

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

2017/HP/1082

**BETWEEN :**

BORNIFACE SHANTEBE
(Senior Headman Mulowa)

1ST PLAINTIFF

CLIFFORD MUKEMBE

2ND PLAINTIFF

DOREEN KACHENJELA
(suing in her capacity as an affected farmer,
also as the next friend of Fred Munyikwa
a Minor)

3RD PLAINTIFF**AND**

KAINDU NATURAL RESOURCES
REGISTERED TRUSTEES

1ST DEFENDANT

ROYAL KAFUE LIMITED

2ND DEFENDANT

**Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on the
26th day of February, 2018**

*For the Plaintiff : Dr. J. M Mulwila, SC & Mr. B. J Mwansa, Messrs Ituna
Partners*
*For the Defendants: Mr. K. Kombe & Ms. K. Parshotam, Messrs Andrew &
Partners*

J U D G M E N T

Cases Referred To:

1. *Anti-Corruption Commission v Barnet Development Corporation Limited*,
Judgment No. 5 of 2008 SCZ
2. *Industrial Gases Limited v Waraf Transport Limited and Mussah
Mogeehaid*, SCZ Judgment No. 2 of 1997

3. *Tweedie v Atkinson* (1861) EWHC J57 (QB)
4. *Edgar Hamuwele (Joint Liquidator of Lima Bank Limited (in Liquidation) Christopher Mulenga (Joint Liquidator of Lima Bank Limited (in Liquidation) v Ngenda Sipalo and Brenda Sipalo* SCZ Judgment No. 4 of 2010
5. *Robson Sikombe v Access Bank Zambia Limited* SCZ Appeal No. 240/2013

Legislation Referred To:

1. *Lands Act, Chapter 184*
2. *Zambia Wildlife Act No. 14 of 2015*
3. *Land (Perpetual Succession) Act Chapter 186*

Other Works Referred To:

1. *Land Law in Zambia: Cases and Materials* by Fredrick S. Mudenda, 2007, UNZA Press Zambia

By Writ of Summons and Statement of Claim, the Plaintiffs seek the following reliefs:

1. An order declaring that the 1st Defendant has no title to the purported farm No. 10415 to alienate or sublet.
2. A declaration that the purported sub-lease between the 1st and 2nd Defendants is null and void abinitio.
3. An order of injunction restraining the Defendants and their servants from carrying out any activities which are detrimental to the interests of the native people in the proposed farm No. 10415.
4. Aggravated damages for the injuries occasioned to Fred Manyikwa by the servant or agent of the 2nd Defendant.
5. General damages for interfering with the Plaintiffs farming activities and restricting their freedom of movement within their mother land.
6. Any other relief the Court may deem just
7. Interest
8. Costs

The Statement of Claim discloses that sometime in 2005, the 1st Defendant applied to the Commissioner of Lands for a certificate of title for the portion of land proposed as farm No. 10415, Mumbwa District. The 1st Defendant was offered the property with some conditions, being that it should not sublease the land without the written consent of the Commissioner of Lands and only use it for residential purposes.

The Plaintiffs aver that the 1st Defendant did not comply with the conditions of the offer letter and was not given title. The Plaintiffs also aver that the Defendants executed a lease agreement on 21st May, 2010 in which the 1st Defendant sub-leased the proposed farm No. 10415 to the 2nd Defendant for the whole term offered to it by the Commissioner of Lands. The Plaintiffs state that they were harassed by the 2nd Defendant and its servants and as a consequence they have been unable to attend to their fields or carry out farming activities on farm No. 10415.

The Plaintiffs further aver that Mr. Ken Chipasu, a servant of the 2nd Defendant who was a game scout unlawfully shot and wounded the 3rd Defendant's 16 year old son, Fred Munyikwa on his left hand and now has a permanent disability. The 3rd Plaintiff claims exemplary damages for the unlawful wounding of her minor son. The particulars of unlawful shooting being:

- (i) *The 2nd Defendant executed an unforceable contract with the 1st Defendant when it was prohibited from subleasing*

the property without the written consent of the Commissioner of Lands.

- (ii) The minor Fred Munyikwa was within his rights as a resident of Chipuluka village to walk and pick mushrooms on farm 10415, Mumbwa for which no one has been given a certificate of title.*
- (iii) The 2nd Defendant or its servant or agents has no licence to shoot anyone found on the property.*

The Plaintiffs state that they are no longer free to carry out their farming activities on farm No. 10415 for fear of being shot at or possibly killed and have suffered damages.

The Defendants settled a Defence where they state that the 2nd Defendant does not conduct hunting activities in the 2nd Plaintiff's village but in Chief Kaindu's Chieftdom. The 1st Defendant was established for the purposes of ensuring the community interests of the Kaindu community by managing the natural resources of Kaindu Chieftdom.

The 1st Defendant admits that it has an offer letter from the Commissioner of Lands for farm No. 10415, Mumbwa District. It acquired the land for wildlife conservation in 2003 from his Royal Highness Chief Kaindu of the Kaonde people in Mumbwa District. The 1st Defendant states that the Chief is very supportive of its community game ranch project, which aims to alleviate poverty in his Chieftdom. The 1st Defendant avers that farm No. 10415 is in a wildlife area and not suitable for residential purposes. The

Department of National Parks and Wildlife granted the farm game ranch status and not the Commissioner of Lands.

The 1st Defendant further avers that it does not have title because it failed to comply with the terms of the offer letter from the Commissioner of Lands. Rather, the Commissioner of Lands has delayed to issue title of the Plaintiffs' has delayed to issue title because of the Plaintiffs' careless assertions that farm No. 10415 is meant for residential purposes. The 1st Defendant admits that it sublet the game ranch to the 2nd Defendant, which is the developer and its partner in the operation of the game ranch. The 1st Defendant asserts that it owns farm No. 10415 under customary tenure and not leasehold. It is capable of leasing out its land to would be developers.

The 2nd Defendant denies that it harassed the Plaintiffs and they are free to conduct their farming activities outside farm No. 10415. It insists that there are no agricultural fields on farm No. 10415 as it is exclusively a game ranch. It also states that the Zambia Wildlife Authority and Mumbwa District Council conducted site inspections and confirmed that the property was free from any settlement. The 2nd Defendant exposes that the 2nd Plaintiff's village is not on farm No. 10415 but outside its boundaries. Further, that Fred Munyikwa was found in a group of about ten individuals who were carrying out illegal hunting activities with dogs. He was pursued by the village scouts employed by the Community

Resource Board when he fell and injured himself on his hand. His wound was not as a result of a gunshot but from the impact of falling on a sharp rock. He was not shot by anyone.

The 2nd Defendant denies that the 3rd Plaintiff is entitled to any compensation as her son was illegally on farm No. 10415 and conducting poaching activities. The 1st Defendant asserts that the Zambia Wildlife Authority approved its application to operate a game ranch and it followed due process in establishing the game ranch. Therefore, the Defendants are lawfully on farm No. 10415 unlike the Plaintiffs whose conduct is tantamount to trespass.

The Defendants state that the Plaintiffs require permission to enter the game ranch because hunting activities do occur and the likelihood of a person being shot when hunting is taking place are high. They pray to Court to dismiss the Plaintiffs' claims for lack of merit.

Clifford Mukembe testified as **PW1**. His evidence was that Farm 10415, Mumbwa is associated with Kaindu Natural Resources Registered Trustees (KNRT) and Royal Kafue Limited (RKL), the 1st and 2nd Defendants, respectively, who are in partnership. PW1 stated that KNRT failed to represent the people of Kaindu Chiefdom and sided with Mr. Andrew Baldry, a director of RKL. It was PW1's evidence that he is a resident of Chipuluka village, which is in farm No. 10415. The farm belongs to the people of Kaindu Chiefdom and is not on title. PW1 added that there was another village on the

farm known as Suse and the villages have been in existence for 17 years.

PW1 testified that there were wrangles on the farm provoked by RKL against the community and one Fred Munyikwa, a minor was shot by an RKL employee in Suse village. According to PW1, Chief Kaindu terminated the Defendants' partnership vide a letter shown at pages 29 and 30 of the Plaintiffs' Bundle. He was one of the persons who signed the attendance list attached to the termination letter. PW1 prayed to Court to grant the Plaintiffs the reliefs sought.

In **cross-examination**, PW1 denied that he was removed as Headman of Chipuluka village by Chief Kaindu. Rather a group working with KNRT and Mr. Robert Chikumbi removed him after he commenced this action. He added that a headman could only be removed by his family members and the Chief. He sued Mr. Robert Chikumbi for his wrongful removal in another cause. PW1 stated that he was harassed and taken to police station in order to distract him from attending Court.

PW1 maintained that the villages on farm No. 10415 had been in existence for 17 years. He was not present when the farm was demarcated for agricultural activities, adding that Chief Kaindu was free to give land to any person. PW1 confirmed at page 38 of the Defendants' Bundle that Chief Kaindu gave KNRT land but it is not

supposed to harass the members of the community. PW1 testified that KNRT has a right to enter into partnerships for the land it holds and was not aware that Zambia Wildlife Authority (ZAWA) designated farm No. 10415 as a game ranch. He was equally not aware of the agreement between KNRT and ZAWA at pages 1 and 2 of the Defendant's Bundle.

In **re-examination**, PW1 insisted that Fred's wound resulted from a gunshot. The letter dated 1st December, 2016, in the Plaintiff's Bundle bore Chief Kaindu's date stamp. Further, that Andrew Baldry was given hunting rights by Chief Kaindu on 9th October, 2016 which were revoked on 1st December, 2016.

PW2 was **Boniface Shantebe** who testified that he reported the shooting of Fred Munyikwa, which occurred on 27th November, 2016 to the police station. He became involved in the case when the neighbourhood watch members approached him. It was his evidence that Fred Munyikwa was injured on his left hand by a scout employed by RKL in the agricultural zone. He had gone to pick mushrooms. PW2 stated that Chief Kaindu was informed of the shooting incident and he visited the victim. With others he pursued the offender. PW2 stated that Fred was taken to hospital and received treatment. There is a farming block in farm No. 10415, which borders the game ranch.

PW2 stated that he lives in Mulowa village but has an agricultural plot in farm No. 10415. He stated that the Defendants were in a habit of harassing the villagers because they want to turn the farming block into an exclusive game reserve. It was PW2's evidence that RKL sold hunting licences and it did not carry out hunting activities in the farm block. According to PW2, Kaindu community owned farm No. 10415 and not RKL. PW2 stated that he attended the meeting where Chief Kaindu terminated the KNRT and RKL lease and signed the letter to that effect. PW2's prayer was for the Defendants to stop harassing the people in Kaindu chieftdom and to cancel the lease agreement between the Defendants. He also prayed for the other reliefs in the Writ of Summons.

In **cross-examination**, PW2 in reference to pages 6 and 8 of the Defendants' Bundle stated that the Community Resource Board (CRB) spearheaded the creation of the game ranch in 2003. He stated that he had an agricultural plot in farm No. 10415 since 2008. He added that the farm No. 10415 is divided into a ranch and farming block. It was his evidence that farm 10415 belonged to Chief Kaindu and he had the power to repossess it. Further, Fred told him that he was shot in the farming block.

In **re-examination**, PW2 stated that he had been farming in the agricultural zone since 2008. Headman Chipuluka allocated him an agricultural plot.

Humphrey Kabinda testified as **PW3**. His evidence was that KNRT was created by the people of Kaindu Chiefdom to promote their interests. He previously served as the Chairperson of KNRT and that he was elected by the people on 21st March, 2017, and served until July 2017, when he was removed. As Chairperson, his main task was to take care of the community interests, to oversee projects and to ensure that people were living in harmony.

PW3 told the Court that he called for a meeting on 21st August, 2017, where the minutes of 30th November, 2016 were discussed including the progress made on the letter from the Ministry of Lands, dated 1st June, 2017. The agenda also included a discussion on the letter to RKL on their cooperation. PW3 subsequently wrote to RKL informing it of KNRT's proposal to meet with Mr. Andrew Baldry over the strained relationship between him and the community.

PW3 testified that the Kaindu Chiefdom residents attended the meeting of 21st August, 2017, but the Chief was not present. The meeting resolved to terminate the relationship between KNRT and RKL because it was a source of anxiety in the community. PW3 stated that he wrote a letter on 15th August, 2017 to RKL following the meeting resolution and the letter from the Ministry of Lands. PW3 added that RKL sued him because it was alleged that he was interfering with the Defendants' agreement.

In **cross-examination**, PW3 stated that he was notified of his removal as Chairman in July, 2017. He did not agree with his decision and it was signed and conveyed to him by the Secretary and not the Chief. According to PW3, only the Chief could remove him. In reference to the letter dated 14th October, 2017 at page 57 of the Defendant's Bundle, PW3 stated that the Chief only became aware of PW3's removal in August, 2017.

In **re-examination**, PW3 stated that the letter at page 57 showed that there was a resolution to remove him from office. His letter of removal was drafted in July 2017. When he held the meeting in August, 2017, he was aware that he had been removed as Chairperson.

PW4 was **David Mulupwe** who testified that in November, 2016, whilst in his field, he heard gunshots in the farm block. He rushed to the scene where he heard the sound and found a child who had been shot. He was later taken to the clinic. PW4 stated that Chief Kaindu visited the victim at the clinic. The Chief and other community members went to RKL Chipandu camp to look for the offender who happened to be a scout in the employment of RKL. He was wearing a green uniform at the material time. According to PW4, one of the scouts at the camp admitted that he shot the boy by mistake. The scout was apprehended and taken to the police station. A medical report was prepared, for the victim and given to

the police, the Chief and headman. PW4 later learnt at a farmers' meeting that farm 10415 is an agricultural zone.

In **cross-examination**, PW4 stated that the farm block was patrolled by scouts dressed in green uniforms. Further, the victim and his friends had gone to pick mushrooms at the farm and not to hunt.

In **re-examination**, PW4 stated that he knew for a fact that the victim and his friends were picking mushrooms given the season. At the camp, he saw the scouts cooking the mushrooms, which they grabbed from the boys.

PW5 was Doreen Kachenjela. Her evidence was that she had lived in Mwanabunda village for four years and Fredrick Munyikwa, her son was shot at on 27th November, 2016, in the agricultural zone. His left hand was wounded as shown in the picture at page 22 of the Plaintiffs' Bundle. According to PW5, her son was shot by Kenny Chipaso an employee of RKL. She saw him at Kaindu police post. It was PW5's evidence that she greatly depended on her son to carry out chores and prayed to Court to compensate him for the injury. Even though the wound had healed, her son was not able to work as he previously did because his hand had become shorter.

In **cross-examination**, PW5 stated that her son's assailant was taken to Court. She later learnt that he was released and had

no opportunity to follow the case because she was nursing her son. None of her relatives appeared in Court because the hearing dates were not communicated.

PW5 denied that her son and his friends were poaching but had gone to pick mushrooms, which were taken away by the scouts. Her son and his friends were not found in the ranch but in the farming zone. The person who shot her son admitted that her son had gone to pick mushrooms.

PW5 was not **re-examined**.

PW6 was **Alex Chibangula**. His testimony was that he was Royal Secretary for Kaindu Chiefdom for five (5) years. He was responsible for documenting all the issues in Kaindu. He stated that farm No.10415 belongs to KNRT, which is in partnership with RKL. He repeated the earlier evidence on record about KNRT and RKL not having title for the farm. KNRT only had an offer letter for farm No. 10415. It was not given title because there were homesteads in existence before the game ranch was established.

PW6 testified that he kept all the records of the Kaindu Royal Establishment. It was his evidence that the Defendants had problems and he knew of a letter written by Chief Kaindu that terminated their partnership.

In **cross-examination**, PW6 stated that Mr. Cephas Kaindu was his uncle and was not the Royal Secretary. He was still the substantive office holder. He had not called for meetings because he did not have instructions from Mr. Robert Chikumbi the Chairman. He did not attend the meeting that removed PW3 as Chairman. PW6 learnt that PW1 and PW2 were to be removed as Headmen because they reported a story to the media accusing Chief Kaindu of indiscriminately selling land.

The witness was not **re-examined**.

The Defendants' first witness was **Boniface Chisoshi** who testified as **DW1**. His testimony was that sometime in 2003, the CRB called a meeting to discuss the possibility of establishing a game ranch in Kaindu Chiefdom. The CRB also identified a piece of land for its venture. In April, 2003, the CRB Management wrote a letter to GRZ/DANIDA seeking assistance for its proposal. In August, 2003, the CRB wrote a letter to the Commissioner of Lands who told it to address its request to Chief Kaindu and the Council. DW1 testified that in November, 2003, Chief Kaindu gave the CRB land and the Council was approached. All formalities were observed and the farm was inspected. An offer letter was generated in 2005 and the CRB implemented its proposal.

DW1 stated that sometime in 2010, the CRB observed some farming activities on the southern side of farm No.10415. It decided

to leave the farmers on the land and an agreement was made with Chief Kaindu to designate the area as a farm block, while the other side would be reserved for the game ranch. DW1 stated that the CRB later discovered that PW1 was selling land to people. They asked the people to vacate the land and they obliged. DW1 stated that the CRB never had problems with the farmers. He served as Chairman of KNRT Board from 2009 to 2013. On 21st July, 2017, the KNRT Board returned him as Chairman to replace PW3 who had mishandled KNRT affairs.

According to DW1, PW3 refused to hand over office and continued holding himself out as Chairman. In August, 2017, he convened a meeting, which he alleged was sanctioned by the KNRT. A number of people attended the meeting but the Chief as patron was not present. The KNRT representatives, Palace Committee, Royal Establishment and the Kaindu CRB did not attend the meeting. DW1 testified that KNRT has not obtained title for the farm because the Ministry of Lands was falsely informed that the game ranch had human settlements long before it was established, according to pages 41 and 42 of the Defendants' Bundle. DW1 went on to state that KNRT had been paying ground rates consistently since December, 2017. Further, that there is a cut line, which designates farm No. 10415 into two zones, namely a game ranch in zone 1 and an agricultural zone 2.

According to DW1, Chief Kaindu told the Commissioner of Lands that KNRT's interest was in ranching and not farming. Further, ZAWA gave KNRT a certificate to keep animals. KNRT's partnership agreement with RKL allows the latter to operate as a developer. The partnership agreement was desired after the community realized that it could not afford to maintain a game ranch. Chief Kaindu and the Council sanctioned the arrangement. It was DW1's evidence that the Defendants work well and RKL sells hunting quotas (list of animals) and licences for the animals. After the hunting season, the community is given 40% of the profits, which is used to develop the community.

In **cross-examination**, DW1 stated that he has been involved with KNRT since 2004. According to DW1 in reference to the National Parks and Wildlife Act, a community game ranch must be supported by a CRB. This is meant to protect the livelihood of wild animals. There are three organisations involved in the protection of wildlife, namely the CRB through the National Parks and Wildlife Act, KNRT through the Land Perpetual Succession Act and RKL. DW1 testified that the Ministry of Lands issued KNRT an offer letter for a 99 year lease in 2005.

DW1 also testified that he was a member of KNRT Board from 2003 to 2009 and that all residents of Kaindu were ordinary members of the association. The conditions set by the Ministry of Lands in the offer letter stated at page 18 of the Defendants' Bundle

were that houses built on the property should be in excess of K500,000.00 and the land was to be used only for farming purposes. There is no title deed for farm No. 10415.

At page 11 of the Defendants' Bundle, DW1 stated that KNRT was given land by the Chief and it was entitled to enter into a business venture with RKL for safari hunting and game viewing. He added that the partnership is still subsisting and Chief Kaindu is aware of their relationship. DW1 was an ordinary member of KNRT in December 2016 and he attended the meeting of 1st December, 2016, called by the Palace Committee. The other participants of the meeting were the five village action groups, three members from KNRT Board and some village headmen. DW1 testified that the letter at page 27 of the Plaintiffs' Bundle was not written during the meeting but by the Chief Administrator, although it was signed by Chief Kaindu. DW1 did not agree with the contents of the letter.

DW1 told the Court that PW3 received a notice convening the meeting of 21st July, 2017. There was no agenda item on the removal of PW3 as Chairman, but the meeting considered the issue under one of the items. DW1 testified that PW6 was a member of Kaindu Chieftdom but was not the Royal Chairman. The Royal Chairman is Mr. Robert Chikumbi. According to DW1, PW6 served as Royal Secretary for four months but was removed.

DW1 testified that KNRT tolerated the farmers who entered farm No. 10415 on the southern side because it was humane to do so. He stated that Mr. Sindila, Chief Lands Officer was not truthful in his letter, when he stated that the people on farm No. 10415 had to be resettled from the game ranch.

In **cross-examination**, DW1 stated that he did not own an agricultural plot in farm No. 10415, but had a farm in Mwanabunda village. He heard of a shooting incident from the patrons of his shop, which is near the police post. He could not recall if he was an executive member of the KNRT at the time of the shooting incident. He heard that a game scout shot a boy. It was DW1's evidence that farm No. 10415 is under customary tenure and KNRT only had an offer letter from the Ministry of Lands. There is a lease agreement between the Defendants who are in a business venture. The scouts working for RKL are recruited from the community. The hunting licence in Kaindu Chiefdom is given to the community and RKL does not have a separate quota. He told the Court that he is not a member of the Royal family but a brother to Chief Kaindu's first wife. He is equally not a member of the Palace Committee. PW6 is a member of the Royal family but never served as Royal Secretary. He knew the leaders of the community from the meetings he attended. PW6 only held office in 2015 for four months.

In **re-examination**, DW1 stated that KNRT applied to the Ministry of Lands to have the land converted and not allocated because the land belongs to Kaindu Chiefdom. KNRT does not have a lease with the Ministry of Lands, which was breached. The community agreed to use farm No. 10415 as a game ranch in 2003. The letter dated 1st December, 2016 did not contain the resolutions of the meeting. An attendance list was enclosed without minutes. The issue of termination stated in that letter was not part of the meeting's agenda. DW1 added that there was a disparity on the content of the letter and outcome of the meeting. Further, that PW6 was not the Royal Chairman as he depicted himself on the attendance list. DW1 stated that Mr. Robert Chikumbi, assumed office in 2015. He insisted that Mr. Sindala's letter was misleading because it referred to a resettlement plan contrary to the land given to KNRT, which was not inhabited. According to DW1, KNRT and Mr. Andrew Baldry share a cordial working relationship. Mr. Baldry only gets involved with the KNRT if there is an issue with hunting or scout upgrading.

DW2 was **Robert Chikumba Shibuyunji** whose testimony was that he is the Royal Chairman. His role is to ensure that the Chief is taken care of according to traditional rules and customs. As Royal Chairman, he oversees the works of investors in the Chiefdom and how headmen are treating their subjects. He told the Court that he was selected in 2015 and continues to hold office. He stated that PW6 was a child of the Royal family. According to PW2,

portfolios in the Royal family are given by the family members after recognizing suitable members. Once selected, the office holders who are ten in total begin to execute their duties. DW2 told the Court that the current Royal Secretary is Mr. Cephas Kaindu and as the Royal family they believe that they own the game ranch.

In **cross-examination**, DW2 stated that he did not know of the meeting of 30th November, 2016 and he did not receive the notice. The meeting was not convened by the Royal family but the people who attended it. He did not know that Chief Kaindu wrote a letter after that meeting. He knew everything that happened in the palace. He knows Mr. Alex Chipindu who used to be the Chief's representative but was removed for being sly. He also knows headman Kataba who is related to him, PW1 and PW2 who were dethroned. DW2 testified that when PW1 and PW2 sued the Defendants he did not take any action against them. Instead PW1 and PW2 were dethroned for spreading falsehoods about Chief Kaindu.

The witness was not **re-examined**.

Teddy Bwalya a Senior Conservation officer at the Department of National Parks and Wildlife testified as **DW3**. He is responsible for hunting activities, which include monitoring private wildlife estates and compliance. He testified that in 2017, the Department received a complaint from the Chairman of KNRT

alleging that the outfitter's director, (RKL). Mr. Baldry was using abusive language on the people of Kaindu Chiefdom. Further, that elephants were being poached and women were made to parade and dance naked in the community. According to DW3, the Department of National Parks and Wildlife constituted an investigation team, which he led to Kaindu Chiefdom from 15th-17th October, 2017. Members of the team were drawn from the Community Based Natural Resource Conservation Management Department, and the Investigations Department.

DW3 stated that their investigations started with the Senior Warden of Central Province who told them that he received a copy of the complaint letter. The Senior Warden carried out his own investigation in the Chiefdom. The headquarter team held interviews at the Regional office and they went to Chief Kaindu's Palace to gather information. They met some of the KNRT Board members, the Area Councillor and CRB Chairman. Chief Kaindu told them that he was not aware of persons who were being abused by workers from RKL and he never received reports of women who were made to undress and dance in the community. DW3 stated that the Chief told them that if the letter written by PW3 was in the interest of KNRT, he would have signed it as Patron. As far as the Chief was concerned, PW3 appeared to be working against KNRT. He also told them that PW3 was removed as Chairman of KNRT by the Board in July, 2017.

DW3 stated that he conducted random meetings in the community to verify the Chief's assertions. His team also interviewed KNRT patrol scouts who told them that they had a cordial working relationship with RKL. None of the scouts were abused by Mr. Baldry. The scouts told DW3 and his team that a boy was shot and the matter was before Court. The scouts confirmed that an elephant was poached and discovered four days after about 3.5 kilometres outside the game ranch and about 18 kilometres away from Mr. Baldry's camp.

DW3 testified that he interviewed the Area Councillor and PW3. PW3 told him that he wanted the hunting quota cancelled because RKL was involved in malpractices and killing animals outside the quota. The community was not benefiting from the 20% hunting profits. PW3 also complained of the bad attitude of the RKL workers and told DW3 that a fisherman was killed and his boat was recovered with blood. DW3 stated that PW3 told him that he felt betrayed by KNRT because members of the community overwhelmingly elected him. On the other hand, a few individuals passed a vote of no confidence in him. According to DW3, PW3 failed to substantiate any of his claims with evidence.

DW3 told the Court that they visited two fishing camps and ended their mission. A report was prepared with recommendations and submitted to management.

In **cross-examination**, DW3 stated that he has worked for the Department of National Parks and Wildlife since 1991. He has been involved in numerous investigations and he once served as Senior investigations officer. It was his evidence that one of the requirements for establishing a game ranch is proof of ownership of land obtained under customary or leasehold tenure.

DW3 reiterated that the purpose of his investigation was to verify PW1's complaint letter. Before the investigation, he reviewed some documents on RKL. He could not recall the plot number of the farm but investigated the complaint based on the site maps. He also reviewed the report of the regional team, which was independently submitted to ZAWA. He maintained that he spoke to PW3 at the fishing camp and that he is a fisherman. DW3 stated that the quota in Kaindu Chieftdom is given to RKL and did not know if KNRT is given another.

DW3 testified that the CRB employs scouts and Chief Kaindu is their patron. The scouts work in connection with the Department and are paid by the CRB Management Board. DW3 stated that the people in the community and the Chief told him that there was no fisherman killed but that a person went missing some time ago. It was DW3's evidence that he went on a fact finding mission and not an investigative inquiry, which would lead to prosecution. He conducted interviews in the community but did not record the names of the respondents. He did not speak to anyone from RKL

because the Chief told him that they had a cordial relationship with the outfitter who was remitting 40% of the profits to the community.

According to DW3, the Chief defended Mr. Baldry's operations and he saw no need to interview him. According to the Chief, there was no dispute between the Defendants and no persons were harassed. DW3 stated that the poached elephant whose head was removed could have been killed by a person who wanted to implicate the outfitter. The issue was referred to the police for investigations. He added that complaints regarding an outfitter are reported to the Chief or CRB and not the police.

The witness was not **re-examined**.

DW4 was **Chuma Simukonda**, Wildlife Ecologist, Assistant Director Research and Veterinary Medicine, who testified that he is responsible for the sections, one which monitors information on wildlife for more accurate decision making; the research section, which facilitates the establishment of game ranches in the country. There are two types of game ranches namely open and closed and the process of establishing the ranches is the same. The difference lies in the manner that they operate.

DW4 stated that the community secured land from Chief Kaindu for wildlife conservation. He conducted a quantitative

assessment of land proposed for game ranching by Kaindu CRB in 2011. The purpose of the assessment was to establish the suitability of the area for the purposes of establishing a game ranch. DW4's findings were that the area had many species with most of them being abundant. He compiled a report whose findings culminated into the creation of Kaindu game ranch in 2012. DW4 stated that a game ranch applicant was required to produce a title deed or written letter of consent from the Chief.

It was DW4's evidence that during his investigations, he observed that there were no settlements on Kaindu ranch and if he had found people, he would have raised the issue as a main concern. This is because there is always conflict when animals and people live in close proximity. He testified that Kaindu game ranch is next to Kafue National Park and KNRT oversees the activities on Kaindu game ranch. It also applies for the quota.

In **cross-examination**, it was DW4's evidence that Mr. Edwin Matokwani, Director General, ZAWA in 2012. The Kaindu conservancy is about 15,000 hectares. During his assessment, he traversed all of the sampled areas representing the conservancy and as shown in his report. He did not find gardens, fields or human beings except that there were seasonal fishermen near the water source. He did not know if people picked mushrooms in the game ranch although people entered game management areas to collect natural favours. There were no cemeteries or burial grounds found

in the area. It was also DW4's evidence that game ranch owners are free to enter into partnerships but the owner of the property is maintained on records. Unlike block concessions, it was not necessary for a game ranch owner to inform the Department of its business ventures.

The witness was not **re-examined**.

DW5 was **Andrew Baldry** who testified that he is a professional hunter and looks after international tourists on safari. He also advertises hunting licences and sells packages to international clients. He is also under an obligation to safe guard Zambia's natural resources. DW5 testified that before obtaining a professional hunting licence, he endured three years apprenticeship alongside professional hunters and was monitored by ZAWA scouts and officials. He has a big game hunter's licence and is licenced to take on dangerous animals. He also passed technical exams set by ZAWA. DW5 added that he has been a professional hunter for 25 years.

It was DW5's evidence that RKL built infrastructure in Kaindu game ranch and a camp to accommodate clients, which is resourced by skilled workers. RKL supplies vehicles, boats and other equipment to coordinate the anti-poaching activities of the community scouts. The scouts are stationed in four camps and are provided with all necessities throughout the safari season.

DW5 stated that RKL donated scout uniforms to the Kaindu community as well as motor cycles, radios, firearms and vehicles. He added that the scouts are employed by the CRB in conjunction with KNRT. He employs ten members of staff who include specialized skimmers, chefs, trackers, waiters and driver/mechanic. He also employs two CRB scouts during the safari season. It was DW5's evidence that in the last 30 years, he has worked with communities across Zambia in community relations and development.

DW5 testified that the Royal Kaindu family asked him to submit a proposal to GRZ/DANIDA for the project to develop the game ranch. He offered to spend a year with the community so as to assess the viability of the project. After realizing that the project had potential and was supported by the community, DW5 formed a development company called RKL. The shareholders are himself, Mr. Sipho Phiri, Mr. Thomas Yanga and KNRT. Its purpose is to protect and develop the game ranch based on the model designed by the Government and community.

DW5 stated that a lease agreement was forged along the original GRZ/DANIDA brief with the Kaindu community. Initially, he discovered that the animal population was low. It was his evidence that KNRT facilitated a survey for a 99 year leasehold at the time of his involvement. The vision of the community was to

retain their land and realize income from tourism. The community selected the original board of KNRT who considered his proposal and there were 4 or 5 other bidders who participated. DW5 stated that RKL had a direct relationship with KNRT and he is one of the directors. DW5 testified that RKL and KNRT do not have a lease with the Government and the game ranch is not on title. The game ranch is under customary tenure, and it was acquired from Chief Kaindu.

According to the lease agreement, KNRT was required to obtain leasehold title. DW5 was not familiar with the offer letter from the Commissioner of Lands, but he was aware that the community had been pursuing title to attract investment. DW5 denied that he ever harassed the Plaintiffs. He reiterated that the farming block is not in the game ranch and the area was zoned according to activity. DW5 stated that when RKL signed the lease agreement, KNRT asked it if it could consider the traditional agricultural land in the southern part of the game ranch known as Katanga as a farming block. According to DW5, RKL agreed and the farm was divided into 4/5 of a game ranch zone and 1/5 for agriculture. DW5 did not venture into the agricultural zone because it was populated and there was a safety concern.

He was aware that Ken Chipasu shot Fred Munyikwa and the matter was in Court in Mumbwa. He saw the photograph of Fred Munyikwa's wounding and did not believe that his injury resulted

from a gunshot. He testified that Ken Chipasu was carrying a shot gun with catridges of 30-40 ball bearings also known as Bird Shot. The gun is designed to scare off wild animals and poachers. According to DW5, when the shotgun is fired, it dispenses ball bearings and at very close quarters, the ball bearings form a ball. If the shotgun was fired at Fred Munyikwa it would have resulted into loss of limbs. If it was fired at a distance, he would have been covered by ball bearings. To date, no one had produced the residual of gun powder or ball bearings.

DW5 testified that he was not aware of the letter at page 27 of the Plaintiff's Bundle, which was full of falsehoods. The Chief was his very good friend and he never received the letter. DW5 added that the allegations in the letter were scandalous and simply meant to discredit him. It was DW5's evidence that on the date the letter was purportedly written, Chief Kaindu granted him exclusive hunting rights to the entire Kaindu Chiefdom. He wondered how the Chief could counteract the great privilege he had just bestowed on him.

DW5 stated that he had in his possession a recent letter written by Chief Kaindu to the Ministry of Lands and the Department of National Parks and Wildlife, pledging his support to the RKL and KNRT project. There was no mention of the allegations in the letter dated 1st December, 2016. He wondered why the lease

agreement was being questioned when it was signed a long time ago.

DW3 stated that the model for the game ranch was designed by ZAWA and the community in 2003. If there was any objection on the lease, the issue should have been raised at the time. The lease agreement was drafted after receiving legal advice from the Defendants' advisers. DW5 stated that since the first year survey of animals on the ranch, the population had risen quite dramatically and the international safari industry had recognised the game ranch as one of Zambia's finest destinations.

In **cross-examination**, DW5 testified that he was a voluntary ZAWA reservist for 15 years. He has more than 25 years' experience in handling firearms. He received formal training at a military base school in the United Kingdom for five years and he carries a firearm when he is at the ranch and at all times because his life has been threatened. He does not go to the agricultural zone because it is highly populated. He could not recall if Ken Chipasu was an employee of RKL or a CRB scout at the time that Fred Munyikwa was allegedly shot. The major reason the lease was executed was to secure title and it is still in existence.

The witness was not **re-examined**.

Learned Counsels for the parties filed written submissions for which I am indebted. On behalf of the Plaintiffs, Learned State Counsel submitted that KNRT did not comply with the conditions of the offer letter at page 1 of the Plaintiffs' Bundle. It did not pay the fee of K90,4476.00 within thirty days, nor construct a building with a minimum value of K500,000 within eighteen months. It also did not restrict the farm's use to residential purposes. He further submitted that KNRT failed to fulfill the conditions after twelve years and as a result, the offer lapsed.

State Counsel called in aid the case of **Anti-Corruption Commission v Barnnet Development Corporation Limited¹**, where the Supreme Court held *inter alia* 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 the certificate title."

Counsel asserted that KNRT had no title to the land, and could not sub-lease it to RKL. Counsel made reference to clause 4.12 of the Defendant's lease, which provides that:

"In consideration for the granting of this demise by the Trust, the Developer shall pay the Trust US\$90,000 subject to the trust producing a 99 lease in relation to the property and the granting of vacant possession of the site."

He further made reference to clause 9 of the lease on obligations of the trust, where it is stated that:

"The Trust shall procure a 99 year lease in relation to the property and register this agreement on the title deeds accordingly."

Counsel argued that KNRT's failure to obtain a 99 year lease evidenced by a certificate of title vitiated the Defendants' agreement. He went on to submit that DW5 failed to prove that Chief Kaindu had given him exclusive hunting rights to the entire Chieftdom. As such, he could not assert RKL's right to the land. In addition, Chief Kaindu was only capable of granting land up to 250 hectares as provided by the Lands Circular No. 1 of 1985. It was Counsel's contention that the Chief's grant of land to RKL in excess of 15,000 hectares was void.

Counsel went on to state that the Plaintiffs proved that they were harassed by RKL and its servants. Further, they were prevented from attending to their fields on farm No. 10415. Counsel added that the shooting of Fred Munyikwa and the complaints relayed by Chief Kaindu to DW5 in his letter dated 1st December, 2016, as well as Fred Munyikwa's shooting fortified the Plaintiffs; claims of harassment. He made reference to a portion of the medical report where it was stated that Fred Munyikwa was: *"unlawfully wounded using a firearm and that the boy suffered a deep degloving wound on the later palmer aspect of the left hand plus puncture of the distal phalanx of the long finger of the left hand."*

Counsel further submitted that Mr. Ken Chipasu, an employee of RKL at the material time, admitted that he shot Fred Munyikwa. By his admission, RKL became vicariously liable for his actions and compensation was due. Counsel cited the case of **Industrial Gases Limited v Waraf Transport Limited and Mussah Mogeehaid²**, where the Supreme Court held that:

"As long as the wrong is committed by the employee in the course of his employment, the general rule is that the employer will be vicariously liable."

Counsel dismissed DW5's evidence, which alleged that Fred Munyikwa's injury did not result from a gunshot. He argued that although DW5 may have hunting expertise and is familiar with firearms; he was not a ballistics expert or a medical doctor to offer an opinion. Counsel contended that DW5 was precluded from offering an opinion on his mere examination of a photograph showing Fred Munyikwa's wound, which had been sutured. Counsel urged the Court to disregard DW5's evidence on the footing that it was speculative and unauthoritative.

In response, Learned Counsel for the Defendants submitted that Chief Kaindu demised farm No. 10415 to the CRB in 2003. This was in response to the community's desire to establish a game ranch that would assist it in alleviating hunger. To fortify his assertion, Counsel referred me to the Chief's letter at page 11 of the Defendants' Bundle. Counsel went on to state that after demising

the land, the Chief became a patron. Counsel submitted that after the CRB obtained the land, it registered KNRT under the Land (Perpetual Succession) Act to hold possession, care and control of the farm under customary tenure. Counsel cited section 7(2) of the Lands Act, which recognizes customary tenure as follows:

“....the rights and privileges of any person to hold land under customary tenure shall be recognized....”

Counsel submitted that KNRT has authority to deal with the farm as it pleases. Thus, KNRT was well within its rights when it requested the Ministry of Lands to convert its customary tenure into leasehold. Counsel added that the conversion had protracted because of the scandalous misrepresentations made by PW3 and others to the Ministry of Lands. In spite of that, Counsel stated that Chief Kaindu wrote a letter to the Commissioner of Lands at page 53 of the Defendants' Bundle, where he reiterated his support to the Defendant's venture and dismissed the baseless misrepresentations.

Counsel went on to submit that the offer letters issued by the Ministry of Lands are in standard form, irrespective of what the land is intended for. Thus, the reference to “residential purposes”. In reference to the alleged breach of lease, Counsel contended that the Defendants could not breach a non-existent lease because KNRT only had an offer letter.

Counsel argued that if the current offer letter was to form the basis for the certificate of title, it would create an absurdity because the land in dispute is in a wildlife zone. It cannot be used for residential or farming purposes as this could lead to human-wildlife conflicts in Kaindu Chiefdom. Counsel further submitted that all procedures were satisfied when CRB established the game ranch. In particular, the CRB obtained approval from the Chief, Mumbwa District Council and the Department of National Parks and Wildlife. In addition, the CRB was established in accordance with section 32(1) of the Zambia Wildlife Act, which reads:

“A local community along geographic boundaries contiguous to a Chiefdom in a game management area, an open area or a particular Chiefdom with common interest in the wildlife and natural resources in that area, may apply to the Minister for registration as a community resources board.”

Counsel submitted that Chief Kaindu had no power to cancel the Defendants' lease agreement by his letter dated 1st December, 2016; because he is not a party to that agreement. Counsel cited the case of **Tweddie v Atkinson**³, on the doctrine of privity of contract and emphasized that only parties to an agreement could terminate it. Counsel stated that Chief Kaindu fully supported the Defendants' lease agreement. The Chief wrote a letter to the Director of the Department of National Parks and Wildlife dated 16th October, 2017, where he reiterated his support to the Defendants lease agreement.

It was Counsel's submission that Circular No. 1 of 1985 merely gave guidelines on land allocation and had no force of law. Counsel cited the case of **Edgar Hamuwele and Christopher Mulenga v Ngenda Sipalo and Brenda Sipalo**⁴, where the Supreme Court held *inter alia* that:

"....a policy has no force of law and cannot therefore prevail against an enactment."

On that basis, Counsel argued that the Defendants could not be denied the 15,000 hectares that was demised by the Chief.

Counsel submitted that the Plaintiffs failed to prove their claims of harassment, including those alleging that DW5 forced some women to dance naked in the community. Counsel contended that Fred Munyikwa was not shot and the medical report at page 21 of the Plaintiffs' Bundle was not conclusive on the cause of injury. Counsel argued that the information in the first part of the medical report was given by the bearer of the report as follows: "*bearer....complains of cuts on the left hand under the following circumstances unlawfully wounded using a firearm....*" According to Counsel, the statement was not part of the doctor's findings and wondered how a gunshot wound could be described as a "cut". In addition, none of the Plaintiffs witnesses were present during the alleged shooting incident. It was probable that Fred Munyikwa's injury could have resulted from a fall on a rock.

I have carefully considered the pleadings, evidence adduced and submissions filed herein. The facts are largely not in dispute and can be broadly stated in the following: Farm No. 10415 is in Kaindu Chiefdom, Mumbwa District. In 2003 Chief Kaindu demised land to CRB to establish a game ranch for the benefit of the community. KNRT was subsequently registered for the purpose of managing the game ranch. In 2005, KNRT applied to the Commissioner of Lands for title deeds. It was issued an offer letter on 12th January, 2005, for farm No. 10415. It was to hold the land for 99 years. As part of the conditions of offer, KNRT was required to pay K90,447,600 within 30 days, erect buildings with a minimum value of K500,000 within eighteen (18) months, not to assign, subdivide, mortgage or sublet the farm and to use it for residential purposes.

The Defendants executed a lease agreement on 21st May, 2010, where KNRT leased the game ranch to RKL. One of the conditions in the offer letter required KNRT to obtain a 99 year lease upon which the Defendants' agreement was to be registered. The Defendants also agreed to jointly manage Kaindu game ranch for the benefit of the community. On 22nd February, 2013, KNRT obtained approval from ZAWA to establish an open game ranch. There is general agreement that farm No. 10415 is divided into two zones, with the major part hosting a game ranch and the other agricultural plots.

In my considered view, the issues that fall for determination are threefold: firstly, whether KNRT established a game ranch on farm No. 10415, which is a residential plot and thereby contravened the offer letter? Collary to the issue is whether Chief Kaindu was entitled to terminate the Defendants' lease agreement? Secondly, whether the Plaintiffs were harassed by the Defendants and are entitled to compensation? Thirdly, whether Fred Munyikwa was shot by an RKL employee and is entitled to aggravated damages?

As regards the first issue, the Plaintiffs' evidence is largely derived from PW1, PW2, PW3 and PW6. They all testified that farm No. 10415 belongs to the people of Kaindu Chiefdom and it is not on title. PW1 is the only witness who testified that there are two villages on farm No. 10415 known as Suse and Chipuluka, and they have been in existence for 17 years. PW2 testified that he has an agricultural plot on farm No. 10415.

On the other hand, DW1 testified that Chief Kaindu granted farm No. 10415 to the CRB after the community agreed to set up a game ranch in 2003. The community could not afford to run the game ranch and decided to enter into partnership with RKL. In 2011, ZAWA granted KNRT a game ranch licence and together with RKL they begun to undertake their business.

DW1 also testified that KNRT lodged an application with the Ministry of Lands to convert the tenure of farm No. 10415 from

customary to leasehold. DW4 testified that farm No. 10415 was granted game ranch status in 2011 by ZAWA, after he conducted a quantitative assessment. He also testified that when he conducted his assessment, he did not find human settlements. If he had, he would have raised the issue as a primary concern because of animal-human conflicts.

It is incontrovertible that farm No. 10415 is not on title. There is an offer letter from the Ministry of Lands for a 99 year lease and it states that the land should be used for residential purposes. KNRT has not adduced evidence to show that it complied with the requirements of the offer letter. In like manner, the Plaintiffs have not proved that the offer lapsed and that an entry on the Lands Register was entered to that effect by the Commissioner of Lands. Thus, I take the view that the offer letter is still valid. I find that the Commissioner of Lands never issued a lease for farm No. 10415. As rightfully contended by Counsel, the Defendants could not have breached a non-existent lease.

DW4 testified that farm No. 10415 was not inhabited in 2010 and was suitable for game ranching as opposed to human habitation. Both DW3 and DW4 testified that ZAWA approved the establishment of Kaindu game ranch. Section 26(1) of the Zambia Wildlife Act provides that:

“The President may after consultation with the authority and the local community, by statutory order, declare any area of land within

the Republic to be a game management area for sustainable utilization of wildlife.”

According to the Learned Author Fredrick S. Mudenda on Land law in Zambia:

“The involvement of ZAWA in the management of land under game management areas arises where a person who has been using or occupying land under game management areas intends to convert the same to leasehold.”

Section 8(2) of the Lands Act provides that:

“The conversion of rights from a customary tenure to a leasehold tenure shall have effect only after the approval of the chief and the local authorities in whose are the land to be converted is situated and in the case of a Game Management Area, and the Director of National Parks and Wildlife Service (now Zambia Wildlife Authority), the land to be converted shall have been identified by a plan showing the exact extent of the land to be converted.” (underlining my own)

In the present case, the CRB on 18th August, 2003 applied for land from the Commissioner of Lands to establish a game ranch. On 22nd October, 2003, the Chief Lands Officer advised the CRB to channel its application to His Royal Highness Chief Kaindu and Mumbwa District Council. On 3rd November, 2003, Chief Kaindu informed the Ministry of Lands that his people had identified land which they wished to establish for a game ranch in order to generate income for the community.

The Chief stated that he approved the development as it would assist in alleviating poverty in his chiefdom. Mumbwa District Council vide a minute dated 7th November, 2003 informed the Commissioner of Lands that its Development and Social Services Committee recommended approval of the CRB's decision to be involved in the management and sustainable utilization of natural resources (game ranch). Further, the Council through its Plans Development and Social Services Committee approved the CRB's proposal to establish a game ranch. The CRB was informed of the decision on 4th November, 2003. As part of its procedures, the Council conducted an inspection of the proposed game ranch and some of its relevant findings were that:

- "i Chief Kaindu's area is not part of the proposed community game ranch.***
- ii. The farm is vacant and has no squatters except some seasonal temporal fishermen, who disappear when the fish ban is effected....***
- iii. The inspection team discovered that no single animal (game) was seen in this ranch. The animals either migrated away from the farm due to heavy poaching or they were completely wiped out.***
- iv. The team inspected the proposed Kaindu Community Game Ranch and recommended that CRB be issued with title deeds."***

I have carefully considered the evidence adduced, and I find that farm No. 10415 was not schemed as an ordinary residential estate but a game ranch. The confusion surrounding its status is attributed to the standard offer letter that was issued by the

Commissioner of Lands. In my view, it did not take into account the purpose for which the land was to be utilized by the CRB and KNRT. I therefore, agree with Counsel for the Defendants that if the game ranch is confined to the description of residential purposes, then that description will create an absurdity. I am fortified by DW4's evidence that the larger part of farm No. 10415 is a game ranch and only fit for wildlife conservation. It must therefore be reserved for that purpose.

Apart from PW1, there were no other Plaintiff witnesses who testified that farm No. 10415 has two villages. His evidence was not corroborated. DW1 testified that PW1 sold parcels of land in the game ranch. However, the buyers vacated the premises after they were approached by KNRT. In my view, PW1 could have contrived the story on the two villages because of his person dispute with DW1 and DW2.

The agricultural zone of farm No. 10415 exists on the southern side. In my view, there is no need for the confusion created by some disgruntled subjects in the chieftdom. Their grudges against other members cannot be the basis for abolishing the game ranch. I opine that whereas the members of the community have unlimited access to the agricultural zone, they require permission to enter the game ranch given the nature of activities carried on.

On the Chief's termination of the Defendant's lease, PW1, PW2 and PW3 testified that there were wrangles between the subjects of Kaindu Chiefdom and RKL employees and singled out DW5 as the main perpetrator. They also stated that Chief Kaindu terminated the lease agreement between KNRT and RKL due to those wrangles by his letter dated 1st December, 2016, address to DW5. In that letter, the Chief cited the following concerns:

- "1. No respect to the sitting Chief (wiping Chief's vehicle)*
- 2. Not cooperating with the agreed MOU terms.*
- 3. Allowing untrained scouts to shoot at community members, and other unnecessary harassments.*
- 4. Fighting with fishermen who fish along Kafue River, and hunting not being monitored by the Community Leader.*
- 5. Employing and firing workers without the consultation of KNRT Board members.*
- 6. Not observing Government laws on the use of firearms, and threatening people with a pistol at awkward hours.*
- 7. Concentrating on hunting than conservancy."*

DW1 and DW5 testified that the Defendants lease agreement was purely a business arrangement and that the parties initially agreed that KNRT would obtain a title but that has not been achieved. DW1, DW2 and DW5 all denied that Chief Kaindu terminated the lease between the Defendants vide the letter of 1st December, 2016. DW5 testified that Kaindu community game ranch was modeled on the GRZ/DANIDA brief and it had the consent of

the Chief and the Government. In the case of **Robson Sikombe v Access Bank Zambia Limited**⁶, the Supreme Court stated that:

“The Learned Counsel for the Respondent opposed the arguments made in support of ground six. It was Ms. Mutemi’s submission that a party is bound by the terms of the agreement, which he freely enters into....The law is trite that a party is bound by the terms of an agreement that he voluntarily enters into. We do not wish to undertake the difficult task of explaining very elementary principles of the law of contract in this regard. Suffice it to state that we agree with the submissions of the Learned Counsel for the Respondent on this point.”

From the evidence adduced, the Plaintiffs contended that Chief Kaindu had the power to terminate the Defendants’ lease agreement. On the other hand, the Defendants argued that the Chief never terminated their lease agreement. They added that the Chief’s letter dated 16th October, 2017 addressed to the Director, Department of National Parks and Wildlife proved their assertion that he is committed to their venture. After carefully analyzing the contested position of the parties. I find that the community through the CRB informed the Ministry of Lands on 18th August, 2003, *inter alia* that:

“From the several meetings the community had in the recent past, a general desire for the community to engage in wildlife management by way of developing a community game ranch was shown. This would go a long way in alleviating poverty to the many suffering Kaindu community members. A number of well-wishers had indicated willingness to provide support to the community, the main organization being DANIDA/GRZ CBNRM Mumbwa Project. This organization had already provided support in a number of areas

and have pledged to support by way of financing the community game ranch."

Thus, the overriding consideration as regards this issue borders on privity of contract. My firm view is that the Chief is not a party to the Defendants' lease agreements and had no power to terminate it. The Defendants are persons at law with full capacity to enter into legal relations, thus they are not bound by the Chief's displeasure. I therefore decline to declare the lease agreement between KNRT and RKL is null and void.

The second issue raised in casu is whether the Plaintiffs were harassed by RKL and its employees. During trial, I observed that the Plaintiffs merely stated that they were harassed but did not go further to provide specifics on time, location or event except for Fred Munyikwa's shooting. DW3 and DW5 testified that the alleged harassment of the Plaintiffs was baseless. DW3 carried out investigations after PW3 wrote a letter of complaint to ZAWA about RKL and DW5's conduct.

I found DW3's evidence most compelling in settling this issue because he was an independent witness with no personal connection to the Kaindu Chiefdom. His investigations revealed that PW3's allegations against RKL were baseless. They stemmed from a personal grudge he had against some of the members of the community for relieving him from the position of Chairperson of

KNRT. It is worth stating that Fred Munyikwa's shooting was not evidence of the Plaintiffs' harassment and they had an obligation to adduce cogent evidence in order to prove their allegations. They failed to do so. Accordingly, I find no merit in the claim and decline to award the Plaintiffs general damages.

On the third issue, PW1, PW2, PW4, PW5 and PW6 all testified that Fred Munyikwa was shot by Ken Chipusa, a scout who at the material time was employed by RKL. The Plaintiffs produced a photograph of Fred Munyikwa's wounded hand and a medical report signed by Dr. Y. Mulenga the examining physician. The doctor's findings were that Fred Munyikwa:

"was unlawfully wounded using a firearm and suffered a deep degloving wound on the later palmer aspect of the left hand and puncture of the distal phalanx of the long finger of the left hand."

PW4 and PW5 testified that Fred Munyikwa's case was sent to the Subordinate Court, but were unaware of the outcome. DW5 contended that Fred Munyikwa's wounding did not result from a gunshot because Ken Chipasu was carrying a Bird Shot gun. If the gun was fired at short distance, then he would have lost his limbs and from a long distance, his body would have been covered with ball bearings.

I was only shown a photograph of Fred Munyikwa's wounded hand. He was not presented in Court and I could not associate the wounded hand to the body of Fred Munyikwa. I observed that the medical report was inconclusive on whether a firearm was discharged against Fred Munyikwa or not. For that reason, I find that the physician's findings are too broad and do not disclose the cause of Fred Munyikwa's injury. Further, the findings can be interpreted in two ways: either Fred Munyikwa was shot or he was hit with a gun and sustained the injury. The doctor did not state that Fred Munyikwa was shot. That information was given by the bearer of the medical report.

I equally have no way of establishing that Ken Chipasu was charged with the offence of unlawful wounding so as to connect him to the shooting incident. If the proceedings of the Subordinate Court had been produced, then I might have arrived at a different conclusion, which would have resolved the issue of Fred Munyikwa's compensation. This is not the case and none of the Plaintiff witnesses saw Ken Chipasu shooting Fred Munyikwa. I therefore, find that the claim has not been proved and it fails.

I therefore, hold that the Plaintiffs have failed to prove any of their claims against the Defendants and dismiss their case. I award costs to the Defendants to be taxed in default of agreement.

Leave to appeal is granted.

Dated this 26th day of February, 2018.


M. Mapani-Kawimbe
HIGH COURT JUDGE