

**IN THE HIGH COURT OF ZAMBIA
AT THE DISTRICT REGISTRY
AT LIVINGSTONE**
(Civil Jurisdiction)

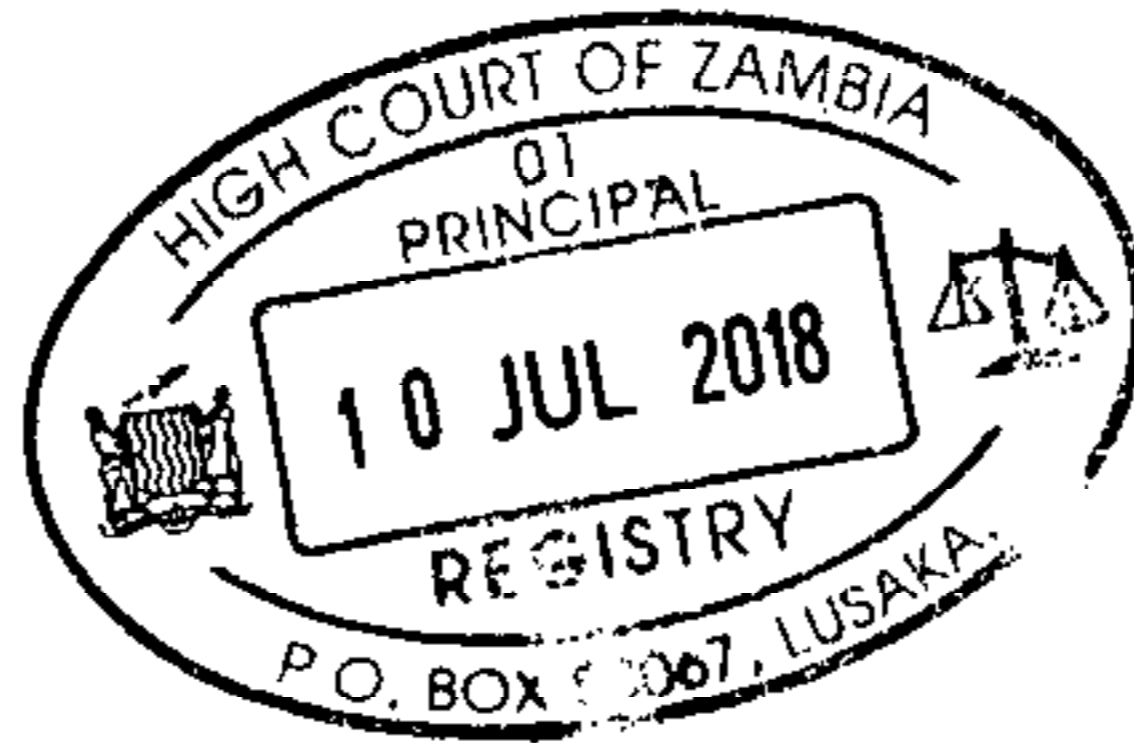
2016/HP/0976

BETWEEN:

**LACK ZUZE
FLORENCE ZUZE**

AND

DAVID SAMPA



1ST PLAINTIFF

2ND PLAINTIFF

DEFENDANT

Before Hon. Mrs. Justice G. Milimo- Salasini in Chambers the 10th day of July, 2018.

For the Plaintiffs: In Person
For the Defendant: In Person

J U D G M E N T

Cases referred to:

- 1. Anti-Corruption Commission vs. Barnett Development Corporation Limited (2008) Z.R*
- 2. Musialela vs. Chipman (2011) Z.R Vol. 472*

Legislation referred to:

- 1. Lands Act, Chapter 184*
- 2. Lands and Deeds Registry Act, Chapter 185.*

This is an action brought by Writ of Summons by Lack Zuze and Florence Zuze, the 1st and 2nd Plaintiffs respectively on 17th May, 2016. The action is against one David Sampa, the Defendant.

The Plaintiffs claim for:

- (i) An Order of Declaration that the Plaintiffs are the lawful and rightful owners of property known as Plot Number 3842/M, Kabanana, Lusaka.
- (ii) An Order for an Injunction restraining the Defendant whether by himself, his servants or agents or any of them or otherwise from disposing of or otherwise dealing with the property known as Plot Number 3842/M, Kabanana, Lusaka in a manner which is detrimental to the interest of the Plaintiffs in the said property.
- (iii) An Order for Vacant Possession of the property known as Plot Number 3842/M, Kabanana, Lusaka.
- (iv) Damages for inconvenience caused by the Defendant's action.
- (v) Any other relief the Court deems fit.
- (vi) Costs of and incidental to these proceedings.

According to the Statement of Claim, the Plaintiffs were appointed joint administrators of the estate of their father, **late Paul Zuze** who was the legal owner of the property known as Plot Number 3842/M, Kabanana, Lusaka. That consequently the Plaintiffs became the legal owners of the property Plot Number 3842/M and hold Certificate of Title Number L3066 in respect of the said property, whose size is in extent of 2.9623 hectares in Kabanana.

That the Defendant is and was at all material times a resident of Chipwalu Village and a neighbour of the Plaintiffs. The Plaintiffs allege that he, the Defendant is trespassing on the property belonging to the Plaintiffs and did on 25th April, 2010 remove the beacon from Plot Number 3842/M and began to encroach and planned to sell part of the land without any lawful justification.

The Plaintiffs state that the Defendant admitted to removing the beacon with the intent to sell the property and was advised to desist from such conduct by the Plaintiffs. That this caution was to no avail prompting the Plaintiffs to commence this action.

The Plaintiffs also filed an Ex-parte Summons for an Interim Injunction restraining the Defendant from developing, disposing of or otherwise dealing with the property in dispute on 17th May, 2016. The Affidavit in Support of the Summons was sworn by Lack Zuze, who deposed that the Original Title holder of Plot Number 3842M, Kabanana, Lusaka, was one Paul Zuze, the late father of the 1st and 2nd Plaintiffs. That the late Paul Zuze owned the Title Deed Number L3066 relating to Plot Number 3842/M. The Certificate of Title is exhibited as "**LZ1**".

She further states that after the death of her father, late Paul Zuze, she and her sister, Florence Zuze, the 2nd Plaintiff herein were appointed as Joint Administrators of the estate of their late father. An Order of Appointment of Administrators is exhibited as "**LZ2**" and was granted on 18th April, 2005. Her Affidavit also states that the Defendant admitted to developing and selling some portions of the said property which property is in an extent of 2.9623 hectares at Kabanana, Lusaka and unless

the Defendant is not restrained, he will continue to develop or dispose of and continue dealing with the property in dispute.

An Interim Injunction was granted to the Plaintiffs on 20th May, 2016 and the Inter parte hearing was scheduled for 31st May, 2016.

On 31st May, 2016 the Plaintiffs and the Defendant appeared before this Court.

The 1st Plaintiff, Lack Zuze narrated how the Defendant, David Sampa kept removing the beacons from their plot and had encroached into their yard. That the first time she and her sister, Florence Zuze, the 2nd Plaintiff approached Mr. Sampa to talk to him, he responded that he wanted the area he was living around to be clean. That he also told the Plaintiffs that the person who had sold him the property had informed him that his property went beyond the beacon. When the Plaintiffs disagreed with him, the Defendant obtained a Summons from the Headman. At the Headman's village it was resolved that if there was a Title Deed regarding the property then the Title Holder was the owner of that land. The Plaintiffs then replaced the beacon but the Defendant removed it again prompting the Plaintiffs to report the Defendant to the Police. At the Police Station, the Defendant was also told that the holder of the Title Deed was the legal owner. That despite this, the Defendant obtained a Summons again, this time from the Chieftainess Mungule, where he was told that the Title Holder was the owner of that land.

After the directive from Chiefteness Mungule, the Defendant went ahead to sell part of the land in dispute. The 1st Plaintiff told the Court that the alleged buyer was approached by them and warned the buyer that if he did not demolish the house he had begun to build, they, the Plaintiffs would demolish it. That the buyer asked for the title to the property and when he was shown the Title deeds by the Plaintiffs, he demolished the house and moved away. What followed was the Defendant bringing an action in the Mungule Local Court for compensation and malicious damage for the demolished house. Which matter was dismissed.

The Plaintiffs then embarked on an exercise to sub divide the property but discovered that the beacons had been removed again by the Defendant and when they later approached him, differences began again. The Plaintiffs then contracted a Surveyor who replaced the beacon but the Defendant removed them yet again. The parties went again to the Police where the Defendant's wife suggested that the matter be resolved in Court, hence this action.

The 2nd Plaintiff, Florence Zuze also gave her side of the story at the Inter parte hearing. She concurred with what the 1st Plaintiff had said and added that when the last beacon had been put by the Surveyor, the Plaintiff approached the Defendant's son to inform him that another beacon had been put by the Surveyor who had been paid and hence the beacon should not be removed but they later found that the beacon had been removed.

In opposing the Application, the Defendant, Mr. David Sampa told the Court that the person he bought the land from is still alive. He admitted that he had no Title Deed to the property but only had a Document for the house, which house was on the property in dispute in Kabanana. He further informed the Court that he will call the person he bought the land from to testify at trial.

The Interim Injunction was then granted pending the determination of the issue of ownership vides a Ruling of this Court on 10th June, 2016.

Trial commenced on 23rd June, 2016 with the evidence of the 1st Plaintiff, Lack Zuze as "**PW1**". She reiterated her narration of the Inter parte hearing. She testified that she was in possession of a copy of the Certificate of Title and the Original Document which was her evidence that the land belonged to her and her sister. She described the Certificate of Title as being Number L3066 with the name of her late father, Paul Zuze. That it had a seal from the Commissioner of Lands and it related to Plot Number 3842/M. She applied to submit a copy of the Original Certificate of Title as part of her evidence. At that point, the Defendant objected to the production of the Certificate of Title saying that the land is not for the Plaintiffs. The Defendant was then shown the Original Certificate of Title upon which the Defendant alleged that the Certificate of Title shown to him was a fake document because he did not know its origin.

The Court overruled the objection on the basis that the Defendant had not given a proper ground for his objection.

The Certificate of Title was thereafter admitted into evidence and marked "P1".

There was no cross-examination from the Defendant.

The next witness "PW2" was Florence Zuze, the elder sister of PW1. She again concurred with her sister's evidence. She told the Court that the evidence her sister and her had given earlier that their late father left the land to them was by virtue of the Certificate of Title which was given to them by their mother, who has had custody of it and currently resides in Kabanana. PW2 was then cross-examined by the Defendant who asked her whether he had taken her to the person who sold the land to him and she replied in the negative.

After the close of the case for the Plaintiffs, the Defendant began his testimony. He testified that there was no plot description because the land fell under Chief Mungule, he told the Court that he bought the plot in August, 2011. When he learnt about the property from Mrs. Elina Zulu, he approached the late Kasungu, who was a Headman in Kabanana. He stated that Mrs. Elina Zulu sold the property to him at a cost of K350 (Three Hundred and Fifty Kwacha) and it measured 20m² by 12m² in size. He said there were trees which he began to cut down. That in 2012, he saw the 1st Plaintiff uprooting the flowers which he, the Defendant had planted to demarcate the land. He went on to testify that his neighbour on the right was Mr. Chipili while on his left was one Mr. Mulenga and in front of his plot were other plots. He stated that behind his plot was a road which goes to the new school. He reiterated that he had no diagram to show that the land was his except that the person who sold him the land would be called as his witness. In cross-examination by the 1st Plaintiff, the Defendant was asked whether he saw a beacon when he

found trees and he responded that he did not see it. When asked whether or not he asked the neighbour about the land he wanted to buy, he informed the Court that he had asked the late Mr. Sakala who lived there before a Mr. Mulenga, who was a neighbour on the left side of where he lives. When asked why he did not go to the Police if the flowers which were uprooted were on his land, he testified that he went to Chief Mungule's Palace to get a Summons.

The Defendant was also cross-examined by the 2nd Plaintiff, Ms. Florence Zuze asked him that if he was not our neighbour then whose farm is behind his house, to which he stated that it was for Mr. Chipili. He was then asked if that was the same Mr. Chipili who he had said was on the right and the Defendant replied that he was the same Mr. Chipili. When asked who his neighbour behind his house was, the Defendant answered that the only land behind his house was for Mrs. Elina Zulu. The Defendant was then asked who had removed the beacon behind his house, he replied that he was the person who had removed the beacon because it (the beacon) was in his plot. He then went on to state that he was approached by the Plaintiffs who had asked him why he had removed the beacon so he went again to get a Summons and that he also told the Plaintiffs to go to the person who had sold him the land. The Defendant also expressed ignorance when he was asked by the 2nd Plaintiff why they had gone to him to ask him why he had removed the beacons. Finally, the Defendant was asked what was told to him at Chief Mungule's Palace to which he stated that he was told that he did not know how to buy drinks and buns and the case was dismissed. That was the testimony of the Defendant.

The next witness for the defence was Mrs. Elina Zulu, **DW2**. Her testimony began by her declaring that the land belonged to her. She stated that she sold the land to the Defendant at a cost of K100. That a document was signed through the Headman, who is her grandson, Bonnie known as Headman Chipwalo.

She went on to narrate that she then called the Plaintiff's late father (Paul Zuze) who was in Matero. That the late Paul Zuze was told by her uncle to build a butchery which he wanted by the roadside. That the Late Paul Zuze was given a place. She then narrated that the late Paul Zuze began to build the butchery, **DW2** told the Court that she was surprised that the Plaintiffs are claiming the land to be theirs. She proceeded to define the extent of the property by stating that where there is a road after the butchery, going westward the land was hers. She told the Court that she had sold a small portion to the Defendant and offered to move the Court to the disputed property.

In cross-examination by the 1st Plaintiff, **DW2** was asked why Headman Chipwalo had denied the fact that he had signed, she answered that she did not know why. She was then asked what proof she had to show that the land was hers, **DW2's** response was that she had obtained the land from her fore fathers so she had authority to sell it to the Defendant.

When asked by the 1st Plaintiff who occupied the land first, **DW2** stated that it was the father of the Plaintiffs. There was no cross-examination by the 2nd Plaintiff. In

re-examination **DW2** confirmed that Banda Kasunga was also called Headman Chipalo and that it was not Bonnie who transacted with the Defendant.

A site visit was then undertaken on 2nd March, 2017 at Kabanana. The Plaintiffs were asked by the Court if they had gone to the Ministry of Lands and they informed the Court that they were told that the files were Confidential and could not be accessed without a Court Order. At the request of the Plaintiffs the Court Ordered the presence of an Officer from Survey Department of the Ministry of Lands and the Lands and Deeds Registry to testify regarding the demarcations.

On 25th April, 2017 a witness for the Plaintiffs, **PW3**, Mr. Paul Phiri, a Survey-Examiner gave his testimony. He began by explaining in detail the procedure for determining the status of any property by the office of the Surveyor General as well as the procedure applied by that Office to determine the relationship of properties as they appear on the site plans. He testified that in response to the Court Order, he considered the Certificate of Title Number L3066 relating to Lot Number 3842/M and stated that in order to identify the property, the Office of the Surveyor General will rely on the co-ordinates in the site plan. He referred to the diagram before him, Number 225/87 and informed the Court that the present diagram was numbered by the Surveyor General. He explained that the co-ordinates pinpoint positions of the beacons on the ground, which beacons are put by the Surveyor. **PW3** distinguished the procedure that exists regarding obtaining of site plans vis-à-vis property under traditional land where after the Headman gives consent to an Applicant and makes a recommendation to the Chief on behalf of the Applicant, the Chief will send Messengers to verify that there are no other interested persons. That if it is found

that there are no other interested persons, the Chief will then endorse the Applicant's Application and the plan will be taken to the Ministry of Lands through the Local Authority such as Lusaka City Council. Thereafter, the Council will consider the Application at a full Council Meeting. If approved, the Council forwards a recommendation to the Commissioner of Lands. He stated that the Applicant will have copies of:

- (i) The Minutes of the full Council Meeting.
- (ii) The Recommendation Letter, and
- (iii) The Site Plan.

He also testified that the area of the property in the Site Plan was 2.9623 hectares which translates to 7.3 acres. When asked whether in the event of a dispute on a property, a Surveyor will continue to survey, **PW3** responded that a Surveyor should not continue to survey.

There was no cross-examination by the Defendant.

At this juncture the matter was adjourned to the 6th June, 2017 for continued trial and testimony of **PW3** as a witness for the Court. On the said date, 6th June, 2017 the witness presented the location plan regarding the property Plot Number 3842/M in relation to other surrounding properties for Kabanana Area. When asked if the site plan corresponds with diagram in the Certificate of Title before Court as "**P1**" as exhibited, the witness told the Court that it corresponded. The Defendant was shown the Master Plan from Ministry of Lands which he did not dispute. **PW3** went

further to tell the Court that the Defendant did not have a Title Deed for the property except papers from Headman Kaungu and which papers he gave the Surveyors in 2003.

In cross-examination, the Defendant submitted the Letter of Agreement exhibited as "R1" dated 22nd November, 2003 and the seller was one Maureen Sakala and an installment of K270,000 was indicated in the Letter.

When asked by the Court the meaning of such a Letter, **PW3** testified that there must be State Consent from the Commissioner of Lands. That the owner's and seller's details and the size and location of the property must be stated.

The Plaintiffs filed submissions on 12th July, 2017. They restated their claim and relied on Section 33 of the Lands and Deeds Registry Act to prove the authenticity of their title deed. I have further noted Section 34 (1) (C) and Section 35. The Defendant, David Sampa also filed submissions on 1st August, 2017. According to the Defendant, he acquired the property in dispute in 2006 and on the assurance of Elina Zulu, he engaged in construction. This information is at variance with his earlier testimony that he acquired the plot in 2011. He stated that the 1st Plaintiff approached him with a request to stop construction resulting in an encounter with Elina Zulu who told the 1st Plaintiff that the land had belonged to her. He submitted that the 1st Plaintiff returned and uprooted some flowers from his property, for a second time. That the 1st Plaintiff even destroyed a four roomed box. That he took the matter before Chieftainess Mungule's Traditional Court at Kakoma Palace, in 2012 but did not succeed. Again at Mungule Local Court he was not successful as

he had no title. He further submitted that the 1st Plaintiff put beacons in 2016 which he removed. When he reported the matter to Police he and the Plaintiffs were advised to resolve the matter at home or obtain summons. The Defendant argues that if the title was obtained in 1987, the Certificate of Title would have been produced in 2003 when he bought the land. He prays that the Court finds in his favour as the seller, Elina Zulu, even testified.

The Plaintiffs claim for:

- (i) An Order of declaration that the Plaintiffs are the lawful and rightful owners of property No. 3842/M, Kabanana, Lusaka,
- (ii) An order for vacant possession of the property
- (iii) Damages,

In Zambia the holding of land is governed by the Lands (Amendment) Act 1996, Chapter 184 of the laws of Zambia. Under Section 3 (1) "all land in Zambia shall vest absolutely in the President and shall be held in perpetuity for and on behalf of the people of Zambia."

Section 5 (1) states:

"A person shall not sell, transfer or assign any land without the consent of the President and shall accordingly apply for that consent before doing so."

Section 2 defines "Certificate of Title to mean a Certificate of Title issued in accordance with the Lands and Deeds Registry Act"

The Lands and Deeds Registry Act, Chapter 185 requires that-

"4 (1) Every document purporting to grant, convey or transfer land or any interest in land, ---- to be a lease or permit of occupation of land for a longer term than one year..... Must be registered within the times herein the times hereinafter specified in the Registry or in a District Registry if eligible for registration in such District Registry...."

Section 33 of the lands and Deeds Registry Act provides:-

"A Certificate of Title shall be conclusive as from the date of its issue and upon and after the issue thereof, notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the President or otherwise, which but for parts III to VII might be held to be paramount or to have priority, the Registered Proprietor of the land comprised in such Certificate shall, except in case of fraud, hold the same subject only to such encumbrances, liens, estates or interests created after the issue of such Certification as may be notified on the folium of the Section 35 provides that-

"After land has become the subject of a Certificate of Title, no title, no title thereto, or to any right privilege, or easement in,

upon or over the same, shall be acquired by possession or user adversely to or in derogation of the title of the Registered Proprietor."

The Courts have guided on the effect of Certificate of Title and its importance.

In the case of **Anti-Corruption Commission vs. Barnett Development Corporation Limited (2008) Z.R** it was held that-

"Under Section 33 of the Lands and Deeds Registry Act, a Certificate of Title is conclusive evidence of ownership of land by a holder of a Certificate of Title. However, under Section 34 of the same Act, a Certificate of Title can be challenged and cancelled for fraud or reasons for impropriety in its acquisition."

In another Court decision of **Musialela vs. Chipman (2011) Z.R Vol. 472**

Mutuna J, held that "in the absence of proof of title to the property, the Plaintiff's claim cannot be sustained."

In the matter before me it is not in dispute that the Plaintiffs, Lack and Florence Zuze and the Defendant reside at Kabanana Area at Plot 3842/M. It is also not in dispute that one Elina Zulu sold to the late Paul Zuze (title holder of Certificate of Title No. L 3066 relating to Lot No. 3842/M, and that Elina Zulu also sold some land to the Defendant, one David Sampa on behalf of her niece Maureen Sakala (by letter of agreement of 22nd November, 2003). The testimony of Elina Zulu who was DW2 was that she had earlier sold to the late Paul Zuze and later sold to David Sampa.

I find as fact that the late Paul Zuze obtained a Certificate of Title on 17th August, 1987 for Lot No. 3842. I also find as a fact that by Order of Appointment of Administrator granted on 18th July, 2005, the Plaintiffs Lack Zuze and Florence Zuze assumed the proprietary right to Lot 3942/M as Administrators to the estate of the late Paul Zuze. As has been shown by the evidence of PW3, the witness from the Office of the Surveyor General the location plan produced in Court corresponded with the survey diagram in the Certificate of Title belonging to the Plaintiffs. On the other hand, the Defendant did not adduce evidence to show the location of the property he called his. Neither did he show proof of Ownership save for a letter of agreement.

I am satisfied that the property in dispute belongs to Lack Zuze and Florence Zuze because the Certificate of Title was obtained in accordance with the procedure outlined by the Surveyor Generals Department and with the law. I THEREFORE, Order that property L 3842/M legally belongs to the Plaintiffs and are entitled to possession of the said property.

I further declare that the Defendant has no title to the area he has occupied to which has encroached into the property of the Plaintiffs.

I further award costs to the Plaintiffs.

Leave to appeal is granted.

DATED AT LUSAKA THIS ^{10th} DAY OF ^{July} 2018

G. Milimo J

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G. MILIMO - SALASINI
HIGH COURT JUDGE

