IN THE HIGH COURT FOR ZAMBIA **2015/HP/201**

AT THE PRINCIPAL REGISTRY

AT LUSAKA

(Civil Jurisdiction)

BETWEEN:

ZAM ZAM HALAAL BEEF COMPANY LIMITED **1ST PLAINTIFF**

TAYSIIR INVESTMENTS LIMITED **2ND PLAINTIFF**

AND

COMMISSIONER OF LANDS **1ST DEFENDANT**

ATTORNEY GENERAL **2ND DEFENDANT**

BEFORE HON. JUSTICE C. CHANDA IN OPEN COURT ON 26TH JUNE 2020.

For the Plaintiffs : *Mr. G. Phiri, Messrs PNP Advocates*

For the Defendants : *N/A*

JUDGMENT

CASES REFERRED TO:

1. *Eastace Spaita Bobo and Another V The Commissioner Of Lands and Another 2005/HP/1108 (Unreported)*
2. *Shadrek Wamusula Simumba V Juma Banda & Lusaka City Council (2013) 2 ZR 178*
3. *Anort Kabwe & Charity Mumba Kabwe V James Dawa, Attorney General & Albert Mbazima (2006) ZR 12*
4. *J.Z. Car Hire Limited V Malvin Chala & Another (2002) ZR 112*

LEGISLATION AND OTHER WORKS REFERRED TO:

1. *Order 35 Rule 3 of the High Court Rules, Chapter 27 of the Laws of Zambia*
2. *Section 13 (1) and (2) of the Lands Act, Chapter 184 of the Laws of Zambia*
3. *Section 22 (4) of the Town and Country Planning Act, Chapter 283 of the Laws of Zambia*

ZAM ZAM HALAAL BEEF COMPANY LIMITED the 1st Plaintiff and **TAYSIIR INVESTMENTS LIMITED** the 2nd Plaintiff, hereinafter collectively referred to as *"Plaintiffs"* had on the 12th February 2015 commenced these legal proceedings by way of writ of summons seeking the following reliefs:

1. ***An order setting aside Certificate of Re-entry on Plot 20973, Lusaka.***
2. ***An order for the rectification of the land register by registration of the 1st Plaintiff as proprietor of Plot 20973, Lusaka to enable it pass title to the 2nd Plaintiff, the equitable mortgagee.***
3. ***Damages***
4. ***Interest***
5. ***Any Other relief that the court may deem fit.***
6. ***Costs.***

In their accompanying statement of claim, the Plaintiffs described themselves as being corporate entities incorporated under the relevant Laws of Zambia and conduct their businesses as such. The 1st Defendant has been sued as an agent of the 2nd Defendant in terms of the relevant provisions of the State Proceedings Act, Chapter 71 of the Laws of Zambia.

The Plaintiffs' case as pleaded was to the effect that the 1st Plaintiff was the registered owner of **Plot 20973 Lusaka**, the property in issue. It was then averred that by a Consent Order under cause number **SCZ/8/136/2013** between themselves, the 2nd Plaintiff, as equitable mortgagee would have been the registered owner of the said property in issue but for the Certificate of Re-entry on the property.

It was thus alleged that on the 29th October 2013 the 1st Defendant had issued a Notice of Intention to Re-enter the property in issue and indeed so re-entered by a Certificate to that effect on 31st October 2013 on the pretext that the 1st Plaintiff had not developed the subject property. It was then pointed out that the property in issue together with other surrounding plots had remained undeveloped owing to a directive given by the Surveyor General not to develop in order to deal with long-running boundary disputes, which the 1st Defendant was alleged to have been aware of.

It was also pointed out that these long-running boundary disputes culminated into a Consent Settlement Order whereby all plots in the area were to adopt a new General Plan. Further, it was averred that the said property in issue had prior been a subject of legal proceedings between the Plaintiffs and the 2nd Plaintiff had in fact placed a caveat thereon to secure its interests as equitable mortgagee.

The Plaintiffs then pleaded that representations made by the 1st Plaintiff for the 1st Defendant to rescind the said certificate of re-entry so that title could pass to the 2nd Plaintiff, were all rebuffed. The Plaintiffs then alleged that the 1st Plaintiff had been discriminated against in that the 1st Defendant did not issue Certificates of Re-entry for Plots 20972, 20971 and 20969 all of which bordered the Plot in issue and over which a Notice of Intention to re-enter had been issued and to date remained undeveloped.

Consequently, it was alleged that the Plaintiffs had suffered loss and damage entitling them to restoration of the said property hence the above set out reliefs sought.

In their defence, the Defendants denied that the Plaintiffs ever suffered any loss or damage entitling them to the reliefs sought or at all. It was averred that the 1st Defendant had issued a Notice of Intention to Re-enter the plot in issue on 12th and 14th June 2013 and it was pleaded in the main that any boundary dispute could not have stopped the development of the properties.

At trial there was no appearance on the part of the Defendants and no reason was furnished excusing their no attendance. Having been satisfied that the Defendants were duly served with the Notice of Hearing as per the affidavit of service filed on 29th April 2019 exhibiting the acknowledgment of same, I decided to proceed in their absence in terms of the provisions of Order 35 Rule 3 of the High Court Rules, Chapter 27 of the Laws of Zambia especially that this is a backlog matter and any postponement will merely perpetuate the delay. The said Rule provides as follows:

> ***"3. If the Plaintiff appears, and the Defendant does not appear or sufficiently excuse his absence, or neglects to answer when duly called, the court may, upon proof of service of notice of trial, proceed to hear the cause and give Judgment on the evidence adduced by the Plaintiff, or may postpone the hearing of the cause and direct notice of such postponement to be given to the Defendant."***

The Plaintiffs led evidence from three (3) witnesses. **PW1** was **MOHAMED ABDULLE SABRIE** a business man and Managing Director of the 1st Plaintiff Company. His testimony was that in the year 2001 he bought Plot 20973, the plot in issue from Atosh

Transport Company. At that time the said plot had been invaded by squatters who were evicted with the help of the Lusaka City Council and Zambia Police. The 1st Plaintiff then built a boundary wall around it and so did the other neighboring developers when it transpired that they were encroachments of plots in the area.

PW1 then explained that his neighbor **JACK KAWINGA** whose plot was 20972 which had been extended and renumbered 33011 by Ministry of Lands encroached on his land and thereby blocked his gate. He brought the matter to court and the Surveyor General stopped everyone who was affected from carrying out further developments pending the rectification of the surveys. The letter to that effect appears at page 1 of the Plaintiffs bundle of documents dated 13th December 2004. All other developers stopped except his neighbor **JACK KAWINGA** who continued.

It was PW1's further testimony that the Commissioner of Lands (1st Defendant) wanted to re-enter and repossess the undeveloped lands. The 1st Defendant, however, issued a certificate of Re-entry only against the 1st Plaintiff's plot as is evident from pages 51-53 of their bundle of documents. PW1 complained that the 1st Plaintiff was not notified of the 1st Defendant's intention to re-enter which was only learnt of after the Title Deeds were surrendered to the 2nd Plaintiff to effect the change of ownership. That was when they were told that the plot had been re-entered. He further explained that the 2nd Plaintiff had on the 16th September 2011 registered a caveat on the said plot which was two (2) years before such re-entry.

PW1 denied ever seeing any advertisements of the 1st Defendant's intention to re-enter but only came to learn about it after the plot had

already been re-entered. I was then referred to pages 31 and 32 of their bundle of documents where PW1 explained that the said advertisement showed that the 1st Plaintiff's plot and that of three (3) of his neighbors were alleged to be undeveloped but surprisingly only the 1st Plaintiff's plot was re-entered while the others were not. That he discovered that only the 1st Plaintiff's plot was re-entered when he obtained printouts of the neighboring plots which appear at pages 39,43 and 47 of their bundle of documents.

After discovering that the other plots were not re-entered, PW1 felt discriminated and appealed against such re-entry as per his appeal letter appearing at page 34 of their bundle of documents dated 30th May 2014. However, the 1st Defendant by letter dated 27th January 2015 responded to the appeal stating that the appeal was late as the plot had already been repossessed.

Aggrieved by the 1st Defendant's action, the Plaintiffs commenced these legal proceedings. PW1 insisted that to date his neighbors have never developed their plots on the instructions of the Surveyor General. PW1 also mentioned of a Consent Judgment entered between the 1st Plaintiff and **CYCLONE AUTO** the owner of plots 20971 and 20972 settling the encroachment issue by way of adopting the new general plan No. **01/2008** and all certificates of title were surrendered to the 1st Defendant for such rectification.

PW1 then pointed out from the said Consent Judgment appearing at page 7 of their bundles that the Surveyor General acknowledged the mistake by the Planner who had proposed bigger plots on a small stretch of land. Hence, all the title deeds were surrendered for adapting to the new general plan aforesaid so that the sizes of the

plots were reduced to accommodate everyone. The said new plan appears at page 5 of their bundle of documents but **JACK KAWINGA**'s plot was erroneously written as 33010.

It was PW1's further testimony that on the 17th November 2014, he wrote to the Surveyor General as per the letter appearing at page 35 of their bundle of documents to make corrections on the erroneous number stated above. Unfortunately, the Surveyor General could not rectify same as the 1st Plaintiff's plot was re-entered. The Surveyors General's response appears at page 54 of their bundle of documents to the effect that he awaits the clarification from the 1st Defendant on the status of the land in issue.

In conclusion, PW1 testified that the 1st Plaintiff had developed the plot by erecting a boundary wall around it, putting up a two (2) roomed structure for a caretaker and a gate. However, no further developments could be carried out as half of the said plot had been encroached by **JACK KAWINGA** who built a double story building on half of its plot with a boundary wall around it.

PW1 also explained that the plot in issue by now ought to have been for the 2nd Plaintiff following the Consent Judgment between them appearing at page 33 of their bundle of documents. That the change of ownership could not be effected because the plot was re-entered. He explained that the 1st Plaintiff had borrowed money from the 2nd Plaintiff which it failed to pay and the 2nd Plaintiff obtained a Judgment in its favour appearing at page 18 of their bundle of documents. It was PW1's prayer that the re-entry be reversed and the property pass to the 2nd Plaintiff.

PW2 was **MUHAMED MOHAMUD ABDULWAHID ALI** also a businessman running the 2nd Plaintiff's Company. His brief testimony was that the 1st Plaintiff owed the 2nd Plaintiff the sum of **US$ 55,000.00** which culminated into a Consent Judgment for the said plot in issue to be transferred to the 2nd Plaintiff. In the process of effecting change of ownership PW2 was informed that the said plot had been re-entered in 2013.

PW2 expressed surprised about the re-entry because in September 2011 he had placed a caveat on the said plot. It was his prayer that the said plot be given to them as they had waited for six (6) years to have their plot.

The last witness the Plaintiffs called was **PAUL PHIRI**, a Senior Land Surveyor with Survey Department of the Ministry of Lands under the Surveyor General's Office who testified as **PW3**. He stated that he had been a Surveyor for 30 years both at Regional Survey and at the Headquarters where he carries out field surveys and examines documents lodged by other private Surveyors for approval by the Surveyor General.

PW3's testimony was that in the year 2004, a verification exercise was done by the Surveyor General's Office to determine the relationship between plots 20972 and 20973 Lusaka. When the Surveyor went on the ground, he discovered that the two (2) properties were overlapping or there was an encroachment that was caused by the two (2) different surveyors who had carried out the surveys. As a result of the encroachment, the Surveyor General wrote a letter appearing at page 1 of the Plaintiffs' bundle of documents

dated 13th December 2004 informing the parties affected to stop developments until the problem was sorted out.

It was PW3's further testimony that after a period of time another request was made through the Provincial Office for another verification to be done as the matter had taken time to be sorted out. However, the Surveyors could not go on the ground as a search at Lands and from the Commissioner of Lands, stand 20973 had been cancelled and was not existing. Thus the Surveyors had been waiting for clarification from the 1st Defendant concerning the same as per the communication appearing at page 54 of the Plaintiff's bundle of documents which clarification had not yet been received.

Regarding the current status, it was PW3's testimony that as this was a dispute involving two (2) properties in the same area, there was some re-planning that was done. In order to sort out the problem, some properties were cancelled and new properties were created. However, instructions or guidance was still awaited from the 1st Defendant on the old properties and those created after.

Finally, PW3 reiterated the Surveyor General's letter that all the parties affected by the dispute were not supposed to develop their plots. Regrettably PW3 did not know what was currently obtaining on the ground as the second verification had not yet been done as they still await communication from the 1st Defendant and he was unaware of the certificate of re-entry.

That marked the close of the Plaintiffs case.

In his written Submissions, Mr. Phiri, the Learned Counsel for the Plaintiffs submitted that the Plaintiffs had proved their case and prayed for the reliefs sought to be granted to them. Mr. Phiri urged

me to consider the following as fundamental issues in the resolution of this matter: that the 1st Plaintiff had built a wall around the said plot, the Surveyor General had directed that no further development should be carried out pending the rectification of the boundary dispute, the non-compliance with the procedure for re-entry and the different treatment accorded to the 1st Plaintiff by the Defendants.

It was Mr. Phiri's argument that given the fact that the 1st Plaintiff had erected a boundary wall with a gate and constructed two rooms, that amounted to appreciable developments and hence the property was not liable to be entered. Similarly, it was argued that Section 13 of the Lands Act, Chapter 184 of the Laws of Zambia was not complied with as no notice was ever served on the 1st Plaintiff nor the 2nd Plaintiff who had registered its interest in the said property by way of a caveat.

To reinforce his argument on service, Mr. Phiri relied on the Judgment of **CHASHI J**, as his Lordship then was, in the case of **EASTACE SPAITA BOBO & ANOTHER V THE COMMISSIONER OF LANDS & ANOTHER**[1] a copy of which was not availed to me. In that case, Chashi J was attributed to have held as follows:

> ***"As regards service of notice, although this is not provided for in the main body of the provisions of the Lands Act, it has come to be accepted that and judicial notice should be taken to that effect that service of notices is in line with Rule 27 of the Lands (Lands Tribunal) Rules of the Lands Act and should therefore be by registered post to the Lessee's usual address for service. It also follows that the***

evidential burden is on the Commissioner of Lands representing the President to provide proof of such service"

I was also referred to the Supreme Court decision in the case of **SHADREK WAMUSULA SIMUMBA V JUMA BANDA & LUSAKA CITY COUNCIL**[2] in relation to what amounted to *"development."* Section 22 (4) of the Town and Country Planning Act, Chapter 283 of the Laws of Zambia was also relied upon which enacts as follows: -

"(4) In this Act, "development" means the carrying out of any building, rebuilding or other works or operations on or under land or the making of any material changes in the use of the land or buildings...."

Given that the 1st Plaintiff had developed the land in issue, it was contended that the notice of intention to re-enter was not necessary or applicable. Even then, it was argued that the 1st Plaintiff was treated differently from the other land owners whose plots were never developed and notices issued but no such re-entry was effected. He pointed me to the testimony of **PW3** who confirmed that indeed the properties had an overlap which required rectification and the owners were stopped from further development.

On those considerations, I was urged to enter Judgment in favour of the Plaintiffs.

I have considered the pleadings exchanged by the parties, the evidence before me and I have taken into account submissions and arguments made on behalf of the Plaintiffs.

Although the Defendants never attended at trial, this failure does not entitle the Plaintiffs to an automatic Judgment. The Plaintiffs still

bear the onus to prove their claims and to do so to the requisite standard of proof on the balance of probabilities.

From the evidence before me, I find as established and there is no dispute that indeed property known as 20973 Lusaka belonged to the 1st Plaintiff and a Certificate of Title to the same was issued somewhere around 2002 as per the print out of the Lands Register appearing at pages 52 and 53 of the Plaintiffs bundle of documents. And from the said print outs of the Lands Register it is also established that on the 16th September 2011 the 2nd Plaintiff registered a caveat on the said property as an equitable mortgagee. It is also evident from the said register that the 1st Defendant registered his notice of intention to re-enter the said land on 29th October 2013 and subsequently on the 31st October 2013 the certificate of re-entry was registered.

I also find as established that the 2nd Plaintiff had obtained a Judgment against the 1st Plaintiff on 19th April 2013 which culminated into a Consent Judgment sealed by the Supreme Court on 26th December 2013 to the effect that the said property in issue was surrendered to the 2nd Plaintiff.

The issue that falls for determination therefore, is whether or not the said property was validly re-entered by the 1st Defendant.

In order to determine the said issue identified above, it is important to note the reason given for the purported re-entry. Going by the Defendant's defence, it was alleged that the 1st Defendant had issued notices of intentions to re-enter the said property on 12th and 14th June 2013. It appears the Defendants referred to the Newspaper advertisement referred to by **PW1** in his testimony which he came to

learn of after the re-entry appearing at pages 31 and 32 of the Plaintiffs bundle of documents.

From those adverts, it is apparent that plots numbered from **20969 to 20973** were alleged to have been undeveloped and hence the 1st Defendant's intention to re-enter and/or withdraw the offers. To that extent, although the actual notice was not produced in court, it can reasonably be assumed that the 1st Plaintiff's property was re-entered on the allegation that it remained undeveloped.

Was the 1st Plaintiff's land undeveloped to be liable to be re-entered?

According to the testimony of **PW1**, the 1st Plaintiff had built a boundary wall around the said plot with a gate and also built a two (2) roomed shelter. Although the Plaintiffs never pleaded that the said plot was developed, **PW1**'s testimony in that regard is fortified by a letter written from the Surveyors General's Office dated 31st August 2005 to the 1st Defendant where a confirmation of the erection of a boundary wall was made. The said letter appears on page 2 of the Plaintiffs bundle of documents and the relevant portion reads: -

> ***"2. What development are there on these parcels?***
>
> ***A wall was built along boundary lines of stand 20973 in the year 2002. Last year the owner of stand 20972 built a wall blocking the gate of stand 20973 hence leaving him with no access to his premises."***

Clearly, the 1st Defendant was long informed in 2005 that the 1st Plaintiff had built a boundary wall. Am satisfied and as rightly submitted by Counsel for the Plaintiffs, I find that the property in issue was already developed to an appreciable level at the time the

1st Defendant purported to re-enter in terms of the provisions of Sections 22 (4) of the Town and Country Planning Act, and as confirmed by the Supreme Court in the **SHADRECK WAMUSULA SIMUMBA** case[2].

In addition, I find that any further developments on the plot in issue was stopped by the Surveyor General by his letter appearing at page 1 of the Plaintiffs bundle of documents dated 13th December 2004. The said letter was addressed to the 1st Plaintiff and reads as follows:

"RE: ENCROACHMENT ON STANDS 20969,20971,20972,

20973, 33010 AND 33011 CITY OF LUSAKA

Your property is one of the properties affected by the above-mentioned encroachments.

We are here to advise that you stop any developments going on your property. This is to facilitate for the corrections in the surveys involving the above-mentioned properties.

Therefore, all the developers including yourself would only develop the property after the surveyors are rectified.

Signed

D.Mubanga

Surveyor General"

PW3 confirmed that indeed the Surveyor General had written such letter and all the affected persons were not to develop their properties until the encroachment was rectified.

It was, however, strongly pleaded by the Defendants in their defence as follows: -

"7. The Defendants deny the contents of paragraph 7,8,9,10 and 11 of the Plaintiffs Statement of Claim and will aver that the boundary dispute could not have stopped them from developing the said properties."

Quite clearly, it was reasonably expected that no further developments were undertaken given that there were encroachments. It would have been unwise for any of the affected owners to continue with the development which the Surveyor General saw fit to stop. In any case, the Defendants did not deny there being encroachments or boundary disputes. In fact, the issues raised by the 1st Plaintiff in its appeal letter dated 30th May 2014 were never disputed by the 1st Defendant who only regretted that the appeal was late as the land had already been repossessed.

For the above considerations, I find that the erection of a boundary wall amounted to development and the 1st Plaintiff's property was then not liable for re-entry. If that development did not constitute sufficient development in the eyes of the 1st Defendant, I find that that failure was not deliberate as any further development of the said property beyond the wall fence was stopped by the Surveyor General in order to rectify the encroachments. Needless to say that these encroachments were not the fault of the owners of the properties but as testified by PW3, was caused by two (2) different surveyors who had conducted such surveys. And it's only logical that the Surveyor General rectifies the said encroachment so that the owners have correct extents and dimensions of their properties.

In the circumstances of this case, I am satisfied that indeed the 1st Plaintiff was treated differently from the other property owners who were stopped from developing their lands but had their properties not re-entered. It is also evident from the Lands Register printouts in respect of the other properties which were advertised appearing at pages 39 to 50 of the Plaintiffs bundle of documents that those properties were never re-entered as by the dates of those print out being 10th February 2015. Differential treatment to similarly circumstanced persons in prohibited in Zambia.

I now wish to determine whether or not there was a valid re-entry.

The provisions empowering the 1st Defendant to re-enter any property are enacted under Section 13 (1) and (2) of the Lands Act, Chapter 84 of the Laws of Zambia as follows: -

> ***"13. (1) Where a lessee breaches a term or a condition of a covenant under this Act the President shall give the lessee three months' notice of his intention to cause a certificate of re-entry to be entered in the register in respect of the land held by the lessee and requesting him to make representations as to why a certificate of re-entry should not be entered in the register.***
>
> ***(2) If the lessee does not within three months make the representations required under subsection (1), or if after making representations the President is not satisfied that a breach of the term or a condition of a covenant by the lessee was not intentional or was beyond the control of***

the lessee, he may cause the certificate of re-entry to be entered in the register".

The above provisions were long considered by the Supreme Court which guided on how a valid re-entry ought to be made. Silomba JS, as his Lordship then was, held in the case of **ANORT KABWE & CHARITY MUMBA KABWE V JAMES DAKA, ATTORNEY GENERAL & ALBERT MBAZIMA**[3] at pages 17 to 18 as follows: -

> "***The mode of service of the notice of intention to cause a certificate of re-entry to be entered in the register for a breach of the covenant in the lease, as provided for in Section 13 (2) of the Lands Act, is cardinal to the validation of the subsequent acts of the Commissioner of Lands in disposing of the land to another person. We say so because if the notice is properly served, normally by providing proof that it was by registered post using the last known address for the lessee from whom the land is to be taken away, to show why he could not develop the land within the period allowed under the lease. If the land is eventually taken over because of being in breach, despite the warnings from the Commissioner of Lands, the registered owner cannot successfully challenge the action to deprive him of the land. On the other hand, if notice is not properly served and there is no evidence to that effect, as was the case here, there is no way the lessee would know so as to make meaningful representations. It follows that a repossession effected in circumstances where a lessee is not afforded an opportunity to dialogue with the Commissioner of Lands, with a view to having an extension***

of period in which to develop the land, cannot be said to be a valid repossession. In our view, the Commissioner of Lands cannot be justified in making the land available to another developer."

As testified by PW1 and as rightly submitted by Counsel for the Plaintiffs, there was no notification by registered post that the 1st Defendant intended to register a certificate of re-entry on the said land and calling upon the 1st Plaintiff to make representations. Thus, there was no knowing on the part of the 1st Plaintiff of the 1st Defendants intentions. The purported advertisement in the Newspaper did not constitute compliance with the law as guided by the Supreme Court.

It is therefore, clear from the provisions of Section 13 of the Lands Act aforesaid and as guided by the Supreme Court in the **ANORT KABWE** case that non-development of land *per se* does not entitle the Commissioner of Lands to re-enter the land. Rather, the provisions of Section 13 cited above provide a well-intended mechanism by the Legislature through which the Commissioner of Lands engages with developers to establish why the land is not being developed. It is also a mechanism through which a developer can request the Commissioner of Lands based on valid reasons to extend time within which a property can be developed.

In other words, the terms or conditions of a covenant are not cast in concrete. Where the Commissioner of Lands is satisfied that a breach of the terms or conditions of a covenant was not intentional or was beyond the control of a lessee, like in this case, no certificate of re-entry should be registered.

In the instant case, the 1st Plaintiff proved that he was not accorded any opportunity to make representations. In fact, as the Lands Register shows, the 1st Defendant registered his Notice of Intention to re-enter on 29th October 2013 and barely two (2) days later on the 31st October 2013 registered a certificate of re-entry. Thus, the 1st Plaintiff was not given a period of three (3) months within which to make good its breach, if any, contrary to Section 13 of the Lands Act.

The circumstances of this case and as confirmed by **PW3** an officer from the Surveyor General's Office, proves that if there was any un-development, then the same was not intended and was beyond the control of the 1st Plaintiff. The reason was that there was an encroachment on the boundaries which the Surveyor General wanted to rectify and hence stopped any further developments. Under those circumstances, no certificate of re-entry can be registered and the certificate of re-entry registered by the 1st Defendant was null and void.

The Plaintiffs also claimed for damages but no such damage were proved to have been suffered. It is trite that damages are only awarded where a claimant has proved to have suffered any.

I am guided in this regard by the Judgment of the Supreme Court in the case of **J.Z. CAR HIRE LIMITED V MALVIN CHALA & ANOTHER**[5] where Chirwa JS, as Lordship was then, reiterated at page 114 as follows: -

> ***"It is for the party claiming the damages to prove the damage, never mind the opponent's case."***

Although Mr. Phiri urged me in his written submissions to grant the Plaintiffs the full reliefs sought as endorsed on the writ of summons, I cannot award damages to the Plaintiffs as they failed to prove any.

In the result, judgment is hereby entered in favour of the Plaintiffs to the extent that **the Certificate of Re-entry on Stand 20973 Lusaka registered on 31st October 2013 is hereby set aside** and the Defendants are hereby ordered to immediately rectify the Lands Register and restore the said land to the 1st Plaintiff as the registered proprietor.

Costs are awarded to the Plaintiffs which costs are to be taxed in default of agreement.

Leave to appeal is hereby granted.

Dated at Lusaka this 26th day of June 2020.

C. CHANDA
JUDGE