

IN THE SUPREME COURT OF ZAMBIA  
HOLDEN AT LUSAKA

(172)  
SCZ JUDGMENT NO. 7 OF 2008  
APPEAL NO. 195 OF 2004

(Civil Jurisdiction)

B E T W E E N:

**HUMPHREY BANDA**

APPELLANT

**AND**

**CHONGWE DISTRICT COUNCIL**  
**MPHANDE AND OTHERS**

1ST RESPONDENT  
2ND RESPONDENTS

**CORAM:** Chirwa, Mumba and Silomba, J.J.S.  
On 13<sup>th</sup> July, 2006 and 31<sup>st</sup> January, 2008.

For the Appellant: In Person

For the Respondent: Not Present

---

**J U D G M E N T**

---

**SILOMBA, J.S., delivered the judgment of the Court.**

At the outset, we regret the delay in the delivery of the judgment, which could not be delivered much earlier due to the heavy schedule of work.

This is an appeal against the judgment of the Lands Tribunal dated the 24<sup>th</sup> day of March, 2004. The brief facts of the case are that Lot No. 9186/M, Chongwe, was being used by UNIP as a conference centre for Lusaka Province. In

1995 the Lot was handed over to the 1<sup>st</sup> respondent by the Government. The 1<sup>st</sup> Respondent later acquired a certificate of title over the Lot.

In order to avoid vandalism of structures that were built within Lot No. 9186/M, the 1<sup>st</sup> respondent decided to allow some individuals to occupy habitable buildings within the Lot. Sometime in 1996, the 1<sup>st</sup> respondent decided to dispose of some structures within the Lot following a directive from the Government to sell Council houses to sitting tenants.

Before the houses could be sold, the 1<sup>st</sup> respondent ensured that the land within Lot No. 9186/M was planned and demarcated, taking into account the existing structures. Later, the structures were individually valued after they were numbered as subdivisions of Lot No. 9186/M.

In 1998, the 1<sup>st</sup> respondent advertised all the subdivisions within the Lot. Of relevance to this appeal, the appellant applied for Subdivision 'R' while Joseph Bauleni applied for subdivision 'S'. The two applicants were given offers for their respective subdivisions and they paid for them.

It would appear the appellant was not happy with the allocation of Subdivision 'S' to Joseph Bauleni. Consequently, he decided to appeal to the Lands Tribunal, alleging that when the land was being planned by the Provincial Planning Officer from Lusaka it was recommended that Subdivisions 'R' and 'S'

were too close to each other and should, therefore, be occupied by one family. He further alleged that he was in occupation of Subdivision 'R' and was at the same time using Subdivision 'S'.

His prayer before the Tribunal was that he be allocated Subdivision 'S' as well. The Lands Tribunal declined to entertain the prayer because the appellant never applied for Subdivision 'S' following an advertisement by the 1<sup>st</sup> respondent, hence this appeal.

There are fifteen grounds of appeal filed by the appellant as per the memorandum of appeal but only eight were covered in the heads of argument on which he relied entirely. In the view we take of this appeal, we do not find it necessary to set out the grounds of appeal and summarize the heads of argument. We, however, assure the parties that we have scrutinized the record of appeal, the judgment of the Lands Tribunal and the heads of argument filed by the appellant.

According to the judgment of the Lands Tribunal, the appeal before it was decided on affidavit evidence in accordance with Rule 12 of the Tribunal Rules. Our perusal of the affidavit evidence and the record shows that the appellant did not apply to be considered for Subdivision 'S' following the advertisement put up by the 1<sup>st</sup> respondent. In the circumstances, there was no cause of action before the Lands Tribunal for which the 1<sup>st</sup> respondent could be found liable. If the appellant

had applied for Subdivision ‘S’ and his application was rejected he could have then challenged the decision of the 1<sup>st</sup> respondent, particularly if he felt that there were under-hand tactics or methods used in rejecting his application for the subdivision.

We note that Subdivisions ‘S’ and ‘R’ form part of Lot No. 9186/M, Chongwe, which had a superior title. The appellant had no title to Subdivision ‘R’ and likewise there was no title to Subdivision ‘S’ by Bauleni. Therefore, any internal alterations, including the change of sublessees of the subdivisions, by whatever process, would have no effect on the overall title to Lot No. 9186/M. We also note that, the decision to allocate internal subdivisions to successful applicants was the responsibility of the 1<sup>st</sup> respondent. Whether or not a decision of the 1<sup>st</sup> respondent in this respect is appealable to the Lands Tribunal is a matter of law.

In Section 15 (1) of the Lands Act, Chapter 184 of the Laws, in relation to applications to the Lands Tribunal, it is provided that÷

**15. (1): Any person aggrieved with a direction or decision of a person in authority may apply to the Lands Tribunal for determination.**

**(2): In this section “person in authority” means the President, the Minister or the Registrar.**

Further, in Section 22 of the Lands Act, the jurisdiction of the Lands Tribunal is confined to matters under the Lands Act. In the event, our

interpretation of the law under the Lands Act is that it is only the decision of the President (or Commissioner of Lands as a delegate of the President), the Minister of Lands and the Registrar of Lands and Deeds, which can be challenged before the Lands Tribunal and none others. Accordingly, the Lands Tribunal had no jurisdiction to entertain the dispute emanating from the decision of the 1<sup>st</sup> respondent.

We shall dismiss the appeal on the ground that the appellant went to a wrong forum and besides there was no cause of action disclosed. Each party shall bear its own costs.

.....  
**D. K. CHIRWA**  
**ACTING DEPUTY CHIEF JUSTICE**

.....  
**F. N.M. MUMBA**  
**SUPREME COURT JUDGE**

.....  
**S. S. SILOMBA**  
**SUPREME COURT JUDGE**

