

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA
(Civil Jurisdiction)

APPEAL NO.157/2009

BETWEEN:

RONALD MUSONDA

APPELLANT

AND

MASHAMBA RAPHAEL KASONDE

RESPONDENT

Coram: Phiri, Hamaundu and Wood, JJS

On 6th May, 2014 and 31st October, 2022

For the Appellant : Messrs ABM Advocates

For the Respondent : Messrs SLM Legal Practitioners, agents for
Messrs Abha Patel & Associates

JUDGMENT

HAMAUNDU, JS, delivered the Judgment of the Court

Cases referred to:

1. **Henry Siwale & Others v Ntapila Siwale (1999) ZR 84.**
2. **Village Headman Albert Phiri Mupwaya and Kamaljeet Singh v Mathew Mbaimbi, Appeal No. 41 of 1999**

1.0 INTRODUCTION

1.1 This appeal is against the decision of the Hight Court sitting at Kasama (Kabuka, J, as she then was). The dispute, however, comes all the way from the subordinate court. When we heard the appeal on 6th May, 2014, we sat with Mr Justice G.S. Phiri, who has since retired. This judgment is, therefore, by majority.

2.0 THE CASE

2.1 The parties have, since 2006, been in dispute over a piece of land measuring about 100m by 100m in size in Kasama. According to the respondent, the said piece of land belongs to him. The appellant on the other hand insists that the piece of land is part of a much bigger piece of land that belongs to him, and for which he had already applied to obtain title deeds.

2.2 There was evidence before the subordinate court that Senior Chief Mwamba had tried to resolve their dispute by sending his retainer to the site to show the two parties

where the boundary was. The subordinate court found that both parties were given plots by Senior Chief Mwamba in customary land. The court found, particularly, that the respondent was given his in 1994 while the appellant was given the land in 1995. Another important finding of fact that the trial court made was that the parties were given separate plots which were merely next to each other.

- 2.3 The appellant appealed to the High Court against those findings. The latter court particularly noted the evidence of the chief's attempt to show the parties where the boundary was. It also confirmed the trial court's other findings and held that the respondent held prior interest in his land, which interest was protected by **section 7(1) of the Lands Act**.

3.0 THE APPEAL

- 3.1 The appellant is now before us on the following two grounds of appeal:

- 1. That the court below erred in law and fact when it failed to apply its mind to the fact that when Senior Chief Mwamba gave the appellant the**

piece of land in 1995, which had also partly been given to the respondent in 1994, it meant that the Chief had withdrawn the respondent's piece of land from him (the respondent).

2. That the court erred in law and fact when it failed to apply itself to the facts on record that Senior Chief Mwamba recommended to the Kasama Municipal Council for the appellant to have title deeds to the said piece of land. This was further a confirmation that no other person had rights to the said piece of land.

3.2 The appellant's argument in both grounds is that Senior Chief Mwamba, as the custodian of land under customary tenure, had withdrawn the piece of land from the respondent and given it to the appellant. To support this argument, the appellant points out that his subsequent application to obtain title deeds for the customary land was consented to by the chief.

3.3 The respondent's position is that the argument by the appellant is erroneous because, as the learned trial judge found, there was no evidence that the respondent was ever dispossessed of his piece of land by the Chief: Instead,

there was even evidence that the Chief had sent his retainer to go to the site and clearly demarcate the two separate pieces of land. The respondent relies on two decisions of this court for that submission. There is the case of **Henry Siwale & Others v Ntapila Siwale**⁽¹⁾. There is also the case of **Village Headman Albert Phiri Mupwaya and Kamaljeet Singh v Mathew Mbaimbi**⁽²⁾.

4.0 OUR DECISION

4.1 The argument by the appellant that Senior Chief Mwamba had withdrawn the land that he had given to the respondent flies in the teeth of the finding of fact made by the two courts below, namely, that when senior Chief Mwamba came to hear of the dispute between the two parties, he sent his retainer to the site in order to clearly demonstrate to the parties their boundaries. That move, on the part of the Chief, clearly showed that the chief did not withdraw the piece of land from the respondent.


4.2 The second limb of the appellant's argument, namely, that when the Chief consented to the appellant's application to obtain title deeds to his piece of land, he effectively

withdrew the respondent's portion of land from him, must also fail. This is because; first, the move that the chief took to show the parties their respective pieces of land could only mean that the chief had given his consent by mistake. Secondly, we held in the case of **Village Headman Albert Phiri Mupwaya and Kamaljeet Singh v Mathew Mbaimbi⁽²⁾**, following a decision we had made a little earlier in the case of **Siwale & Others v Siwale**, both of which cases have been cited by the respondent, that in terms of **Section 3** of the **Lands Act, Chapter 184** land held under customary tenure cannot be alienated without consulting any person whose interest might be affected by the grant.

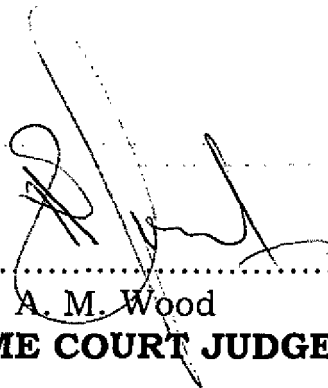
- 4.3 In this case, even assuming that it was the chief's intention to alienate the respondent's piece of land to the appellant, such alienation would be null and void because the respondent who held the piece of land under customary tenure, and whose interest was to be affected by such alienation, was not consulted.

5.0 CONCLUSION

5.1 For the foregoing reasons, we find no merit in the two grounds filed and, consequently, in the whole appeal. We uphold the decisions of the two courts below and dismiss this appeal. The costs of these proceedings are awarded to the respondent.



.....
E. M. Hamaundu
SUPREME COURT JUDGE



.....
A. M. Wood
SUPREME COURT JUDGE