IN THE COURT OF APPEAL FOR ZAMBIA **CAZ APPEAL NO.44/2018**

HOLDEN AT LUSAKA

(Civil Jurisdiction)

IN THE MATTER OF: ORDER 30 RULE 11 OF THE HIGH COURT RULES CAP 27 OF THE LAWS OF THE REPUBLIC OF ZAMBIA

AND

IN THE MATTER OF: THE ILLEGAL OCCUPATION OF SILEMBO VILLAGE AND FIELDS IN THE CHIEF MUSOKWATANE OF KAZUNGULA DISTRICT

AND

IN THE MATTER OF: SECTIONS 8(2) (3) AND 9 (1) (2) OF THE LANDS ACT, CAP 184 AND CUSTOMARY LAND LAWS OF THE REPUBLIC OF ZAMBIA

BETWEEN:

DUNCAN SILEMBO (S/A next of kin of the late Silembo being his son) **APPELLANT**

AND

ROMAN SHALOOMOV (S/A SEKELELEA FARM) **RESPONDENT**

CORAM: KONDOLO SC, MULONGOTI, SIAVWAPA, JJA
On 25th September, 2019 and ....., 2020

For the Applicant : *Mr. A.C Nkausu of Messrs A.C Nkausu & Company*

For the Respondent : *Mr. Mr. H. Chongo of Messrs Tutwa Ngulube*

J U D G M E N T

KONDOLO SC, JA delivered the Judgment of the Court

CASES REFERRED TO:

1. **Attorney General v Marcus Kapumba Achiume (1983) ZR 1.**
2. **Anti-Corruption Commission v Barnet Development Corporation Ltd (2008) Vl.1 ZR 69**
3. **Nkolongo Farms Limited v Zambia National Commercial Bank & Kent Choice & Haruperi SCZ/19/2007;**
4. **Chali Tresford v Emmanuel Kanyanta Ngandu SCZ/84/2014**
5. **Abewe Company Limited v Hadow Mupeza Moonga SCZ/8/23/2004**
6. **Gibson Tembo v Ali Zwani SCZ/6/2016**
7. **Sithole v The State Lotteries Board (1975) ZR 106**
8. **Fabiano Humane v Dp Chinkuli (1971/HP/407 Unreprted)**
9. **Lumanyendo & Another of Chief Chimuka & Others (1988-1989) Z.R. 194.**

LEGISLATION REFERRED TO:

1. **Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia**
2. **Lands Act, Chapter 184 of the Laws of Zambia**
3. **Statutory Instrument No. 89, The Lands (Customary Tenure) (Conversion) Regulations, 1996**
4. **The Rules of the Supreme Court of England 1999 Edition (The White Book)**
5. **The High Court Rules, Chapter 27, Laws of Zambia**

This Appeal is against the ruling of the of the High Court delivered by Mukulwamutiyo J on 27th December, 2017. The appeal has its roots in a land dispute between the Appellant and the Respondent in which the Appellant, who was the Applicant in the Court below, applied by Originating Summons under **Order 113 Rules of the Supreme Court (the "Whitebook")** seeking the following reliefs;

i. An order that the alleged title deeds allegedly obtained by the Respondent over land known as Silembo Village and fields is illegal as having been obtained dubiously and contrary to statutory and customary laws of the Republic of Zambia;

ii. A declaration that the Respondent is not entitled to enter or cross the Applicant's land known as Silembo village and fields at Chief Musokotwane in Kazungula District;

iii. An injunction restraining the Respondent whether by himself/or by his servants or agents or otherwise howsoever from entering or crossing the Applicant's said land.

iv. Damages for trespass; and

v. Further relief as the Court may deem just.

The Parties initially filed their respective Affidavits in support and in opposition but the hearing proceeded as if commenced by Writ of Summons and the Parties called their witnesses to testify.

The Plaintiff was PW1 and testified that he and his family had settled on a piece of land given to his father by Chief Musokotwane Lishumi Namahalika in 1958. He claimed that the area was called Silembo Village and he became village headman after his father died. He was surprised when the Respondent informed him that he was the new owner of the larger part of the land which he inherited from his father. The Respondent produced a Title Deed saying that he had followed the procedure by obtaining consent from the Musokotwane Royal Establishment and a recommendation from Kazungula District Council.

PW1 reported this matter to the Royal Establishment committee amongst whom he found Mr. Kaguwe (PW3) and the committee advised him that they were not aware of the sale of land to the Respondent. He then

reported the matter to the District Commissioner who called for a meeting at the village but the Respondent did not turn up. PW1 was advised to bring the matter to Court.

Under cross examination PW1 stated that he had no document relating to ownership of the land. He accepted that the Respondent had been issued with Title Deeds but he stated that the title was obtained dubiously. He challenged the process by which consent from the traditional establishment was obtained by stating that it was issued by people who had no authority to do so. He said he was challenging the issuance of the Title Deed because even though customary land could be converted to statutory land and title deeds issued, it could not be done over land which was already occupied by people.

PW2 Beatrice Liswaniso who is PW1's niece told the court that the Respondent told her that she had to leave her home in Silembo Village because he had bought the land. She refused to leave because she had lived there ever since she was born in 1970. She said that the Respondent came back on a later date and chased her and other villagers off the land. Under cross examination she said she had a big house which was located near the Appellant's house.

PW3 stated that he was chairman of the Musokotwane Royal Electoral College and he happened to have been at the palace when PW1 complained about the Respondent having been allocated land which comprised most of Silembo village. He explained that since no new chief had been installed after the previous one died; all land disputes were settled by the chief's council

which was supervised by the royal establishment and which at a meeting held in 2008 resolved that no land would be allocated until a new chief was installed. This was a position he maintained under cross examination.

PW3 went on to state that the royal establishment was not aware of the Consent from Ngambela Kenford Simakalanga to the Council Secretary of Kazungula District Council advising that the royal establishment had no objection to the application by the Respondent. He then testified that Ngambela Simakalenga had no authority to grant land.

PW3 visited Silembo village and felt it was an inconvenience to people to allow an investor in the area. The District Commissioner called a meeting to assess how the District Council and Royal Establishment allocated land and it was resolved the place was not suitable for investment because it was a village.

Under cross examination he stated that he did not know the village headman of Silembo village. He testified that no minutes were taken at the meeting held by the District Commissioner. Further, his first visit to Silembo village was after PW1 complained and when he visited the area he saw his house and some developments he had put up.

The Respondent testified as DW1 and said that he followed the procedure for acquiring traditional land by obtaining consent from the headman Situmbeko who was responsible for the land in which he had an interest. He was referred to senior headman Musokotwane who advised him

to apply in writing, he did so and the Royal Establishment issued a consent letter to the Kazungula District Council. The Council interviewed him and after they visited and inspected the area they recommended that the Commissioner of Lands grant him title to the land.

It was the Respondent's evidence that PW1's sister moved onto the land and built a house there after he had already been issued with title deeds. He stated that even though PW3 said that no land could be allocated in the absence of a chief, PW3 was part of a group that inspected land and gave it to the Government for setting up a farming block. The Respondent explained that he had put up massive investments on the land.

Under cross examination the Respondent stated that people, including PW2, moved into the area and built houses after he was issued with title deeds and he denied removing anyone from the area. He said that PW2 was PW1's niece and that was why she lied. He admitted that the District Council noted that there was no visitation report and that one should have been done. He said he believed that the people who signed the authorization were members of the royal family who had due authority.

DW2, senior village headman Musokotwane told the Court that Silembo was not a village but just the name of PW1's area within Situmbeko village where PW1 still lives. He initially met the Respondent in 2008 when headman Situmbeko requested that he be granted a concession for timber which was granted by the Royal Establishment but the Respondent later stopped the timber business and took an application to DW2 seeking land for agriculture

purposes and he was given land by the Ngambela and the Royal Establishment members.

During cross examination DW2 stated that PW3 was a mere member of the Royal Establishment and not the head of the Musokotwane Electoral College. He agreed that when he met the Respondent there were people living at Silembo but nobody was displaced. He said Village headman Situmbeko told him that the Appellant had complained that the Respondent wanted to chase him off the land. In re-examination he said the Respondent was given independent land which was not occupied by the Silembo family.

DW3 Headwoman Situmbeko's testimony was that Silembo was a place within Situmbeko village. That the Appellant was there before the Respondent and it was not possible to give land to a person which is occupied by somebody else.

DW4 Evans Mwiya, a member of the Royal establishment said that the Royal Establishment gave land to the Respondent for agricultural use in Situmbeko village. He told the Court that he was aware of the Appellant's complaint at the palace but branded his testimony as false because the land given to the Respondent was free of occupants and the Royal Establishment indicated that the Appellant's land was not given out.

DW4 further stated that the Kazungula District Council visited the subject land following interviews after which the Appellant was given a consent letter by the Musokotwane Chiefdom. He said the visit was routine

and not on account of any complaint. He said he knew where the Appellant lived and it was not the same place where the Appellant was authorized to cut timber.

DW5 was Shabby Mushabati who was a councilor at Kazungula Council at the material time. He explained that in 2015 the Respondent applied for 250 hectares of agricultural land and he was invited for interviews after which a site visit was undertaken. He said the site visit was important for the purpose of ascertaining that the land applied for was not already occupied by anybody. DW5 led the site visit and established that the land in question was free from habitation. A report was then taken to the full Council meeting in March 2015 and the Respondent's application was approved and a recommendation was made to Ministry of Lands that a title deed be issued.

When cross examined, DW5 admitted that the Council minutes produced at pages 38-39 of the Record of Appeal indicated that the Respondents application was considered and it was recommended that a site visit be undertaken and a report be sought from management to that effect. He further told the Court that the Council could approve land allocation in principle without a visitation report.

DW5 further admitted that the Council minutes produced at pages 40-41 of the record of appeal were incomplete and did not indicate that the site visit report had been submitted and considered by the full council meeting and neither did it indicate that the Respondents application had been

approved in principle. DW5 closed by insisting that the site visit was undertaken and the land allocated to the Respondent was free of occupants.

After considering the evidence, the trial Judge stated that the main issue was that the Appellant felt the allocation of land was defective because it was made without consulting him. The trial Judge made a finding that the Applicant had no ownership of the land in question but only the right of use which was maintainable through the village and the chief in whose chiefdom the land was located. The lower Court accepted the evidence that the Defendant had followed the correct procedure in acquiring the land in question and that the Appellant had failed to show that he owned the land in question or that the Respondent's title was defective. He consequently dismissed the Appellant's claims.

The Appellant has appealed on the following grounds;

1. **The trial judge erred in law and in fact when he glossed over evidence that proved that the purported approvals by the chief and the local authority were dubious.**
2. **The trial Judge erred in law and in fact when he held that the Appellant herein was a resident of Situmbeko Village and he occupies land in that Village.**
3. **The trial Judge misdirected himself when he held that the main issue in this matter raised by the Appellant is that the land in issue was given out without consulting him and, that on that basis he feels the acquisition was defective.**

The Appellant's Heads of Argument were duly filed whilst the Respondent filed his after being granted leave at the hearing. The parties agreed by Consent that the Court would deliver Judgement on the basis of the Record of Appeal together with the Heads of Argument filed by both Parties.

Under ground 1 it was argued that the trial Judge did not evaluate the evidence properly because evidence was presented that when the Appellant complained about the Title Deeds issued to the Respondent, the Royal Establishment said they were not aware that title had been issued. He went to Kazungula District Council where the District Commissioner expressed surprise because they were still awaiting the site visit report. It was the Royal Establishment that advised him to take the matter to Court.

Counsel opined that there was no evidence that the local authority had approved the issuance of title and submitted that this Court was entitled to interfere with the trial Court's finding of fact that the correct procedure was followed when the Respondent was issued with title deeds. He cited the case of **Attorney General v Marcus Kapumba Achiume** [1].

Counsel further submitted that the evidence was clear that the title was improperly obtained and cited the case of **Anti-Corruption Commission v Barnet Development Corporation Ltd** [2] in which it was held that a certificate of title can be challenged and cancelled for reasons of impropriety in its acquisition.

In contrast, the Respondent contended that the Court made a sound finding of fact and did not gloss over the evidence which showed that the approvals by the chief and the local authority were properly obtained. The Respondent also cited the **Marcus Achiume Case** (supra) in which it was held that appellate courts will not easily interfere with a trial court's findings of fact unless the finding is perverse, made in the absence of relevant evidence, misapprehends the facts and could not have reasonably been made if a proper view of the evidence had been taken. It was opined that the Court properly considered the evidence of the Respondent, DW4 and DW5 shown on pages 342-345; 364-399 and 369 – 371 respectively.

It was further submitted that the Appellant could not bring out an action for possession or other action for recovery of land against the Respondent unless fraud was proven. Counsel argued that the Appellant had neither specifically pleaded nor proved fraud and that neither the Judgment appealed against nor the Record disclose any fraudulent acts by the Respondent. He relied on **Sections 33, 34 and 54** of the **Lands and Deeds Registry Act** and also cited the case of **Anti-Corruption Commission v Barnet Development Corporation Ltd (supra).** It was further submitted that fraud should have been specifically pleaded as held in the cases of **Nkolongo Farms Limited v Zambia National Commercial Bank & Kent Choice & Haruperi**[3]; **Chali Tresford v Emmanuel Kanyanta Ngandu** [4] as well as **Orders 18/8/16 and 18/12/18 of the Whitebook** which state that fraudulent conduct must be

distinctly alleged and distinctly proved, and it is not allowed to leave fraud to be inferred from facts.

According to the Respondent, it was the chief who had power to grant occupancy and use rights and to oversee transactions between community members, regulate common pools or resources and adjudicate land disputes. That the Record of Appeal shows that the Appellant reported the land dispute to the Palace but got no help but if he had been a headman, the Chief would have recognized him as such and he could have gotten the help he deserved. The Respondent then set out the procedure for acquiring customary land as follows; *"the conversion of customary land to leasehold title requires approval from three authorities; Chief, the District Council and the Commissioner of Lands. First the written consent of the Chief must be obtained by the District Council as per section 4 (D) (ii) (a) of the Administration Circular of 1995."*

The Respondent argued that having followed the laid down procedure, he was an innocent purchaser for value without notice of fraud or otherwise who acquired good title to the land. The cases of **Abewe Company Limited v Hadow Mupeza Moonga** [5] and **Gibson Tembo v Ali Zwani** [6] were cited.

The Respondent concluded this ground by pointing out that as stated in **Sithole v The State Lotteries Board (7)**, allegations of fraud needed to be proved on a higher standard than a preponderance of probability as is normally the case in civil proceedings. That the Appellant had failed to do so.

The Appellant re-joined by submitting in its arguments filed on 4th October, 2019 and that it was too late in the day for the Respondent to argue against the manner in which the claim was framed because the argument was not raised in the lower Court.

The long and short of the main argument in the rejoinder was that the Appellant had never alleged fraud against the Respondent but simply that there was impropriety in the manner in which title was obtained. He once again referred to the case of **Anti-Corruption Commission v Barnet Development Corporation Ltd** and **Section 8(2) of the Lands Act** which reads as follows;

> ***"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 area the land to be converted is situated."***

In ground 2, the Appellant submitted that the trial Court misapprehended the evidence before it when it found that there was no village called Silembo and that Appellant was not the headman of the said village. Counsel pointed out that the Appellant's National Registration Card indicated that the Appellant was from Silembo Village and he had also produced a village register. He further pointed out that the Appellant did not say that he was headman of Silembo village but was suing as next of kin and that no

consent or approval by the chief was obtained from him as the eldest child or heir of his late father, village headman Silembo.

The Respondent's short response was that the trial Judge made a finding of fact that the Appellant was a resident of Situmbeko village and the finding was not perverse so as to attract interference by this Court.

Under ground three the Appellant submitted that the trial Court misdirected itself because the main issue raised by the Appellant was that, no consent or approval by the chief and the local authority was sought and obtained, to convert customary law tenure to statutory leasehold. According to Counsel, the main issue which was supported by evidence on Record was that the consent and approval obtained were dubious and dubiously obtained to obtain dubious title.

In response, the Respondent reiterated his earlier arguments that the Appellant was not a headman and that the village headman and the chief establishment do not recognise him as the owner of the land in dispute. He cited the case of **Fabiano Humane v DP Chinkuli** [8] which states that squatters have no remedy at law and he also cited the case of **Lumanyendo & Another of Chief Chimuka & Others** [9].

We have considered the Record of Appeal and the Heads of Argument and propose to address the three (3) grounds of appeal as one because this entire Appeal turns on the question of whether or not title granted to the Respondent was granted free of fraud or impropriety and this question is aptly captured by ground 1 which we repeat;

> ***"The trial judge erred in law and in fact when he glossed over evidence that proved that the purported approvals by the chief and the local authority were dubious."***

We observed that the Appellant and the Respondent both produced witnesses that supported their respective positions. Much was argued with regard to whether or not there was a village called Silembo and whether the subject land was located in Silembo village or Situmbeko village. We hold the view that in the circumstances of this particular case and on account of the particular issues that arise, it matters not whether the disputed land was located in Silembo Village or Situmbeko village.

It is not in dispute that the Respondent was allocated land for agricultural use and was issued with title. PW3 told the trial Court that he was present when the Appellant visited the Palace and complained that the Respondent had been allocated land which belonged to the Appellant's family. The Respondent's witnesses, DW3 headwoman Situmbeko and DW4 Evans Mwiya, a member of the Royal Establishment both confirmed that the Appellant had complained that his land had been allocated to the Respondent.

The trial Judge at page J7 stated that:

"I note that as shown in this case, the plaintiff is not a village headman, but a subject of Situmbeko Village, that as such he has a claim to the use of the land in the village. He has no claim to the land as his personal property. The right of use of the Land too is maintainable through the village headman and the chief in whose Chiefdom the Land is situated. The village headman and the chief's establishment do not recognize the Plaintiff as owner of the land in dispute in this case. The rightful person who could maintain a claim in this case should have been the village headman ...."

The trial Judge seems to imply that an individual can have no claim to customary land as his own but only has a right to use it through the headman and the chief who have unfettered power to recognize or dismiss an individual's interest in customary land. This position was supported by Counsel for the Respondent who submitted that *"the record of appeal shows that the Appellant reported the land dispute to the palace but got no help but if he had been a headman the Chief would have recognized him as such and he could' have gotten the help he deserved."* Neither the trial Judge nor Counsel for the Respondent cited any authority to support this argument that individuals have no say over their interest in customary land.

The position they adopted is in stark contrast to **Statutory Instrument No. 89, The Lands (Customary Tenure) (Conversion) Regulations, 1996**

which at **Regulation 2 (4) (c)** provides that a chief is not empowered to give land to an applicant without confirming that giving it away will not infringe on the rights of people. The provision reads as follows;

> ***2. (1) A person-***
>
> ***(a)who has a right to the use and occupation of land under customary tenure; or***
>
> ***(b)using and occupying land in a customary area with the intention of settling there for a period of not less than five years;***
>
> ***may apply, to the chief of the area where the land is situated, in Form I as set out in the Schedule, for the conversion of such holding into a leasehold tenure.***
>
> ***(2) .....***
>
> ***(3) .....***
>
> ***(4) Where the Chief consents to the application, he shall confirm, in Form II as set out in the Schedule.***
>
> ***(a)that the applicant has a right to the use and occupation of that land;***
>
> ***(b)the period of time that the applicant has been holding the land under customary tenure; and***
>
> ***(c) that the applicant is not infringing on any other person's rights;***
>
> ***and shall refer the Form to the Council in whose area the land that is to be converted is situated."***

It is not in dispute that the Appellant complained that his land had been allocated to the Respondent. There is nothing on the Record that indicates that the Appellant was provided with a forum and heard on his complaint despite complaining to the Royal Establishment. The Appellant's

complaint, as well as the issues relating to the existence of Silembo village could have been determined conclusively by the Royal Establishment.

The prescribed form, Form II required by **Subsection 4 of the 1996 Regulations (supra**) was duly completed, albeit controversially. PW3 testified that B. Mweene who signed the form was not Deputy Chief as indicated on the form but the Ngambela. He testified that there was no deputy chief but a Chiefs Council headed by the Ngambela which reported to the Royal Establishment. He said the Chiefs Council had no role in allocating land and it had been decided that no land would be given away until a Chief was appointed. The Appellant confirmed that he met the Ngambela and his witness DW2 confirmed that there was no Chief but only a Chiefs council headed by the Ngambela. DW4, on the other hand claimed that if all 5 clans of the Royal Establishment agreed, land could be given.

The Form II signed by E. Mweene does not indicate that all 5 clans had agreed and he was not even deputy chief as he purported. This is, in any event, all irrelevant because the regulations clearly specify that the application shall be made to the chief and Form II shall be completed and referred to the Council by the chief. Counsel for the Respondent referred to **Section 4 (D) (ii) (a) of Administration Circular of 1985** which according to him specifies that the written consent of the chief is required before customary land can be converted to leasehold title.

Over and above the cited administration circular and the regulations, **Section 8 (2) of the Lands Act specifies** as follows:

8. (2) 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 area 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, the land to be converted shall have been identified by a plan showing the exact extent of the land to be converted. (Emphasis ours)

The responsibility of the District Council is set out in **Regulation 4 (2) (a)** of **Statutory Instrument No. 89 of 1996 (supra), which** provides as follows;

4. (1) Where a council considers that it will be in the interests of the community to convert a particular parcel of land, held under customary tenure into a leasehold tenure, the council shall, in consultation with the Chief in whose area the land to be converted is situated, apply to the Commissioner of lands for conversion.

(2) The council shall, before making the application referred to in sub-regulation (1),-

(a) ascertain any family or communal interests or rights relating to the parcel of land to be converted; and

(b) specify any interests or rights subjects to which a grant of leasehold tenure will be made.

Despite the Respondent's witness, DW5, insisting that a site visit was conducted to verify whether the land given to the Respondent was free of claims from interested parties, the documentary evidence does not prove that this was done. If anything, the documentary evidence does not even show that a full Council meeting approved the conversion of the disputed land into state land for the benefit of the Respondent. We hold the opinion that on a preponderance of probability, no site visit was ever carried out by Kazungula District Council and if it was, no Site Visit Report was ever presented to the full Council.

It is quite clear that the trial Judge incorrectly evaluated the evidence and made erroneous findings that the Respondent, the Royal Establishment and the District Council had complied with the procedure for converting customary land into state land. There was also a clear misapprehension of the law by the learned trial Judge and learned Counsel for the Respondent with regard to the rights of individuals who hold an interest in customary land. The interests of such people cannot simply be brushed aside by headmen and chiefs, they must be given an opportunity to be heard and a clear decision must be made and communicated to all the parties involved in such a dispute.

We have considered the Respondent's arguments that the Appellant's claim of fraud was not specifically pleaded and should thus not be considered. The Respondent commenced this matter in the High Court by Originating

Summons under **Order 113 of the Whitebook** and **Order 30 Rule 11 High Court Rules** and the matter proceeded with both Parties calling witnesses who had not sworn affidavits. The matter proceeded as though commenced by Writ and the Record does not show that the learned Judge ordered the Parties to produce additional pleadings. The only pleadings on Record are the respective Affidavits filed by the Appellant and the Respondent.

The 1st claim in the Originating Summons under **Order 113 of the Whitebook and Order 30 Rule 11 High Court Rules** sought:

1. **An order that the title deeds allegedly obtained by the respondents over land known as Silembo Village and fields is illegal for having been obtained dubiously and contrary to statutory land customary laws of the republic of Zambia.**

We understand the claim to be alleging impropriety in the manner in which the land was allocated to the Respondent. The Affidavit in support of the application clearly stated that the correct procedure was not complied with when the land was allocated to the Respondent and later converted to leasehold tenure. Secondly, if it be felt that impropriety was inadequately pleaded, we note that both sets of witnesses dwelt on the manner in which the land was allocated to the Appellant and neither party raised objection to the reception of this evidence. We would, in circumstances advert to the case cited by the Respondent; **Anderson Kambela Mazoka & Others v Levy Patrick Mwanawasa & Two Others (2005) ZR 138** where the court held that:

"In cases where any matter not pleaded is let in evidence, and not objected to by the other side, the court is not and should not be precluded from considering it. The resolution of the issue will depend on the weight the court will attach to the evidence of unpleaded issues."

The Respondent further claims to be an innocent purchaser for value without notice of fraud or otherwise who acquired good title to the land. We beg to differ because the evidence is quite clear that the law was flouted from the very beginning when an improper letter of consent (Form II) was signed and forwarded to the District Council by the Ngambela compounded by the lack of documentary evidence proving that the Council had complied with the appropriate procedure before recommending that the disputed land be converted to leasehold tenure. These were matters of law which the Respondent should have been able to establish with due diligence. In the circumstances, the Respondent cannot be said to have been an innocent purchaser for value without notice of fraud or otherwise who acquired good title to the land.

In the case of **Anti-Corruption Commission v Barnet Development Corporation Ltd** cited by both Parties the Supreme Court held as follows;

"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."

We find that there was indeed impropriety in the manner in which the disputed land was allocated and leasehold title issued to the Respondent. This Appeal is allowed and we order the Commissioner of Lands to immediately cancel Certificate of Title No. 22387 in respect of Farm KAZUN/10087015/2 issued to the Appellant.

Costs in both this Court and in the lower Court are awarded to the Appellant.

.....
M.M. KONDOLO, SC
COURT OF APPEAL JUDGE

.....
J.Z. MULONGOTI
COURT OF APPEAL JUDGE

.....
M.J. SIAVWAPA
COURT OF APPEAL JUDGE