maize, sweet potatoes, groundnuts, millet, tobacco, and cassava.

They also had access to mangos, bananas and papaya and reared goats, pigs and chickens, and could therefore afford to eat three (3) meals on a daily basis. Further, the forests provided wild fruits such as ntungulu, masuku, maundu, fungu, mushrooms, bark, seeds, roots, leaves and other plants, that they could use for sale and raise income. They also

hunted small animals in the forests, and fished in the nearby rivers, and had constructed houses, latrines, bathrooms, kholas and granaries.

Article 13 of the Constitution is also alleged to have been violated by the forceful eviction. The article provides that;

> ***"13. (1) A person shall not be deprived of his personal liberty except as may be authorised by law in any of the following cases:***
>
> ***(a) in execution of a sentence or order of a court, whether established for Zambia or some other country, in respect of a criminal offence of which he has been convicted;***
>
> ***(b) in execution of an order of a court of record punishing him for contempt of that court or of a court inferior to it;***
>
> ***(c) in execution of an order of a court made to secure the fulfillment of any obligation imposed on him by law;***
>
> ***(d) for the purpose of bringing him before a court in execution of an order of a court;***
>
> ***(e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia;***
>
> ***(f) under an order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;***
>
> ***(g) for the purpose of preventing the spread of an infectious or contagious disease;***

(h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol or a vagrant, for the purpose of his care or treatment or the protection of the community;

(i) for the purpose of preventing the unlawful entry of that person into Zambia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person while he is being conveyed through Zambia in the course of his extradition or removal as a convicted prisoner from one country to another; or

(j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Zambia or prohibiting him from being within such area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Zambia in which, in consequence of any such order, his presence would otherwise be unlawful.

The petitioners contend that none of the exceptions in the above article apply to them, and that under ***Article 6 of the African Charter on Human and People's Rights,*** there is provision that every person shall have the right to liberty and security of his person, and that no person shall be deprived of their liberty, except for reasons and conditions previously laid down by the law.

They also make reference to case of ***Sudan Human Rights Organisation and Centre on Housing Rights and Evictions (COHRE) v Sudan*** [22] where the African Commission found that the forced eviction, destruction of housing and property and accompanying human rights abuses, amounted to a violation of Article 6 of the Charter. That the majority of the thousands of displaced civilians who were forcefully evicted from their villages and homes had not returned.

It was further stated in that case that if Internally Displaced Persons (IDP's) are not able to move freely to their homes, because their homes have been destroyed, then their liberty and freedom is proscribed. That life in an IDP camp cannot be synonymous with the liberty enjoyed by a free person in a normal society.

The petitioners in this matter submit that they are not able to move freely on the disputed land as RW2 testified that it is now private land, and one can only enter that land on being authorised by the 4th and 5th respondents. The petitioners have been threatened with charges of criminal trespass should they enter the disputed land. They also contend that in fear of the destruction of their temporal homes and tents in the Musangashi Forest Reserve, they are forced to stay at home, to keep watch over their properties.

Further the life in Musangashi Forest Reserve cannot be said to be synonymous with that which they enjoyed when they lived on the disputed land. The petitioners also contend that they have been subjected to inhuman and degrading treatment, which has violated ***Article 15 of the Constitution***, which provides that;

"15. A person shall not be subjected to torture, or to inhuman or degrading punishment or other like treatment".

The case of ***Mukoko v The Attorney General*** [29] is relied on, stating that the Supreme Court of Zimbabwe in that matter held that degrading treatment can be any treatment that humiliates or debases a person, or a show of lack of respect or diminishes a person's human dignity or arouses feelings of fear, anguish or inferiority, capable of breaking the person's moral and physical resistance, with humiliation and debasement being the most relevant.

Further, reference is made to the case of ***Hijrizi v Yugoslavia*** [16], where the UN Committee on Torture stated that the forced eviction and destruction of the Bozova Glacia settlement, in the city of Danilovgrad by private residents who lived nearby, under the watchful eye of the police department which failed to protect the settlers, violated the people's rights. The submission is that it was held that the forced eviction and destruction of housing, carried out by non-state actors amounts to cruel, inhuman and degrading treatment or punishment, if the state fails to protect the victims from the violations of their rights.

It is submitted that the 7th respondent failed to protect the petitioners from the humiliation and abuse, and even when the matter was reported to the office of the District Commissioner, nothing was done to restore the dignity of the petitioners, other than to provide them with tents and food for one (1) month.

Still on the violation of their rights, the petitioners refer to Article 17 of the Constitution, which states that;

17. (1) Except with his own consent, a person shall not be subjected to the search of his person or his property or the entry by others on his premises.....".

They submit that the 4th and 5th respondents entered upon their premises without their consent, and destroyed their houses, properties, assets, crops and uprooted their fruit trees, as can be seen from the evidence of the three (3) petitioners that testified in this matter.

They also submit that their freedom of movement has been hindered in violation of Articles 21 and 22 of the Constitution whose provision is that;

"21. (1) Except with his own consent a person shall not be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of his interests.

22. (1) Subject to the other provisions of this Article and except in accordance with any written law, a citizen shall not be deprived of his freedom of movement, and for the purposes of this Article freedom of movement means-

(a) the right to move freely throughout Zambia;

(b) the right to reside in any part of Zambia; and

(c) the right to leave Zambia and to return to Zambia".

They submit that the forceful eviction has led them to squat in Musangashi Forest Reserve, which is very far from their relatives and

friends who are along the Mulembo river, as seen from the villages indicated at page 158 of the petitioners' bundle of pleadings at grid 8557. It is submitted that this has made it very difficult for the petitioners to associate with their relatives and friends, as well as conduct cultural rituals, participate in traditional ceremonies and conduct religious observations.

The submission is also that there are many commercial farmers in the area who have fenced off portions of the forest that the petitioners used for their livelihood. They state that the Mulembo river was part of their identity, where all their ancestors were buried. The petitioners further contend that even their children are unable to attend school anymore, as it is far away from the forest where they are squatting, and the children are unable to walk there.

They rely on the case of ***Sudan Human Rights Organisation and Centre on Housing Rights and Evictions (COHRE) v Sudan*** [22] where it was observed that under international law, it is the duty of the State to take all measures to avoid conditions which might lead to displacement, and thus impacting on the enjoyment of freedom of movement and residence, as provided in Principle 5 of the Guiding Principles on Internal Displacement. That violation of this principle, in turn violates Article 12(1) of the African Charter on Human and Peoples Rights.

It is submitted that the 6th and 7th respondent's failure to either prevent the forced evictions or to take urgent steps to ensure the petitioners' return to their homes was a violation of Article 22 of the Constitution. The petitioners further allege violation of Articles 23 and 266 of the Constitution. Article 23 provides as follows;

"23. (1) Subject to clauses (4), (5) and (7), a law shall not make any provision that is discriminatory either of itself or in its effect.

(2) Subject to clauses (6), (7) and (8), a person shall not be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this Article the expression "discriminatory" means affording different treatment to different persons attributable, wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, marital status, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description".

Article 266 of the Constitution as amended by Act No 2 of 2016 defines discrimination as;

> ***"discrimination" means directly or indirectly treating a person differently on the basis of that person's birth, race, sex, origin, colour, age, disability, religion, conscience, belief, culture, language, tribe, pregnancy, health, or marital, ethnic, social or economic status;"***

The submission is that the above articles provide for protection against discrimination on the basis of tribe, place of origin, and gender among

others. That the petitioners are Lala people living in customary land according to their own customs and beliefs. However, the respondents have exploited these features of the petitioners' identity, by discriminating against them, and treating them as sub humans. It is stated that the petitioners' traditional customs and desires were not respected by the respondents when they destroyed their homes and burial sites, and forcefully evicted them.

It is also the petitioners' contention that the females have been discriminated against, because they have been proportionately affected by the displacement. To support this position, reliance is placed on the case of ***In R (on the application of Dalai and another) v Secretary of State for the Home Department*** [24] where Siber J remarked that indirect discrimination occurs when a rule or practice is applied equally to all individuals, but which has disproportionate impacts on particular members of a minority.

Further, that the ***UN Committee on Economic, Social and Cultural Rights (CESCR)*** noted in General Comment No 7 in paragraph 10, that women suffer disproportionately from forced evictions, due to the statutory and cultural discrimination regarding property ownership, as well as being at increased vulnerability to acts of violence and sexual abuse after being rendered homeless.

The petitioners submit that PW2 testified that under Lala custom when a man marries, he leaves his home to go and live with his in laws. That after sometime, he may request his in laws if he can take his wife to his family's village, and if he is allowed, he may do so. They state that when

a woman does not have land, it is very difficult for her to get married, and they are left with the burden to provide for themselves.

It is further stated that in this matter, the petitioners woes have been compounded by the fact that there is chronic water shortage, and food insecurity, which has had a disproportionate impact on the women and children, with the nearest water point being a minimum of five (5) kilometres away. That the lack of water has adversely affected women's sanitation and hygiene, as well as increased their health risks and violence, which is an indirect violation of Articles 23 and 266 of the Constitution.

As seen from the evidence on record, the petitioners are now squatting in the Musangashi Forest Reserve. The photographs at 169-243 of their bundle of pleadings reveal the conditions under which they are living. The allegations with regard to the violations of their rights have not been challenged in any way. The petitioners were living on the disputed land, where they had access to housing, and they grew sufficient food for their nourishment, and were able to hunt and rear animals like chickens and goats, from which they earned income to survive.

Their children had access to education as schools were nearby, and they had access to health services from the clinics. The petitioners also practiced their Lala custom, and the enjoyment of these rights, enhanced their right to life, freedom of movement and association, dignity, self worth and right to protection of all. These rights are fundamentally enjoyed by every citizen of this country, and guaranteed by constitution, except as prescribed by the law.

To take away these rights as a result of alienation of the land to the 1st respondent, and without following the procedure prescribed by the law, infringed on the petitioners' rights, and they are now IDP's, and I accordingly so find.

Section 3 of the Lands Act, Chapter 184 of the Laws of Zambia vests all land in Zambia in the President on behalf of the people. It states that;

> ***"3. (1) Notwithstanding anything to the contrary contained in any other law, instrument or document, but subject to this Act, all land in Zambia shall vest absolutely in the President and shall be held by him in perpetuity for and on behalf of the people of Zambia.***
>
> ***(2) Subject to subsection (4) and to any other law, the President may alienate land vested in him to any Zambian.***
>
> ***(3) Subject to any other provisions and procedures relating to alienation of land, the President may alienate land to a non-Zambian under the following circumstances:***
>
> ***(a) where the non-Zambian is a permanent resident in the Republic of Zambia;***
>
> ***(b) where the non-Zambian is an investor within the meaning of the Investment Act or any other law relating to the promotion of investment in Zambia;***
>
> ***(c) where the non-Zambian has obtained the President's consent in writing under his hand;***
>
> ***(d) where the non-Zambian is a company registered under the Companies Act, and less than twenty-five per centum of the issued shares are owned by non-Zambians;***

(e) where the non-Zambian is a statutory corporation created by an Act of Parliament;

(f) where the non-Zambian is a co-operative society registered under the Co-operative Societies Act and less than twenty-five per centum of the members are non-Zambians;

(g) where the non-Zambian is a body registered under the Land (Perpetual Succession) Act and is a non-profit making, charitable, religious, educational or philanthropic organisation or institution which is registered and is approved by the Minister for the purposes of this section;

(h) where the interest or right in question arises out of a lease, sub-lease, or under-lease, for a period not exceeding five years, or a tenancy agreement;

(i) where the interest or right in land is being inherited upon death or is being transferred under a right of survivorship or by operation of law;

(j) where the non-Zambian is a Commercial Bank registered under the Companies Act and the Banking and Financial Services Act; or

(k) where the non-Zambian is granted a concession or right under the National Parks and Wildlife Act.

As has been seen above, the President is empowered under Section 3 (4) of the Lands Act, Chapter 184 of the Laws of Zambia, to alienate land held under customary tenure on the conditions specified in the Section. That provision enables the safeguarding of the rights to land held under

customary tenure, as guaranteed by the Constitution and Section 7 of the Lands Act. As submitted by the petitioners, this was recognized by the then Minister of Lands, Dr Shimaponda during the second reading of the Lands Bill, 1995, when he stated that;

> ***"The fear expressed in this August House last year to the effect that upon passage of the bill, that villagers and peasant farmers would be displaced from the land by wealthy applicants has been taken care of Sir, by providing in sub clause 4(c) of Section 3 that....."***

The petitioners submit that Sections 33, 34 and 35 of the Lands and Deeds Registry Act grant security of tenure to persons on State land over that provided to rural communities and using customary land, which violates Articles 11(d), 16 and 23 of the Constitution. Article 11 guarantees fundamental rights and freedoms. It states that;

> ***"11. It is recognised and declared that every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex or marital status, but subject to the limitations contained in this Part, to each and all of the following, namely:***
>
> ***(a) life, liberty, security of the person and the protection of the law;***

(b) freedom of conscience, expression, assembly, movement and association;

(c) protection of young persons from exploitation;

(d) protection for the privacy of his home and other property and from deprivation of property without compensation;

and the provisions of this Part shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in this Part, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest".

Article 16 of the Constitution 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.

This Article guarantees the protection from depravation of property, while Article 23 guarantees persons from discrimination. The petitioners argue that Sections 33, 34 and 35 of the Lands and Deeds Registry Act have created a situation whereby persons from rural communities such as the petitioners, who have occupied and used unregistered customary land for generations, can lose their customary land rights without compensation,

once that land becomes the subject of a certificate of title, and transform them into squatters.

Reference is made to the case of ***Raphael Ackim Namung'andu v Lusaka City Council*** [5] where it was held that;

> ***"Squatters build on their own risk and if the owners of the land withdraw their permission or licence or if they decide to demolish a structure built in the absence of any permission or other lawful relationship, the squatters' losses though very much regrettable are not recoverable in a court of law".***

It is further argued that while the issuance of a certificate of title results in the absolute termination of customary land rights over land to which it relates, it does not provide any form of compensation for communities who enjoyed the customary land rights before the certificate of title was issued. The submission is that the Supreme Court in case of ***Goswami and another v the Commissioner of Lands*** [13] held that our constitution does not countenance the deprivation of property belonging to another person without compensation.

The petitioners further submit that Sections 33, 34 and 35 of the Lands and Deeds Registry Act, have created a situation that make if difficult for persons in rural communities like the petitioners to recover their properties once certificates of title are issued, in respect of the land that they held under customary tenure. They refer to the case of ***Tresphord Chali Emmanuel Kanyanta Ngandu*** [30] where the Supreme Court stated that;

> ***"It is clear from Section 33 that once a certificate of title is issued, it becomes conclusive evidence of ownership of the***

> ***land to which it relates. This implies that once a person is issued with a certificate of title, that title raises a presumption that the person followed the requisite procedures for obtaining the certificate of title to the land. This presumption is rebuttable and can be dislodged under Section 33 itself, notably in the case of fraud".***

It is the petitioners' submission that as seen from the ***Tresphord Chali*** case, allegations of fraud have to be proved on a standard higher than that of a balance of probabilities, that is applicable to civil matters, but lower than beyond all reasonable doubt. Therefore, these provisions of the law are unconstitutional.

Article 11 of the Constitution guarantees rights and freedoms universally, and recognises that all persons are equal before the law. The right to ownership of land, and protection from its deprivation is guaranteed in Article 16. In particular, Article 23 proscribes the discrimination of any person. Therefore, the petitioners have the freedom to practice their customary rights, which include land rights held under customary tenure. It is trite that as Zambians, we identify ourselves by are tribe, which gives us a sense of belonging.

I have already highlighted that Section 7 of the Lands Act, Chapter 184 of the Laws of Zambia guarantees customary land rights. It has also been seen that the President may alienate land held under customary tenure pursuant to Section 3 (4) of the said Lands Act, and there are requirements that have been laid down in order for such alienation to be done. Therefore, Section 3(4) of the Lands Act provides safeguards to persons on land held under customary tenure as enshrined in the Constitution and Section 7 of the Lands Act.

It is only when the conditions set in Section 3 (4) of the Lands Act are followed, that persons on the land held under customary may lose their rights to that land. The petitioners have argued that where that is the position, neither the Constitution nor the Lands and Deeds Registry Act provide for the compensation of the persons in the rural communities who are affected.

Indeed, that is position, and the evidence given by RW3 in cross examination was that where there are people on land that is sought to be converted from customary into statutory tenure, the Commissioner of Lands will ask for a resettlement plan, before approving the conversion of the land. Further, that the Commissioner of Lands has power to decline a request for conversion where there are settlers on the land sought to be converted from customary tenure into statutory tenure, as once the conversion is approved, it becomes state land.

It can be seen that the Lands Act and the Lands and Deeds Registry Act have provisions that protect persons on land held under customary tenure, and the alienation of land in these areas cannot be arbitrarily done. Article 16 of the Constitution which guarantees the right from deprivation of property in Sub section 2 of that Article has exceptions. It states that;

> ***"(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-***
>
> ***(a) in satisfaction of any tax, rate or due;***

(b) by way of penalty for breach of any law, whether under civil process or after conviction of an offence;

(c) in execution of judgments or orders of courts;

(d) upon the attempted removal of the property in question out of or into Zambia in contravention of any law;

(e) as an incident of contract including a lease, tenancy, mortgage, charge, pledge or bill of sale or of a title deed to land;

(f) for the purpose of its administration, care or custody on behalf of and for the benefit of the person entitled to the beneficial interest therein;

(g) by way of the vesting of enemy property or for the purpose of the administration of such property;

(h) for the purpose of-

(i) the administration of the property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the benefit of the persons entitled to the beneficial interest therein;

(ii) the administration of the property of a person adjudged bankrupt or a body corporate in liquidation, for the benefit of the creditors of such bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property;

(iii) the administration of the property of a person who has entered into a deed of arrangement for the benefit of his creditors; or

(iv) vesting any property subject to a trust in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust;

(a) in consequence of any law relating to the limitation of actions;

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

a. in terms of any law relating to absent or non-resident owners, as defined in such law, of any property;

b. in terms of any law relating to trusts or settlements;

c. by reason of a dangerous state or prejudicial to the health or safety of human beings, animals or plants.

d. as a condition in connection with the granting of permission for the utilisation of that or other property in any particular manner;

e. for the purpose of or in connection with the prospecting for, or exploitation of, minerals

belonging to the Republic on terms which provide for the respective interests of the persons affected;

f. in pursuance of a provision for the marketing of property of that description in the common interests of the various persons otherwise entitled to dispose of that property;

g. by way of the taking of a sample for the purposes of any law;

h. by way of the acquisition of the shares, or a class of shares, in a body corporate on terms agreed to by the holders of not less than nine-tenths in value of those shares or that class of shares;

i. where the property consists of an animal, upon its being found trespassing or straying;

j. for so long as may be necessary for the purpose of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon-

of work for the purpose of the conservation of natural resources of any description; or

k. of agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable and lawful excuse refused or failed, to carry out;

l. where the property consists of any licence or permit;

m. where the property consists of wild animals existing in their natural habitat or the carcasses of wild animals;

n. where the property, is held by a body corporate established by law for public purposes and in which no moneys have been invested other than moneys provided by Parliament;

o. where the property is any mineral, mineral oil or natural gases or any rights accruing by virtue of any title or licence for the purpose of searching for or mining any mineral, mineral oil or natural gases-

upon failure to comply with any provision of such law relating to the title or licence or to the exercise of the rights accruing or to the development or exploitation of any mineral, mineral oil or natural gases; or

p. terms of any law vesting any such property or rights in the President;

i. for the purpose of the administration or disposition of such property or interest or right by the President in implementation of a comprehensive land policy or a policy designed to ensure that the statute law, the Common Law and the doctrines of equity relating to or affecting the interest in or rights over land, or any other interests or

rights enjoyed by Chiefs and persons claiming through or under them, shall apply with substantial uniformity throughout Zambia;

in terms of any law providing for the conversion of titles to land from freehold to leasehold and the imposition of any restriction on subdivision, assignment or sub-letting;"

Thus, going by the above, there is nothing in the law that prohibits the conversion of land held under customary tenure into statutory tenure. The protection for persons affected by such alienation is that they should be catered for by being resettled, and where appropriate compensation be awarded, as a way of ensuring that their rights are not violated. The argument that Sections 33, 34 and 35 of the Lands and Deeds Registry Act are unconstitutional therefore fail.

The argument in the alternative is that Sections 33, 34 and 35 of the Lands and Deeds Registry Act are inconsistent with Section 7 of the Lands Act. This is on the basis that these sections violate the property rights of rural communities in occupation of land held under customary tenure, as protected under Section 7 of the Lands Act.

It is argued that the Lands Act, which is later law having been enacted in 1995 by implication repealed Sections 33, 34 and 35 of the 1949, Lands and Deeds Registry Act, as Section 33 neither recognises customary land rights nor makes a registered proprietor of the land subject to prior unregistered customary land rights. It instead only makes the registered proprietor subject to the interests of a proprietor claiming under a current prior certificate of title.

The submission is also that Section 35 of the Lands and Deeds Registry Act has by implication been repealed by Section 7 of the Lands Act, as Section 35 of the Lands and Deeds Registry Act provides for the restriction on ejectment after the issuance of a certificate of title, and it does not acknowledge prior customary rights, among the permitted exceptions, for bringing actions for the recovery of land.

Reliance is placed on the case of *In **the matter of Section 53 (i) of the Corrupt Practices Act**, No. 10 of 1980 **and in the matter of Articles 20 (7) and 29 of** the Constitution **and in the matter between: Thomas Mumba** - Applicant and **the People - respondent*** [6] where it was stated that;

> ***"Under ordinary interpretation of statutes, one would have said that the latest Act impliedly repealed or amended the old Act but there can be no implied amendment to the Constitution".***

Sections 33 and 35 of the Lands and Deeds Registry Act provide as follows;

> ***"33. A Certificate of Title shall be conclusive as from the date of its issue and upon and after the issue thereof, notwithstanding the existance in any other person of any estate or interest, whether derived by grant from the President or otherwise, which but for Parts III to VII might be held to be paramount or to have priority; the Registered Proprietor of the land comprised in such Certificate shall, except in case of fraud, hold the same subject only to such encumbrances, liens, estates or interests as may be shown by***

such Certificate of Title and any encumbrances, liens, estates or interests created after the issue of such Certificate as may be notified on the folium of the Register relating to such land but absolutely free from all other encumbrances, liens, estates or interests whatsoever:

(a) Except the estate or interest of a proprietor claiming the same land under a current prior Certificate of Title issued under the provisions of Parts III to VII; and

(b) Except so far as regards the omission or misdescription of any right of way or other easement created in or existing upon any land; and

(c) Except so far as regards any portion of land that may be erroneously included in the Certificate of Title, evidencing the title of such Registered Proprietor by wrong description of parcels or of boundaries.

35. After land has become the subject of a Certificate of Title, no title thereto, or to any right, privilege, or easement in, upon or over the same, shall be acquired by possession or user adversely to or in derogation of the title of the Registered Proprietor".

Section 7 of the Lands Act on the other hand provides that;

"7. (1) Notwithstanding subsection (2) of section thirty-two but subject to section nine, every piece of land in a customary area which immediately before the commencement of this Act was vested in or held by any person under customary tenure shall continue to be so held and recognised and any provision

of this Act or any other law shall not be so construed as to infringe any customary right enjoyed by that person before the commencement of this Act.

(2) Notwithstanding section thirty-two, the rights and privileges of any person to hold land under customary tenure shall be recognised and any such holding under the customary law applicable to the area in which a person has settled or intends to settle shall not be construed as an infringement of any provision of this Act or any other law except for a right or obligation which may arise under any other law".

I have already alluded to the fact that the President under Section 3 (4) of the Lands Act may alienate land that is held under customary law, subject to the restrictions in the section, and in line with the regulations in Statutory Instrument No 89 of 1996, the Lands (Customary Tenure) (Conversion) Regulations, 1996. It is trite that when land is converted from customary into statutory tenure, a certificate of title may be issued in respect of that land.

Once a certificate of title is issued, the provisions of Sections 33 and 35 of the Lands and Deeds Registry Act kick in. Section 7 of the Lands Act recognises the rights that persons holding the land under customary tenure have. As long as land continues to be held under customary tenure, Section 7 of the Lands Act can be called to aid, to assist a person holding land under that tenure. For land to be converted into statutory tenure from customary, tenure, the procedure in Section 3(4) of the Lands Act and the regulations thereunder need to be complied with.

In that procedure, is the requirement to consult persons who hold the land under customary tenure that is sought to be converted into statutory tenure. The Commissioner of Lands is empowered by law to decline conversion where there are settlers on the land sought to be converted, and in such cases, there will be no conversion, and no certificate of title can be issued.

As seen from the ***Tresphord Chali*** case relied on by the petitioners, once a certificate of title is issued, there is a presumption that all the correct procedure in acquiring it has been followed. However, this presumption is rebuttable, on the certificate of title being challenged. Therefore Sections 33 and 35 of the Lands and Deeds Registry Act are not inconsistent with Section 7 of the Lands Act, as the said sections only set in, once there is a certificate of title relating land, and not when land is held under customary tenure. That claim will therefore fail.

The petitioners also submit that the taking over of their land which was held under customary tenure amounts to compulsory acquisition of land, and therefore violated Article 16 of the Constitution and Sections 3, 5, 6, 7 and 25 of the Lands Acquisition Act, Chapter 189 of the Laws of Zambia. It is submitted that Section 7 of the Lands Act recognises customary land rights and holding.

That these rights, just like those held under leasehold tenure can be taken away to pave way for land based developments or the creation of farm blocks, if the legal and constitutional requirements are met for such taking or loss. Relying on the case of ***Patel v The Attorney-General*** [4] the petitioners argue that the taking away of their customary land by the State without their consent, amounts to compulsory acquisition of the land.

It was held in that case that;

> ***"Although we have not yet reached the stage where any property of the applicant's has been compulsorily acquired, I am satisfied on the evidence that property belonging to the applicant has been taken possession of and that this was done without his consent. It was therefore, taken possession of compulsorily".***

It is argued that the 4th and 5th respondents took over the disputed land which belonged to the petitioners, and which was established as their homes, and that RW2 confirmed in his testimony that Farm No F/9597, Central Province, includes all of the disputed land. He further testified that there were local people on either side of the dambo known as the Mulembo river. The petitioners contend that the taking over the disputed land was instigated by the 6th respondent, and it was effected by the 7th and 8th respondents, who gave the disputed land to the 1st respondent.

It is stated that neither the traditional Chief, the 6th respondent as the local authority or indeed the President obtained the petitioners' consent before the alienation of the land to the 1st respondent, and this is evidenced by the testimony of the petitioners who stated that they were not consulted. The submission is that in the case of ***Mpongwe Farms Limited (in receivership) and two others v the Attorney General*** (19) the court noted that;

> ***"The state passed the legislation and devised statutory procedure to govern the compulsory acquisition of land. For whatever purpose such property is acquired, the State must***

follow that law and procedure. That is what the rule of law entails".

Further reliance is placed on the case of ***William David Carlisle Wise v Attorney-General*** [7] where it was held that the compulsory acquisition of the said two farms was null and void ab initio, and that the defendant exercised his discretion in bad faith.

In terms of compulsory acquisition of land, ***Section 3 of the Lands Acquisition Act, Chapter 189 of the Laws of Zambia*** provides 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".***

The procedure for compulsorily acquiring land is set out in Sections 4-6 of the Act 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.

5. (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".

The evidence in this matter shows that there was no intention to compulsorily acquire the disputed land of which the petitioners were in possession, and were using under customary tenure. What appears to have happened is that farm blocks were created in the area, and this can be seen from the maps on the notice to produce. These maps show that the Local authority provisionally gave farm numbers to the farms that were created, and the maps were stamped by Chief Muchinda signifying that he had consented to the creation of the farm blocks, in 2002, way after the land had been converted and alienated to the 1st respondent in 1998.

It can be said that the land in dispute was converted from customary into statutory tenure in line with the government policy to create farm blocks. It will be noted that from the documents on record, that the 6th respondent as the local authority, did not invoke the provisions of regulation 4 of Statutory Instrument No 89 of 1996 to convert the land from customary into statutory tenure. Rather, before there was approval

by Senior Chief Muchinda for the creation of the farm block in his area, the farms had been provisionally numbered, and were being given out.

In fact, the 6th respondent recommended that the 1st respondent be only given 1300 hectares of land, but an application was made by the 1st respondent, which was forwarded by the Commissioner of Lands to the Minister of Lands for the approval 1790 hectares, 250 hectares having been approved, giving a total of 2040 hectares. In that approval, the Chief's consent for the excess was not obtained, and neither was the petitioners' as persons who would be affected by the allocation of the land.

There was abrogation of the procedural requirements, and even the 1st respondent's application was not even to convert the land from customary into statutory tenure, but was an application for state land. This flew in the teeth of the testimony given by RW3, who told the court that according to the Lands Register, the 1st respondent was issued with a certificate of title in a customary area, which had a right of occupancy attached, which served as a lease.

There was blatant disregard of the petitioners' customary rights when the land was alienated to the 1st respondent, and at the centre of this were the 6th and the 1st respondents. Even the 8th respondent who is the ultimate in land alienation, had to satisfy himself that all the procedural requirements had been satisfied. The documents on record show that the procedural requirements had been met, and yet the 8th respondent in dereliction of duty, approved the conversion of land.

That office being the one that acts on behalf of the president in land alienation matters, is ultimately responsible for the petitioners' plight. It

will be noted that while the Lands Act and the Regulations require persons who will be affected by the alienation of customary land which they hold, to be consulted before the land is converted into statutory tenure, there is nothing in the law that provides for their compensation in the event that the land is converted, and they lose their rights to that land.

Section 10 of the Lands Acquisition Act provides as follows;

> ***"10. Subject to the provisions of this Act, where any property is acquired by the President under this Act the Minister shall on behalf of the Government pay in respect thereof, out of moneys provided for the purpose by Parliament, such compensation in money as may be agreed or, in default of agreement, determined in accordance with the provisions of this Act:***
>
> ***Provided that where the property acquired is land the President may, with the consent of the person entitled to compensation, make to such person, in lieu of or in addition to any compensation payable under this section, a grant of other land not exceeding in value the value of the land acquired, for an estate not exceeding the estate acquired and upon the same terms and conditions, as far as may be practicable, as those under which the land acquired was held".***

Going by the spirit of this section, and also taking into account the fact that creation of a farm block motivated the taking away of the land that the petitioners held under customary law, even though the evidence

given by RW3 was that it is not clear as to whether such farm block was in fact created, even though the maps in the notice to produce show that Senior Chief Muchinda gave its approval for the creation, the fact is that the petitioners were displaced as a result of the 1st respondent acquiring a certificate of title to the land.

The 8th respondent approved the conversion of the land without the petitioners being consulted, resulting in them being left homeless. While the 4th respondent who is the current owner of the disputed land, is not the entity that initially applied for conversion of the land, and to whom the principles of bona fide purchaser for value applied, the principles equally apply to subsequent purchasers.

While the property changed hands from the 1st respondent into the 2nd and 3rd respondents' hands before the 4th respondent acquired it, the 4th respondent still had a duty to ensure that it enquired on the petitioners' interest in the land, before it purchased it, and that it followed procedure for evicting the petitioners. This is so even though it had a certificate of title for the land, which on the face of it, is evidence of ownership of the land, unless challenged.

Order 12 Rule 1 (6) of the High Court Rules, Chapter 27 of the Laws of Zambia provides that;

> ***"(6) In case no appearance shall be entered in an action for the recovery of land within the time limited by the writ for appearance, or if an appearance be entered but the defence be limited to part only, the plaintiff shall be at liberty to enter a judgment that the person whose title is asserted in the writ***

shall recover possession of the land, or of the part thereof to which the defence does not apply".

This provision entails that the 4th respondent should have taken out an action for recovery of the land, and not in the absence of a court order proceed to forcefully evict the petitioners from the land. Further, ***Order 113 of the Rules of the Supreme Court of England, 1999 edition,*** provides for summary possession of land where there are squatters and persons with no authority to be in possession of land, should the 4th and 5th respondents have considered the petitioners as such.

Having found that the 7th and 8th respondents alienated the land to the 1st respondent without strictly following procedure, the conversion was null and void. However, looking at the fact the evidence on record shows that the 4th respondent has settled as a commercial farmer on the land in dispute, most likely in furtherance of government policy to create farm blocks, which are beneficial for national development, it would not be in the public interest to cancel the certificate of title that the 4th respondent holds to F/9597, Central Province.

In line with the principles of equity, seeing that the 8th respondent was in clear dereliction of duty when he approved the conversion of the land into statutory tenure, when the procedural requirements had not been satisfied, I will deem the conversion as a compulsory acquisition of the land. Thus, pursuant to the provisions of Section 10 of the Lands Acquisition Act, the 7th respondent through the 8th respondent and in consultation with the Chief shall grant land to the petitioners, whose value shall not exceed the value of the disputed land, which they occupied and used in pursuance of their customary rights.

The land to be granted to the petitioners, shall, unless no land is available, be located in the area where the petitioners can enjoy their cultural and traditional rights, as Lala persons by tribe, to preserve their national identity. This land should also be located where the petitioners will have ready access to water, carry out farming activities, as well as access health, schools and other social amenities, essential for the promotion of their rights.

Upon the said land being granted, the 6th respondent shall meet the costs of relocating the petitioners to said land. The 4th respondent having evicted the petitioners, shall pay the petitioners' the value of their properties that were destroyed as a result of eviction, including the value of their ancestral graves. The 4th respondent shall also pay the petitioners' compensation for the violation of their rights as a result of the eviction from the land.

The compensation if not agreed shall be assessed by the Registrar in line with the provisions of the Lands Acquisition Act. The petitioners having succeeded, they are awarded costs of the proceedings against the 1st, 4th, 6th and 7th respondents, which shall be taxed in default of agreement. Leave to appeal is granted.

DATED AT LUSAKA THIS 30th DAY OF APRIL, 2020

S. KAUNDA **NEWA**
HIGH COURT **JUDGE**