

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

2012/HP/0337



BETWEEN:

ROBERT SONDASHI AND 151 OTHERS

PLAINTIFF

AND

EASTERN QUARRY LIMITED

1ST DEFENDANT

COMMISSIONER OF LANDS

2ND DEFENDANT

ATTORNEY GENERAL

3RD DEFENDANT

Before the honourable Mrs. Justice F. M. Chisanga this 29th day of May 2020

For the plaintiff : In person

For the Defendants : Mr. J. Zimba, Messrs Makebi Zulu Advocates

JUDGMENT

Cases Referred to:

1. ***Saul Kwesa vs Ganizani Goma and Attorney General 1995 Selected Judgment No. 5 of the Supreme Court***

Legislation referred to:

1. **Section 9 of the Lands Act CAP 184 of the Laws of Zambia**
2. **Section 33 of the Lands and Deeds Registry Act CAP 185 of the Laws of Zambia**

The plaintiffs commenced this action by way of writ of summons and an accompanying statement of claim. They seek claim an order that the purported

allocation of land and issuance of a Certificate of Title relating for Stand No. 30275 Woodlands Extension Lusaka by the 2nd defendant to the 1st defendant is null and void, illegal and a sham.

Alternatively they claim that should the Court find that the allocation and issuance of title deed to the 1st defendant is of any legal import, then the 1st and 2nd defendants should be bound by the plaintiffs' equitable interest. The premise of this claim is that had the defendants been duly diligent, they would have discovered the interest of the plaintiffs who were the original developers and in possession of the property. Damages for trespass. Costs and any other relief the Court may deem just are among the plaintiffs' claims.

In the accompanying statement of claim, the plaintiffs aver that they have been in occupation of Stand No. 30275, Woodland Extension, Lusaka for many years. The Stand did not belong to anyone at the time they occupied it. They engaged the Commissioner of Lands with a view to regularize their occupancy of the stand, which would lead to issuance of title deeds for their respective parcels of land. They were however advised to wait for the Commissioner of Lands to process the documents.

To their surprise, the plaintiffs received an enforcement notice from the Lusaka City Council threatening to demolish all the houses on Stand No. 30275 on 23rd March 2012. It was after this notice that the plaintiffs discovered that the 2nd defendant, without any just cause and explanation, had allocated and

issued a certificate of title to the 1st defendant, who is also the owner of Lot 14820 located next to Stand No. 30275. The plaintiffs claim that this was crookedly and corruptly done, and in bad faith, and null and void as a result.

In its defence, the 1st defendant denies having obtained title to the property in issue crookedly, corruptly or in bad faith. It has averred that the plaintiffs' allegations are false and baseless as the 1st defendant followed procedure in acquiring Stand No. 30275. Rather, the plaintiffs were MMD cadres who were squatters on the property, but were later displaced by PF cadres and were no longer in possession of the property. They therefore lack *locus standi* to claim an interest in Stand No. 30275. It is further averred that the 1st defendant is in negotiation with the current occupants of the land, none of who include the plaintiffs, to resolve the land dispute and bring the matter to a close.

The 3rd defendant has averred in defence that the 2nd defendant was inappropriately joined to these proceedings as it lacks legal capacity. It has denied having any record of the plaintiffs' application or having informed the plaintiffs that it was in the process of issuing letters of offer or title deeds to them. The 3rd Defendant states that the plaintiffs' occupation of the property was illegal and amounted to squatting. It is further averred that the property was offered to the 1st defendant upon recommendation from the Ministry of Mines. The 1st defendant applied and was granted mining rights and then subsequently applied for surface rights. The 1st defendant was issued with title in accordance with procedure.

The prosecution witness, Robert Sondashi's testimony was that they applied for the land in contention as a community, in 2007. However, the Ministry of Lands delayed to issue documentation. To the plaintiff's surprise, notices were issued for demolition of their houses. In reaction, they enquired with the 1st defendant why it wanted to demolish the plaintiff's house. The 1st defendant's response was that the property belonged to it.

The plaintiffs rushed to court and obtained an injunction, but some of the houses were demolished. This, despite the fact that the council did not state that the 1st defendant should demolish the houses. The plaintiffs met with the Commissioner of Lands, Mr. Barnaby Mulenga, who disclosed that the Indian from the 1st defendant had applied for the land where the plaintiffs were supposed to be, so that he could sell it in portions. It was discovered that there was no file for the 1st defendant's title. When the plaintiff showed the Commissioner of Lands the application letter of 24th December 2007, he confirmed receipt of the letter.

These developments prompted the plaintiffs to bring this claim. The witness observed that the Commissioner of Lands and the Attorney General have failed to dispute the allegations. He also denied the allegation that the plaintiffs have been displaced by PF cadres.

The witness explained that after commencing this action, the plaintiffs met with Mr. Barnaby Mulenga and Mabuchi. They subdivided 18 plots measuring

20 x 40. However, only 2 of the plots were offered to members of the community while the rest were offered to others.

It was also PW1's evidence that they were advised to measure plots on another side on the same piece of land. He referred to page 2 of the plaintiff's bundle of documents, and explained that the plots at the end were subdivided by the Commissioner of Lands.

The witness testified that after embarking on engaging a surveyor, the plaintiffs discovered that another 19 plots had been subdivided. Another meeting was held, and the plaintiffs were instructed to subdivide. While they were thinking of subdividing, a change of government occurred. They however insisted that the sub division should proceed because the 1st defendant's title was not known by the Ministry of Lands. The plaintiffs wondered why the Commissioner of Lands was failing to defend a title he had issued. He urged the court to grant the plaintiffs the relief they had claimed for.

When cross examined, the witness testified that he lived in Chilenje on the same land that was in contention. He denied being an MMD cadre, and that the MMD cadres went to chase them. Instead, he asserted, it was Yusuf Issa's man James, who went to chase them. He went on to say that the plaintiffs wanted the court to give them the plot as they applied for it in 2007. He testified that it was Ministry of Lands and the Council that allocate land.

It was his evidence that he went on the land in 2006. The Eastern Quarry was not there. He conceded that the letter relating to the 1st defendant was written in 2004, and also admitted that Eastern Quarry began to operate on 6th February 2001. He conceded that the letter for Easter Quarry was written earlier than their letter. He also admitted that the plaintiffs had no document when they occupied the land.

When referred to the Certificate of title at page 5 of the plaintiff's bundle of documents, he said he brought it to show that the defendants were telling untruths before court. When referred to the plaintiff's bundle of pleadings at page 4, he said he didn't recall saying the Ministry of Lands instructed them to subdivide the land, but that it was the Council and Ministry of Lands who subdivided the plots with surveyors from the Council.

He also said they were informed that the title deed for Eastern Quarries was fake. He went on to testify that he had built a three bedroomed house, with a sitting room, dining room, kitchen, two verandas. He explained that it had a gabled roof with iron sheets. He built it in three years. At the time he testified, he was in the third year of building the house. The house, in which he lives, is not on plot 30275.

In re-examination, he testified that Eastern Quarry applied in 2008, while the plaintiffs applied in 2007. This witness closed the plaintiff's case.

The 1st defendant called one witness and subpoenaed another from the Ministry of Lands and Natural Resources. DW1 was James Kabungwe, a resident at Stand No. 30275, Chalala since 2000. He testified that he was the Manager for the 1st defendant until 2017. The company began its operations of blasting and making blocks at Stand No. 30275 in 2001; at this point only the 1st defendant's workers were accommodated on the property. In 2004, the Ministry of Mines gave the 1st defendant land rights to mine quarry on the disputed property. The 1st defendant later obtained title to the property.

In 2010, the company stopped mining operations but continued producing blocks. In 2011, some cadres invaded the land and some began delivering building materials. They would not come during the day to survey, but every morning, building materials would be found on the land. It would have been delivered in the night. In 2012, when the witness tried to restrain them, he was personally attacked, being the manager for Eastern Quarry. The situation became so violent to an extent that the company requested for six police officers from Chilenje Police Station to reside on the property with their families.

DW1 testified further that he knows the 1st plaintiff, who has never been an occupant of the disputed property. He also stated that it is not possible to have 150 occupants on the property while blasting activities are taking place. At the time the 1st defendant began blasting, the place was a bush. During his stay on

the property, no one from the Ministry of Lands surveyed the property. The witness testified that the Certificate of Title issued to Eastern Quarry was very, very genuine. When shown the Certificate of Title at pages 1 to 4 of the 1st defendant's bundle of documents, he informed the court that that was the document he had talked about. It related to Stand No 30275, and the extent of the land was 18.0161 hectares. The 1st defendant was still paying the rates and the witness resided on the land.

In cross examination, DW1 testified that the 1st defendant applied for title between 2007 and 2008. At this point, all operational documentation including documents from the council and the Zambia Revenue Authority were in place. The 1st defendant did not demolish any houses but served some squatters with letters of intention to demolish. The plaintiffs were given 14 days in which to vacate the land.

DW2 was Tamara Banda Kalabo, Head of Estates and Valuation at the Ministry of Lands and Natural Resources. She testified that according to the records relating to Stand No. 30275, Lusaka, the Ministry had offered the land to the 1st defendant in a letter dated 7th January, 2008 but there was no record that the 1st defendant had applied for the land. The witness referred to a letter dated 28th August 2014 addressed to the Attorney General from the Ministry's principal legal officer stating that the 1st defendant had been mining quarry on the land and on 11th November, 2004, Ministry of Mines recommended that

title be issued to the said 1st defendant by the Ministry of Lands. She testified that the Estates Unit does not allocate land as it is restricted to monitoring conditions of lease compliance after land has been allocated. DW2 also informed the court that the Estate's other function that it performs concerning plots is that it is from time to time requested to approve site plans for numbering purposes. When referred to page 3 of the plaintiff's bundle of documents, she said she did not have that document on record. The documents referred to by this witness were produced. In cross examination, she testified that she was not aware when the proceedings in this matter commenced. No other meaningful cross examination was directed at this witness.

This marked the close of the defence.

I have considered the pleadings and the evidence in support of, and against the claim. I should remind the parties that he who alleges must prove the affirmative of what he asserts. The plaintiffs' claim is that the plaintiffs were squatters on Stand No 30275. This is also discernible from the fact that they have no title to the land they occupy. This occupation of land is contrary to **section 9 of the Lands Act CAP 184 of the Laws of Zambia**, which enacts the following:

9(1) A person shall not without lawful authority occupy or continue to occupy vacant land

- (2) Any person who occupies land in contravention of subsection (1) is liable to be evicted.

This then was the status of the plaintiffs, according to their statement of claim. The plaintiffs' witness said they applied for the land in 2007, and has produced the letter to that effect. The letter, which is dated 24 December 2007 and addressed to the Commissioner of Lands, stated that the community which included Mr. Sondashi, was applying for farm plot 30275. It was stated that the land was along Shantumbu Road and had remained undeveloped for a long time, while the land surrounding it had been allocated to others. The writer of the letter appealed to the Commissioner of Lands to allocate the farm to them.

It appears there was no response to this letter, as the plaintiffs' witness did not say there was a written response to the letter. The evidence on the other hand reveals that the 1st defendant was holder of a Small-Scale Mining Licence for limestone. It was to run for a period of ten (10) years commencing on the 6th day of February 2001. On 11th November 2004 the Acting Registrar of Mining rights, on behalf of the Director of Mines, wrote to the Commissioner of Lands.

The letter read as follows:

All communications should be addressed to the
Director of Mines
Telephone: LUSAKA 251389/251402-03
Telefax: 252916
New Kent Building, Haile Selassie Avenue



REPUBLIC OF ZAMBIA

MINES DEVELOPMENT DEPARTMENT

MDD/APPA/SSML/2/2001

P.O. BOX 31969

11th November, 2004

LUSAKA

The Commissioner of Lands
Ministry of Lands
Mulungushi Avenue
Independence Avenue
LUSAKA

Dear Sir,

APPLICATION FOR SURFACE RIGHTS FOR EASTERN QUARRIES LTD

We have been approached by Eastern Quarries Ltd for a letter of support in their bid to bolster their project development.

This letter therefore, serves to inform you that Eastern Quarries Ltd are duly registered with the Mines Development Department as Small Scale Licence holders over an area in Chilenje South.

Please refer to the schedule attached here – to the actual Surveyed area. The company was issued a Small Scale licence for a period of 10 years commencing 6th February, 2001.

Because of the strategic importance of the planned development, I humbly submit the Ministry's support to the company's application for title deeds over this area of operation.

Your favourable consideration of the company's application shall be greatly appreciated.

Yours faithfully

(Signed)
Albert Mwambwa
Acting Registrar of Mining Rights
For /Director of Mines
MINES DEVELOPMENT DEPARTMENT

c.c. Eastern Quarries Ltd

It is deducible that as early as 11th November 2004, the 1st defendant had requested the Ministry of Mines for a letter of support for its application for title deeds over the area of operation.

The letter in which the plaintiffs applied for allocation of the land in issue did not state that the plaintiffs were in occupation of the land. It stated instead that the land was undeveloped. This would be understood to mean that there were no buildings on the land.

The 1st defendant is registered proprietor of Stand No 30275, Lusaka as revealed by the Certificate of Title issued in its favour. **Section 33 of the Lands and Deeds Registry Act CAP 185 of the Laws of Zambia** stipulates the effect of a Certificate of Title. It reads:

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 created after the issue of such Certificated Register relating to such and 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.**

The plaintiffs' claim is premised on fraud. According to paragraph 8 of the statement of claim, the Commissioner of Lands without any just cause and explanation allocated and issued a Certificate of Title to the 1st defendant who also owns Lot No 14820 next to 30275 thereby embracing part of the plaintiffs' land on Stand No. 30275.

A look at the evidence defeats this averment. Firstly, there is no proof that the 1st defendant purchased Lot 14820. Secondly, the plaintiffs did not own Stand No.30275 when the 1st defendant was offered this stand. The evidence is that the 1st defendant made known its intention to apply for surface rights for the area over which it held a mining licence as far back as 2004. This intention was made known to the Commissioner of Lands on 11th November 2004. The letter to this effect was on record. This was way before the plaintiffs applied for the same land, in 2007.

On this evidence, it cannot be said the 1st defendant used crooked and corrupt means to obtain the stand in issue. This is because before the plaintiffs applied for this land, it had been revealed that Eastern Quarry Limited was interested

in acquiring surface rights over the same land, to enable them enhance development.

I have seen no evidence to the effect that the Commissioner of Lands promised the plaintiffs the same stand as squatters. What has been disclosed by the plaintiffs' witness is that they, in a self-help manner, occupied the land without colour of right. While it is competent for the Commissioner of Lands to decide to offer land to squatters, nothing compels him at law to do so, as squatters are illegal occupants of state land. The plaintiffs' witness informed the court that he would call the then Commissioner of Lands to testify on their behalf, and other officers from the Council. He did not do so. It remains unknown whether or not the said individual had promised the plaintiffs that he would offer them the land, as he was not called. In the case of **Saul Kwesa vs Ganizani Goma and Attorney General¹**, the court held that the intention of the Commissioner of Lands will be considered when a first Certificate of Title is granted.

In this case, the only discernible intention on the Commissioner of Land's part is that of allocating the land in issue to the 1st defendant. It should be borne in mind that a squatter is at the mercy of the Commissioner of Lands. If so inclined, he may allocate the land on which a squatter is, to that squatter. Nothing stops him from doing so. On the other hand however, nothing compels him to allocate land to a squatter who has applied for the same land in which an interest has previously been expressed by another person or entity. It is up

to him to decide who he will allocate the land to, unless he has made representations to the squatter, on which the squatter has acted, to his detriment, that is by legally constructing on the land.

In the instant case, I have not seen any such evidence. The prosecution witness informed me that they were advised to survey the land. He did not specify who so advised them. Besides, the plaintiffs are not registered surveyors, for them to survey the land in issue.

In addition to this, the plaintiffs did not call anyone to validate the claim that they were advised to survey the land. DW2 denied having the document referred to on record. This witness was Head of Estates and Valuation at the Ministry of Lands and Natural Resources. She testified that the Department of Estates, which she heads approves site plans for numbering purposes. The document at page 2 of the plaintiff's bundle of documents bears no official imprint. It merely states that it is a site plan showing stands in part of Chalala (City of Lusaka) Lusaka Province. Page 3 of the plaintiff's bundle of documents is a Lusaka City Council Document. It relates to Stands 38079-38096.

It will be noticed that the land in issue is Stand No. 30275. The survey diagram on the 1st defendant's Certificate of title for the subject land indicates that it was surveyed in May 2008, and approved by the Government Surveyor on 26th May 2010. On the other hand, the faint document at page 3 of the plaintiff's bundle of documents filed in May 2015 indicates a faint date appearing to be

07/06/2011, or 03/06/2011. If this document relates to the land in issue, which is not clearly indicated on the document, then it was drawn way after the survey on behalf of the 1st defendant had been done.

As for the undated and unstamped site plan, at page 2, of the plaintiff's bundle of documents, 38079-38096 appear to be far away from Stand No. 30275. The documents produced by the plaintiffs are of no assistance to their cause. They do not confirm that the plaintiffs were promised the land in contention, Instead what has emerged is that the 1st defendant's interest in the land was revealed way before the plaintiff's application for land. I find no evidence on which I can ascribe a defensible interest in the land on the plaintiffs' part. Ultimately, I find that the plaintiffs have failed to prove their claims. I therefore dismiss them with costs to be agreed, and in default taxed.

Dated the^{29th}.....day of^{May}..... 2020



F. M. CHISANGA
HIGH COURT JUDGE