

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

**2016/HP/1106**

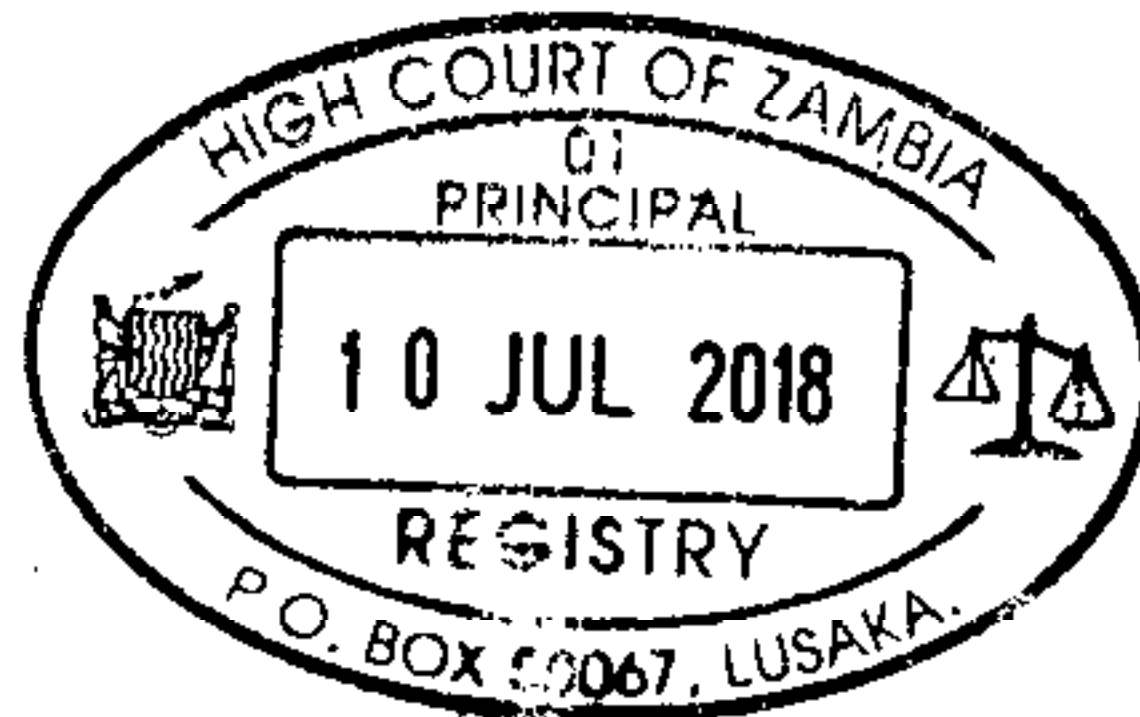
**BETWEEN:**

LAWERENCE MUKOMA

**PLAINTIFF**

**AND**

MIRRIAM NGULUBE  
KELVIN MWEENE



**1<sup>ST</sup> DEFENDANT  
2<sup>ND</sup> DEFENDANT**

**Before Hon. Mrs. Justice G. Milimo- Salasini in Chambers the 10<sup>th</sup> day of July, 2018.**

For the Plaintiff: In Person  
For the 1<sup>st</sup> Defendant: In Person  
For the 2<sup>nd</sup> Defendant: In Person

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

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**Cases referred to:**

1. Smith v Carbibe Chemical Corp, 226 S. W. 3d 52 (Ky. 2007).
2. Walker v Murphree, (Miss. Ct. App 1998).
3. LePrethe v Progressive Land Corporation, (La. App. 3 Cir. June 19, 2002).
4. Lacombe v Carter (La. App 3 Cir, 2008).

**Work referred to:**

1. Halsbury's Laws of England, 3<sup>rd</sup> Edition, Vol.11.
2. McGregor on Damages, 16<sup>th</sup> Edition.

This action was commenced by way of Writ of Summons filed on 3<sup>rd</sup> June, 2016 by **Lawrence Mukoma** (hereinafter called "the Plaintiff"). The action is against **Mirriam Ngulube** (hereinafter called "the 1<sup>st</sup> Defendant") and **Kelvin Mweene** (hereinafter called "the 2<sup>nd</sup> Defendant").

The Plaintiff claims;

- i. Possession of the land measured 25m X 30m situated in Garden House Area, Lusaka West Sub-Division F/N1/1938.
- ii. Damages for trespassing and unlawful entry into the property.
- iii. Damages for inconveniences and trauma suffered by the Plaintiff.
- iv. Damages for disturbing the Plaintiff to develop the property.
- v. Compensation for disturbing the Plaintiff to develop the property.
- vi. Declaration or order that any sale and purchase of the plot in issue if any by anyone is null and void as it had no blessing from the Plaintiff or his relatives.
- vii. Costs.
- viii. Any compensatory relief the Court may deem fit.

The Writ of Summons is also filed with a statement of claim and it states that;

***The Plaintiff on 17<sup>th</sup> March, 2009 was offered a plot in Garden House Area to purchase and the Plaintiff paid an amount of K8, 000.00 towards the said plot to Mirriam Ngulube, the 1<sup>st</sup> Defendant and the payment was witnessed by the Resident Development Committee.***

On 17<sup>th</sup> March, 2009 an Agreement was entered into between the 1<sup>st</sup> Defendant and the Plaintiff to sell a piece of Land measuring 25 X 30 and the 1<sup>st</sup> Defendant offered the same piece of land to the 2<sup>nd</sup> Defendant. The 2<sup>nd</sup> Defendant demolished the Plaintiff's foundation box without a Court order.

The Plaintiff averred that the Defendants had no legal documents or proper reasons to inconvenience him. In the same month that the Plaintiff purchased the said piece of land, the Plaintiff proceeded to construct a four (4) roomed house and roofed it. And on the other part of the piece of land, the 2<sup>nd</sup> Defendant constructed a three (3) roomed house and encroached on the Plaintiff's foundation box without the Plaintiff consent.

The 2<sup>nd</sup> Defendant has since refused to hear the Plaintiff's plea to stop encroaching on the land or stop construction works on the said piece of land. The Plaintiff's reported the matter to the Ward Development Committee and Lusaka Central Police Station. However, the police refused to handle the matter and stated that it was beyond their Jurisdiction.

The Plaintiff also stated that the 2<sup>nd</sup> Defendant is suspected to have acquired an occupancy licence fraudulently from Lusaka City Council for the portion of land which he did not pay for.

The 2<sup>nd</sup> Defendant has moved on to the property and is carrying out construction works thus causing damage to the Plaintiff's house. The Plaintiff stated that the Defendants had no right of claim over the property and cannot be allowed to use a name of the deceased person to rob the Plaintiff's property and use violence or force to deprive the Plaintiff of his interest and rights over the property.

The Plaintiff further stated that the Defendants are illegal squatters and their action is violent and should not be allowed to continue developing the property and threatening the Plaintiff or his agents or servants. The Defendants refusal, harassment and victimization has resulted in the Plaintiff suffering loss and damage.

On the 13<sup>th</sup> June, 2016 the 2<sup>nd</sup> Defendant filed into Court a Memorandum of Appearance and a Defence. In his Defence, the 2<sup>nd</sup> Defendant disputes the contents of paragraph 3 of the Plaintiff's claim and further states that he will put the Plaintiff to strict proof as

the 1<sup>st</sup> Defendant attests that the agreement was to buy a piece of land at K4,500.00 which was paid by the 2<sup>nd</sup> Defendant to the 1<sup>st</sup> Defendant.

The 2<sup>nd</sup> Defendant denies paragraph 4 of the Plaintiff's claim. He states that the Plaintiff bought the same land that was sold to both the Plaintiff and the 2<sup>nd</sup> Defendant is false but instead it was the Plaintiff and the 2<sup>nd</sup> Defendant that bought the plots from the 1<sup>st</sup> Defendant and merely sharing the same boundary.

The 2<sup>nd</sup> Defendants further denies paragraph 5, 6 and 7 of the Plaintiff's claim. He states that he bought the land in 2007 from Victor Kasweka and it was later discovered that the said land never belonged to Victor Kasweka but to the 1<sup>st</sup> Defendant. This was discovered after the 1<sup>st</sup> Defendant took the matter to Court claiming her ownership of the land in dispute. The 2<sup>nd</sup> Defendant bought the same land from the 1<sup>st</sup> Defendant in 2007 before the Plaintiff bought the land in question in 2009. The 2<sup>nd</sup> Defendant states that he only admits to paragraph 1 and 2 of the Plaintiff's claims and denies every other allegation contained in the Plaintiff's Statement of Claim.

On 1<sup>st</sup> July, 2016 the Plaintiff served the 1<sup>st</sup> and 2<sup>nd</sup> Defendants a Notice of Hearing for a hearing to be held on 14<sup>th</sup> July, 2016. The Plaintiff filed an Affidavit of Service on the 13<sup>th</sup> July, 2016 which showed proof of service and informed the Court that both the 1<sup>st</sup> and 2<sup>nd</sup> Defendant had refused to acknowledge the Notice of Hearing.

On the 14<sup>th</sup> July, 2016 the Court issued a Subpoena Duces Tecum that commanded the 1<sup>st</sup> and 2<sup>nd</sup> Defendant to attend Court on 19<sup>th</sup> July, 2016 at 14:30 hours for commencement of trial.

On the 19<sup>th</sup> July, 2016 the Plaintiff, **Mr. Lawrence Mukoma** testified that on the 9<sup>th</sup> March, 2009 he went to City Market in Lusaka and he saw an advert of a plot in Garden Compound. There was a mobile number on the advert and the Plaintiff contacted Mr. Ngulube of Chilanga. The Plaintiff mentioned that he was interested in the advertised

plot. Since Mr. Ngulube was in Chilanga he referred the Plaintiff to his sister who resides in Kanyama/Garden to view the plot.

The Plaintiff called Mr. Ngulube's sister who took him to the advertised plot on the 10<sup>th</sup> March, 2009. The Plaintiff was shown a 25m X 25m plot which was demarcated by some poles. Mr. Ngulube's sister then mentioned to the Plaintiff that she had a bigger plot than her brother's plot. The Plaintiff suggested to view the other plot that Mr. Ngulube's sister had mentioned.

The Plaintiff and Ms. Ngulube (Mr. Ngulube's sister) who is the 1<sup>st</sup> Defendant went 300m away from the earlier viewed plot. Her plot was 25m X 30m and the Plaintiff told the 1<sup>st</sup> Defendant that he was interested in hers and not her brother's plot. The Plaintiff convinced the 1<sup>st</sup> Defendant about his interest in buying the plot and not her brother's plot.

The Plaintiff told the 1<sup>st</sup> Defendant that he would have money in a weeks' time to purchase the plot and the 1<sup>st</sup> Defendant agreed. The 1<sup>st</sup> Defendant took the Plaintiff to the Chairman, Mr. Kabalukila in the Resident Development Committee. Mr. Kabalukila gave the Plaintiff an offer letter for the plot and another document for the Plaintiff and the 1<sup>st</sup> Defendant to sign. The Plaintiff was charged K8, 000.00 to purchase the plot but the Plaintiff had only a K4,500.00 at that time which the 1<sup>st</sup> Defendant accepted and signed for. All the other documents were signed and both the Plaintiff and the 1<sup>st</sup> Defendant signed an Agreement with the Terms and Conditions of Purchasing the plot in the presence of their witnesses who also signed as they witnessed.

In September, the Plaintiff went to Sudan. Before he left for Sudan he gave the 1<sup>st</sup> Defendant an amount of K2, 000.00 for building a foundation whilst he was in Sudan. When the Plaintiff came back, he found the foundation had not been built. When the Plaintiff approached the 1<sup>st</sup> Defendant about the K2, 000.00 he had left for her to build

the foundation, the 1<sup>st</sup> Defendant responded that she had used the money because the Plaintiff had not completed the agreed amount paid towards the plot.

The Plaintiff engaged a bricklayer to construct a two (2) bedroomed house and in 2015 he extended the two (2) bedroom with two (2) rooms. The Plaintiff later left for Central African Republic (C.A.R). Whilst he was away, he received a call from his care taker that his neighbor had started to encroach in his plot. The Plaintiff returned from Central African Republic (C.A.R) on the 5<sup>th</sup> May, 2016, went to the plot and discovered that indeed this neighbor, the 2<sup>nd</sup> Defendant had built on his own plot but had encroached in to the Plaintiff's plot. The Plaintiff could not open his windows due to the 2<sup>nd</sup> Defendant having built his house very close to the Plaintiff's house. The Plaintiff approached the 2<sup>nd</sup> Defendant to find out how he had built closely to his house and encroached in his plot. However, the 2<sup>nd</sup> Defendant refused to dialogue with the Plaintiff because he had also bought the plot from the 1<sup>st</sup> Defendant.

The Plaintiff and the 2<sup>nd</sup> Defendant then decided to visit the 1<sup>st</sup> Defendant whom they believed would help them demarcate the plots to end the confusion. The 1<sup>st</sup> Defendant told the Plaintiff that his plot was a 25m X 30m and told the Plaintiff and the 2<sup>nd</sup> Defendant to go and measure the plot but refused to measure the plot herself for the reason that the plot belonged to someone else and the matter was in court.

When the Plaintiff and the 2<sup>nd</sup> Defendant went back to have the plot measured, it was discovered that the 2<sup>nd</sup> Defendant had built 5 meters into the Plaintiff's yard. The Plaintiff asked the 2<sup>nd</sup> Defendant why he had built a foundation in the Plaintiff's plot and the 2<sup>nd</sup> Defendant replied that he was following the demarcation that the 1<sup>st</sup> Defendant had made as she was the owner of the plot.

The Plaintiff pleaded with the 2<sup>nd</sup> Defendant to sit down and resolve the problem but the 2<sup>nd</sup> Defendant did not compromise. That is how the Plaintiff filed a Writ of Summons into court.

The Plaintiff prays for the Court to help him reclaim his land and he wishes to be awarded costs and all claims in his statement of claim.

In cross examination by the 2<sup>nd</sup> Defendant, the Plaintiff stated that the 2<sup>nd</sup> Defendant did not tell him about the demarcation but instead told the caretaker after he had extended his two (2) bedroomed house.

The Plaintiff also stated that he had gone alone to the 1<sup>st</sup> Defendant's house to inform her that the 2<sup>nd</sup> Defendant had built on his plot. This was in response to the 2<sup>nd</sup> Defendant's question of whether they had gone together or not to complain about the encroachment by the 2<sup>nd</sup> Defendant in to the Plaintiff's plot. The Plaintiff then closed his case.

The 2<sup>nd</sup> Defendant, **Kelvin Mweene**, a bus driver gave his testimony. He stated that he bought his plot from one Victor Kasweka who was the Youth Chairman of the Movement for Multiparty Democracy (MMD). Mr. Kasweka had an office where he and his committee were selling plots.

The 2<sup>nd</sup> Defendant stated that he built a two (2) roomed house on his plot and the 1<sup>st</sup> Defendant approached him and asked him who had sold the plot to him as she claimed it was her plot.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendant tried to contact Mr. Victor Kasweka but all was in vain. Later Mr. Victor Kasweka met the two at Engen Filling Station on Mumbwa Road but Mr. Victor Kasweka and 1<sup>st</sup> Defendant caused some confusion at the meeting. The 2<sup>nd</sup> Defendant told the 1<sup>st</sup> Defendant that he could only manage to pay a K4 million. The 1<sup>st</sup> Defendant refused the K4 million offer but requested to be paid a sum of K7.5 million. Mr. Victor Kasweka offered to top up an amount of K3.5 million and the remaining amount was to be paid by the 2<sup>nd</sup> Defendant. That is how the meeting was concluded.

The 2<sup>nd</sup> Defendant also stated that after the meeting was concluded, Mr. Victor Kasweka refused to pay the money amounting to K3.5 million that he had promised to pay the 1<sup>st</sup> Defendant. This was because Mr. Victor Kasweka claimed to have helped the 1<sup>st</sup> Defendant purchase the plot at K500.

The 2<sup>nd</sup> Defendant stated that when the Plaintiff extended his boundary to avoid confusion, he got the Plaintiff's mobile number from the Plaintiff's caretaker so that he could talk to him about the boundary. However, after talking to him on phone the Plaintiff did not show up but instead sent a bricklayer to put windows on the 2<sup>nd</sup> Defendant side of the plot.

The 2<sup>nd</sup> Defendant dug a foundation according to the plot he was given and built a three (3) roomed house. The 2<sup>nd</sup> Defendant further states that the Plaintiff's caretaker called him and told him about the development on the 2<sup>nd</sup> Defendant's plot.

When the Plaintiff heard that the 2<sup>nd</sup> Defendant had started building on his plot, the Plaintiff called for a meeting to discuss the demarcation and noted that the 2<sup>nd</sup> Defendant had encroached his plot by one meter. The 2<sup>nd</sup> Defendant denied this accusation by the Plaintiff and then showed where the demarcation was by using the guava tree as a landmark. The 2<sup>nd</sup> Defendant further stated that he and the Plaintiff decided to visit the 1<sup>st</sup> Defendant on the issue of the demarcation of the one meter and because the 1<sup>st</sup> Defendant was the one that sold the plots to both the Plaintiff and 2<sup>nd</sup> Defendant.

The 1<sup>st</sup> Defendant told the Plaintiff and the 2<sup>nd</sup> Defendant that the demarcation was where she had put a foundation and some blocks up to the guava tree. The Plaintiff denied the explanation of the 1<sup>st</sup> Defendant and then decided to bring the matter to court. The matter was adjourned to 2<sup>nd</sup> August, 2016 for a site visit but the 1<sup>st</sup> Defendant was not in attendance.



On the 5<sup>th</sup> September, 2016 a Bench Warrant to arrest the 1<sup>st</sup> Defendant was granted. The Bench Warrant was returnable on the 29<sup>th</sup> September, 2016 for continued trial. On the 29<sup>th</sup> September, 2016 the Plaintiff stated that he had no information on the whereabouts of the 1<sup>st</sup> Defendant. The Court adjourned the matter to the 28<sup>th</sup> February, 2017 and extended the Bench Warrant against the 1<sup>st</sup> Defendant. The Court further ordered an Injunction against the 2<sup>nd</sup> Defendant restraining him from undertaking any additional activity of erecting any new structure or extending any existing structure pending full determination of the case.

On the 15<sup>th</sup> December, 2016, the Court granted another extension of the Bench Warrant against the 1<sup>st</sup> Defendant for non-attendance of Court sessions which was returnable on 8<sup>th</sup> February, 2017.

On the 8<sup>th</sup> February, 2017 trial continued with the Plaintiff cross-examining the 2<sup>nd</sup> Defendant. During cross-examination by the Plaintiff, the 2<sup>nd</sup> Defendant stated that he bought the plot in November, 2009 and he found the land bare and started building on his plot and later moved into his house. The 2<sup>nd</sup> Defendant stated that he bought the land earlier because at the time he bought it, the land was bare (nothing was built on it) from the 1<sup>st</sup> Defendant and he bought a 20m X 30m piece of land.

To prove the measurements of the plot, the 2<sup>nd</sup> Defendant stated that he had proof of the measurements from the 1<sup>st</sup> Defendant but had no documentation to show the proof. The 2<sup>nd</sup> Defendant further stated that the other proof was from the site visit that was undertaken because at the site visit, he showed the Court the demarcation by the beacons on either sides and one of the beacons he claimed to have shown the Court was a guava tree.

In response to the Bench Warrant, the 1<sup>st</sup> Defendant attended Court and testified on the 8<sup>th</sup> February, 2017, she stated that she knew the Plaintiff and that she is the one

who sold the plot to him. She also knew the 2<sup>nd</sup> Defendant because the Movement for Multi-Party Democracy had sold one of her plots to him, and the plot is next to the Plaintiff's plot.

The 1<sup>st</sup> Defendant discovered that the 2<sup>nd</sup> Defendant had started building on her plot. She approached the 2<sup>nd</sup> Defendant and the person that sold the plot, one Victor Kasweka concerning her plot and Victor Kasweka apologized for selling the 1<sup>st</sup> Defendant's plot to the 2<sup>nd</sup> Defendant. She testified that he further stated to the 1<sup>st</sup> Defendant that he did not know that the plot belonged to her. That by that time the 2<sup>nd</sup> Defendant had already built a two (2) roomed house. The 1<sup>st</sup> Defendant, 2<sup>nd</sup> Defendant and one Victor Kasweka signed an Agreement in the month of November, 2010. The Agreement was that the 2<sup>nd</sup> Defendant was to pay the 1<sup>st</sup> Defendant an amount of K7, 500 for her plot and was going to pay it in three (3) installments from the month of November, 2010. The 2<sup>nd</sup> Defendant did not pay the 1<sup>st</sup> Defendant as agreed in November, 2010. After non-payment of the agreed money, the 1<sup>st</sup> Defendant decided to take the 2<sup>nd</sup> Defendant to Court for encroaching on her plot and breaching the Agreement signed in November, 2010.

The 1<sup>st</sup> Defendant also stated she sold her plot to the Plaintiff in 2008 at an amount of K4, 500. She began to build for the Plaintiff when he went out of the country for work purposes. That the Plaintiff would refund the 1<sup>st</sup> Defendant the money she used for building on the Plaintiff's plot.

The 1<sup>st</sup> Defendant testified that she started with a foundation and then later put beacons using bricks and a guava tree which was the boundary between the Plaintiff and 1<sup>st</sup> Defendant's plot. After a period of about 3 years, the 1<sup>st</sup> Defendant saw the Plaintiff and the 2<sup>nd</sup> Defendant at her house. They wanted her to show them where the demarcation was because they were in dispute over where the demarcation for their plots was.

The 1<sup>st</sup> Defendant showed the Plaintiff and the 2<sup>nd</sup> Defendant the demarcation of their plots respectively. That the Plaintiff did not agree with the 1<sup>st</sup> Defendant's measurements of the demarcation and accused her of accepting some money from the 2<sup>nd</sup> Defendant and not supporting him. The 1<sup>st</sup> Defendant maintained her position of the demarcation and stated that she did not understand why the Plaintiff and 2<sup>nd</sup> Defendant were in dispute.

The 1<sup>st</sup> Defendant requested the Court to visit the plot again so that she could show the Court the demarcation of the plot that was in dispute by the Plaintiff and the 2<sup>nd</sup> Defendant.

On the 10<sup>th</sup> April, 2017 at the site visit, the 1<sup>st</sup> Defendant showed the Court the demarcation which was in dispute. The Court was also shown the guava tree that demarcates the Plaintiff's plot and the 2<sup>nd</sup> Defendant's plot.

The site visit revealed that indeed the 2<sup>nd</sup> Respondent had encroached into the Plaintiff's plot. It was observed also that the 2<sup>nd</sup> Respondent had built a structure resembling a wall fence and had entered into the Plaintiff's property by approximately 70 centimeters.

The 2<sup>nd</sup> Respondent was ordered to demolish the structure that was in the Plaintiff's plot by his trespass and illegal erection.

The Court therefore, finds and is satisfied that the claim for trespass against the 2<sup>nd</sup> Defendant succeeds. However, the Court does not find the 1<sup>st</sup> Defendant liable to trespass as she merely sold the property. The Plaintiff's prayer for repossession for subdivision F/NI/1938 is granted.

Regarding the damages prayed for by the Plaintiff, I refer the matter to the Honorable Deputy Registrar for assessment.

DELIVERED ON THE <sup>10<sup>th</sup></sup>..... DAY OF JULY, 2018.



HON. G. MILIMO-SALASINI  
HIGH COURT JUDGE

