

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**

2019/HP/A047

IN THE MATTER OF:

**SECTION 87 OF THE LANDS AND
DEEDS REGISTRY ACT, CHAPTER
185 OF THE LAWS OF ZAMBIA**

AND

IN THE MATTER OF:

**PROPERTY NUMBER L/83/M AND
PROPERTY NUMBER F/867/XX2,
SITUATE IN THE COPPERBELT
PROVINCE.**

AND

IN THE MATTER OF:

**AN APPEAL TO THE HIGH COURT
AGAINST THE DECISION OF THE
ACTING COMMISSIONER OF LANDS
ACTING THROUGH THE CHIEF
REGISTRAR OF LANDS AND DEEDS
PURSUANT TO SECTION 87 OF THE
LANDS AND DEEDS REGISTRY ACT,
CAP 185 OF THE LAWS OF ZAMBIA**

BETWEEN:

STAR TANGANYIKA

APPELLANT

AND

THE COMMISSIONER OF LANDS

16 JUL 2020

1ST RESPONDENT

THE ATTORNEY GENERAL

REGISTRY

2ND RESPONDENT



**BEFORE THE HON. JUSTICE G. MILIMO- SALASINI IN CHAMBERS ON
THE 16TH DAY OF JULY, 2020**

For the Applicant: Mr L. Yeta – Messrs Central Chambers

*For the Respondents: Mrs T. Kampata & Mrs M. Mushabati – Attorney
Generals Chambers*

RULING

CASES REFERRED TO:

1. *Corpus Legal Practitioners v Mwanadini Holdings SCJ Judgment No. 50 of 2014.*
2. *Anort Kabwe and Charity Mumba Kabwe V James Daka, The Attorney General and Albert Mbazima*
3. *Banda and Another v Mudiba (2011) Z.R. 182*
4. *Nkongolo Farm Limited v Zambia National Commercial Bank Limited, Kent Choice Limited (in receivership) Charles Haruperi [20051 ZR (S.C)*
5. *Sithole v State Lotteries Board (1975) ZR 140*

LEGISLATION REFERRED TO:

1. *Lands Act, Chapter*
2. *Lands and Deeds Registry Act Chapter 185 of the laws of Zambia.*

The Appellant by way of Notice of Appeal dated 6th December, 2019 appeals against the decision of the Acting Commissioner of Lands and Deeds to cancel the certificate of Re- entry which was registered on Lot L/83/M and entries 1 and 2 on Lot F/867/XX2 pursuant to section 11 (1) of the Lands and Deeds Registry Act, Cap 185 of the laws of Zambia and consequently cancelling the Appellants Certificate of Titles on ground that they were registered in error. The grounds of appeal as follows:

1. *That section 11 (1) of the Lands and Deeds Registry Act, Cap 185 of the laws of Zambia does not empower the Commissioner of Lands/ or Chief Registrar to cancel duly issued Certificate of Titles hence the purported cancellation of the Appellants Certificate of Titles number CT- 51320 and CT- 1008104 respectively is null and void ab initio.*

2. *That the decision by the Commissioner of Lands to invoke Section 11(1) OF Lands and Deed Registry Act, Chapter 185 of the Laws of Zambia to cancel the Certificate of Re-entry on Lot L/ 83/M and entries 1 and 2 on Lot F/867/xx2 has no legal basis.*
3. *That the Commissioner of Lands ought to have followed the procedure set out in section 34 of the Land and Deeds Registry Act, Cap 185 of the Laws of Zambia in effecting the cancellations.*

The Appellant states in their affidavit of even date deposed by Maria Monokandilos a Greek national resident in Zambia, that she is one of the directors of the Appellant as such duly authorized to swear to the contents of the affidavit. That the Appellant Company is the lawful owner of the properties known as Lot L/83/M and Lot F/867/XX2 situate in the Copperbelt province, Zambia having been duly offered by the 1st Respondent herein and paid for that Appellant. That notwithstanding that the Appellant Company is the lawful owner, the Commissioner of Lands by a letter dated 19th September, 2019 addressed to the Appellant notified the Appellant that entries in the Register regarding the said properties were entered in error as such they were cancelling the duly issued certificate of titles on that basis.

That the Appellant acting through its advocates wrote a demand letter to the 1st Respondent informing them of the need to reverse the entries by the Chief Registrar as the law used therein was not meant to be used in effecting cancellation of duly issued certificate of titles.

That despite this demand letter the 1st Respondent has not responded and has proceeded to enter the entries No. 3 of 2019 on Lot F/867/XXX2 and entry No. 15 of 2019 on Lot L/83/M which effectively cancelled duly issued titles to the Appellant despite the Appellant being the lawful owner without notice or being heard. That the action of the acting Commissioner of Lands acting through the Chief Registrar of cancelling title deeds using section 11(1) of the Land and Deeds Act is wrong and illegal. That the Chief Registrar ought to have declined to invoke section 11(1) of the Lands and Deed Registry Act to cancel title deeds as it was wrong on the basis of the said errors which have not been particularized or disclosed. That section 11 (1) of the Lands and Deeds Registry Act does not empower the 1st Respondent to cancel a duly issued Certificate of Title.

The respondent filed into court, an affidavit in opposition of Notice of Appeal to the high Court against the decision of the acting Commissioner of Lands on 9th June 2020. The affidavit was deposed by Mwanchela Kakubo a Legal officer at the Ministry of Lands. He deposed that the Appellant are not lawful owners of the properties Lot/83/M and F/867/XX2 because the Acting Commissioner of Lands lawfully cancelled the certificates of re-entry that were registered on the said properties, thereby effectively cancelling the title held by the Appellant and restoring it to Roan Antelope Mining Corporation Zambia Limited RAMCOZ, the previous owner. That the Acting Chief Registrar duly exercised his powers under the Laws of Zambia, by rectifying the errors procured by fraud or mistake on the Lands Register in relation to the properties, which rectification in

effect restored the properties to their previous owners. That with respect to property F/867/XX2, the said property was erroneously created on an existing property belonging to RAMCOZ (In Receivership) and the subsequent actions by the 1st Respondent were therefore to correct this error. That the Certificate of Title issued to the Appellant was fraudulently or mistakenly issued and therefore invalid as there were several irregularities and mistakes which necessitated the need for correction by the first Respondent. That the irregularities were; (a) entry captured as “registered No. 83/M/2” is not reflected in the Lands Register as exhibited by MKC2; (b) the incomplete date of Certificate of Title; and (c) the wrong diagram number.

That as to the legal claim to ownership of the properties, the Appellants were aware that RAMCOZ (In Receivership) had Certificates of Title to the properties and the objection to the issuance of new title to the Appellant. That the Registrar is not mandated under the law to give notice or afford a hearing to anyone before rectifying the errors on the Register.

In reply, the Appellant filed an affidavit in reply to the affidavit in opposition to notice of Appeal dated 10th June, 2020. The affidavit was also deposed by Maria Monokandilos that the perceived irregularities highlighted in the Respondents Affidavit in Opposition shows the omissions and/ or mistakes in the entry of the register that ought to be rectified in favour of the Appellant as the lawful owners. That the Appellants had no constructive notice of the internal procedures of the 1st Respondent issuing the certificate of

re-entry and the issuing offer letters showed that there were no objections, that the 1st Respondent through the Registrar is not empowered to effect corrections of errors or mistakes in the register which have the ability to deprive the Appellant of its duly issued Certificate of Titles.

At the hearing of this Appeal held on 11th June 2020, this court was asked to interpret the provisions of *Section 11 (1) of the Lands and Deeds Registry*. The Appellant argued that they were the rightful owners as stated in paragraph 5 of their Affidavit in Support and referred the court to the case of ***Corpus Legal Practitioners v Mwanadini Holdings Limited***¹.

The 2nd Respondent submitted that *Section 11 (1) of the Lands and Deeds Registry Act* as exercised, gives the Registrar discretion to form an opinion on what requires to be done and based on that opinion, the Registrar is empowered by law to effect the corrections. Counsel for the 2nd Respondent submitted that there was no mention of a hearing in section 11. Counsel submitted that the question before court is whether there were errors and that Section 11 should be read in totality. Counsel further submitted that the Registrar has a broad mandate to correct errors that are evident.

In reply, Mr. Yeta counsel for the Appellant submitted that there was a notice of Re- entry and a subsequent notice of re-entry. He submitted that the respondent admitted that a Certificate of Re-entry was entered on the two properties and that the errors were supposed

to be corrected in favour of the Appellants who were duly recognized owners of the property. He further submitted that the issue in this matter was whether section 11 (1) can be invoked to settle land disputes.

I have carefully considered and analyzed the affidavit evidence, the written submissions by respective counsel and the authorities cited. I am indebted to both counsel for the spirited submissions. The main argument in this appeal is that the Appellant claims to be the lawful owner of properties Lot L/83/M and Lot F/867/XX2 while, the Respondents argue otherwise.

This Appeal raises three grounds. The first ground is that section 11 (1) of the Lands and Deeds Registry Act, Cap 185 of the laws of Zambia does not empower the Commissioner of Lands/ or Chief Registrar to cancel duly issued Certificate of Titles hence the Purported cancellation of the Appellants Certificate of Titles number CT- 51320 and CT- 1008104 respectively is null and void ab initio. In the case of **Corpus Legal Practitioners v Mwanandani Holding Limited**¹ it was held “*that the Registrar of Lands and Deeds under section 11 does not empower him to determine disputes which have the effect of determining the rights of the parties to any land or to cancel a certificate of Title duly issued to the registered proprietor of the land to which it relates*”. I agree with the above holding and find that ground one has merit and succeeds.

The second ground of Appeal is that the decision by the Commissioner of Lands to invoke *Section 11(1) of Lands and Deed Registry Act, Chapter 185 of the Laws of Zambia* to cancel the Certificate of Re-entry on Lot L/ 83/M and entries 1 and 2 on Lot F/867/XX2 has no legal basis. With regards to ground two the issue to be resolved is to determine whether the re-entry by the 1st Respondent was valid at law. If the re-entry was valid at law, reference is made to the provisions of **Section 13 of The Lands Act** which affords the lessee to either make representations or/and amends of the alleged breach. It is therefore mandatory that the lessee is served with the notice of the intention to cause a Certificate of re-entry to be entered. This means that apart from ensuring that the notice is served on the lessee, there should be proof of such service. Further that only after the expiration of the three months' notice period should the President consider whether there have been any representations and if so, whether he is satisfied that the breach was not intentional or beyond the control of the lessee. This provision of the law would seem to be in tune with the principles of natural justice in that the lessee ought to be afforded an opportunity to make representations. As regards service of the notice, although this is not provided for in the main body of the provisions of The Lands Act, it has come to be accepted that and Judicial notice should be taken to that effect that service of notices is in line with Rule 27 of The Lands (The Lands Tribunal) Rules of The Lands Act and should therefore be by registered post to the lessee's usual address for service. It also follows that the evidential burden is on the

Commissioner of Lands representing the President to provide proof of such service.

In view of the aforesaid, it is my finding of fact and law that the purported re-entry by the Commissioner of Lands was not valid at law. I am fortified in my finding by the authority of **Anort Kabwe and Charity Mumba Kabwe V James Daka, The Attorney General and Albert Mbazima**² where the Supreme Court exhaustively dealt with the conditions to be satisfied for a repossession to be valid. In the said case, it held as follows:

“1. The mode of service of the notice to cause a Certificate of re-entry to be entered in the register for a breach of a Covenant in the lease as provided for in Section 13 (2) of The Land Act is cardinal to the validation of the subsequent acts of the Commissioner of Lands in disposing of the land to another person.

(2) If the notice is properly served, normally by providing proof that it was by registered post using the last known address of the lessee from whom the land is to be taken away, the registered owner will be able to make representations, under the law, to show why he could not develop the land within the period allowed under the lease.

(3) If the notice is not properly served and there is no evidence to that effect, there is no way the lessee would know so as to make meaningful representations.

(4) A repossession effected in circumstances where a lessee is not afforded an opportunity to dialogue with the Commissioner of Lands, with a view to having an extension of period in which to develop the land cannot be said to be valid repossession.

Ground 2, therefore succeeds.

The Third ground raised is that, the Commissioner of Lands ought to have followed the procedure set out in section 34 of the Lands and Deeds Registry Act, Cap 185 of the Laws of Zambia in effecting the cancellations. Section 34 (1) of the Lands and Deeds Registry Act Cap 185 of the Laws of Zambia provides that: *“No action for possession, or other action for the recovery of any land, shall lie or be sustained against the Registered Proprietor holding a Certificate of Title for the state or interest in respect to which he is registered, except in any of the following cases, that is to say: Restriction on ejection after issue of Certificate of Title:”*

- a) *The case of a mortgage as against a mortgagor in default;*
- b) *The case of the President as against the holder of a State Lease in default;*
- c) *The case of a person deprived of any land by fraud, as against the person registered as proprietor of such land through fraud, or against a person deriving otherwise*

than as a transferee bonafide for value from or through a person so registered through fraud;

- d) *The case of a person deprived of or claiming any land included in any Certificate of Title of other land by misdescription of such other land, or of its boundaries, as against the Registered Proprietor of such other land, not being a transferee, or deriving from or through a transferee, thereof bonafide, or deriving from or through a transferee, thereof bonafide for value;*
- e) *The case of a Registered Proprietor claiming under a Certificate of Title prior in date in any case in which two or more Certificates of Title have been issued under the provisions of parts 111 to VII in respect to the same land.*

I must say that I do agree with the Respondent's skeleton Arguments, were he highlight the doctrine of bonafide purchaser for value without notice held in ***Banda and Another v Mudimba***³ where he listed the requirements as follows:

1. *A Purchaser must act in good faith;*
2. *A Purchaser is a person who acquires an interest in property by grant rather than operation of the law. The purchaser must also have given value for the property;*
3. *The Purchaser must generally have obtained the legal interest in the property and*
4. *The Purchaser must have had no notice of the equitable interest at the time he gave his consideration for the conveyance. A Purchaser is affected by notice of an equity in three cases;*

i. actual notice - where the equity is within his own knowledge;
ii. constructive notice; where the equity would have come to his own knowledge if proper inquiries had been made; and iii. imputed notice; where his agent as such in the course of the transaction has actual, or constructive notice of equity.

In applying the above doctrine, one must be a bonafide purchaser meaning that the purchaser must act in good faith and there must be no fraud. The question then is whether there was any fraud or mistake in issuing the Appellant with a Certificate of Title. In ***Nkongolo Farm Limited v Zambia National Commercial Bank Limited, Kent Choice Limited (in receivership) Charles Haruperi***⁴ the Supreme Court held that: -

"Where a party relies on any misrepresentation, fraud, breach of trust, willful default or undue influence by another party, he must supply the necessary particulars of the allegation in the pleadings. Fraud must be precisely alleged and strictly proved. There is no presumption of fraud. In the instant case, fraud was not alleged."

In the case at hand, what has been highlighted on record is that, there were errors on the Certificates of Title issued to the Appellant but no particulars of fraud have been presented to this court. The law in section 34 (1) is clear, it therefore falls that ground 3 also succeeds.

At this point I shall turn to *Section 11 (1) of the Land and Deeds Act* under which the purported cancellations of the certificates of title were done. Section 11 (1) provides: - "**11(1) Where any**

person alleges that any error or omission has been made in a Register or that any entry or omission therein has been made or procured by fraud or mistake, the Registrar shall, if he shall consider such allegation satisfactorily proved, correct such error, omission or entry as aforesaid."

The provision only authorizes the Registrar to correct errors, omissions or entries in the register that have been procured by fraud or mistake. In the case of ***Sithole v State Lotteries Board***⁵ it was held that if a party alleges fraud, the extent or onus on the party alleging is greater than a simple balance of probabilities. The Respondents should have provided this court with particulars of the fraud or mistake that had resulted in the issuance of the Certificates of Title to the Appellants.

For the foregoing reasons, I find merit in the three grounds raised and accordingly order that the purported cancellation of certificates of title for the Appellant with regard to property no Lot L/83/M AND Lot F/867/XX2 be forthwith set aside.

Leave to Appeal is granted.

Delivered at Lusaka this 16th July, 2020.



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HON. JUSTICE G. MILIMO- SALASINI
HIGH COURT JUDGE