

HONORIUS MAURICE CHILUFYA AND CHRISPIN HALUWA KANGUNDA

SUPREME COURT

NGULUBE, C.J., MUZYAMBA AND CHIBESAKUNDA, JJ.S.
ON 7TH JUNE AND 7TH SEPTEMBER, 1999.
(S.C.Z. JUDGMENT NO. 29 OF 1999)
APPEAL NO. 103 OF 1998

Flynote

Land Law – Issuance of Certificate of Title.

Headnote

This action concerned property known as Plot No. 4, Mukulungwe, Ndola. The property was first allocated to the appellant on state lease for fourteen years from 1st January, 1978, and he was issued with a Certificate of Title No. 47570.

For the appellant: Mr.M.Nyirenda, of Kafunda and Company.
For the respondent: Mr. L.M. Matibini, of Matibini and Company.

Judgment

NGULUBE, C.J.: delivered the judgment of the court.

On 1st June ,1999, when we heard this appeal, we allowed it with costs; we ordered that the Certificate of Title issued to the respondent must be cancelled; we ordered that a 99 year lease and the necessary Certificate of Title must be issued to the appellant and that the records at the Lands and Deeds Registry must be rectified accordingly. We said we would give our reasons later, and this we now do.

The action concerned the property known as Lot No. 4, Munkulungwe, situated at Ndola. It was not in dispute that the property was first allotted to the appellant Mr. Chilufya on a state lease for fourteen years from 1st January ,1978, and he was issued with a Certificate of Title No. 47570. Under the terms of the lease, the appellant had to put up developments of not less than K20,000 (twenty thousand). For its part, the state covenanted to come and give Mr. Chilufya a lease for 99 years on payment of the survey fees if he would not have been in breach of his obligations.

There was uncontrovertible and conclusive evidence that the appellant put up developments worth far more than twenty thousand kwacha, infact to the tune of K143 million. As the Town Clerk of Ndola confirmed in a letter dated 17th October,1997, to the Commissioner of Lands, the appellant has constructed two houses built of concrete blocks and iron roofing sheets; he has installed ZESCO electricity which cost him K13 million; he has constructed two fish ponds; a pump house; a water reservoir; a canal and two wells. The appellant has cleared the land and has been growing horticultural produce. The appellant was paying ground rent. At the end of the 14 year lease, the Provincial Lands Officer for the Copperbelt Province wrote to the Commissioner of Lands asking him to prepare a 99 years lease in favour of Mr.Chilufya.

The foregoing facts were not capable of being disputed. Meanwhile, unbeknown to the appellant, the respondent surreptitiously obtained a Certificate of Title No. L1719 and a 99 year

lease to the same property. He sued the appellant for vacant possession. The respondent was assisted in getting this land by two officers who shamelessly wrote untruths in their letters to the Commissioner of Lands. The Director of Legal Services of the Ndola City Council - (apparently without the blessing of his superior, the Town Clerk who later disowned the falsehoods) - wrote as follows:

"MS/lot 4 Munkulungwe

7th November,1996.

The Commissioner of Lands,
P.O Box 30069,
LUSAKA.

Dear Sir,

RE: LOT 4 MUNKULUNGWE : NDOLA

Refer to my previous correspondence and your subsequent Notice to re-enter the above Lot.

I wish to inform you that there is no development on the same even after expiration of your Notice.

Could you therefore commence final re-entry so that it is allocated to a serious developer.

Yours faithfully,

DIRECTOR OF LEGAL SERVICES."

The Senior Registrar of Lands and Deeds based at Ndola wrote as follows:

"17th December, 1996.

The Commissioner of Lands,
Lands Department,
P.O Box 30069,
LUSAKA.

RE: LOT/4-MUNKULUNGWE-NDOLA C.H. KANGUNDA

I have received a representation from Mr. C.H. Kangunda a prospective applicant for Lot No. 4/M Munkulungwe-Ndola.

According to Mr. Kangunda the Ndola City Council had unfairly denied him the opportunity to acquire either of Lots Nos. 27, 94, 95 and 107 Munkulungwe by deliberately frustrating his efforts.

He has shown me a series of correspondence from the Ndola City Council over these Lots in which for example Lot 27/Munkulungwe he was even recommended for by the Council but later again fell out of favour and the same went to somebody else.

The latest being Lot/4, Munkulungwe where the Council is resisting to recommend him despite having struggled to have the same repossessed with the blessing of the Ndola City Council.
