

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

2016/HP/0309

BETWEEN:

NICHOLAS SMITH LWANDA



PLAINTIFF

AND

OLIVER CHILUFYA

1st DEFENDANT

ARNOLD CHILESHE

2nd DEFENDANT

LASTON MWABA

3rd DEFENDANT

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 1st DAY OF
DECEMBER, 2017**

For the Plaintiff

*: Mrs I.M. Kunda, George Kunda and
Company*

For the 1st Defendant

: Mr M. Nzonzo, SLM Legal Practitioners.

For the 2nd and 3rd Defendants : In person

J U D G M E N T

CASES REFERRED TO:

- 1. Basley V Clarlson 1681 3 LEV 37**
- 2. Hadley V Baxendale 1854 EWHC 70**
- 3. Nawakwi V Lusaka City Council and another Appeal No 26 OF 2001**
- 4. Tall Fellow Horton Wishimanga V NIEC Appeal No 50 of 2011**
- 5. Banda V Mwanza ZMHC 72 2011**
- 6. Nsansa Educational Trust V Musamba 2010 Vol 1 ZR 458**

LEGISLATION REFERRED TO:

- 1. The Constitution of Zambia, Act No 2 of 2016**
- 2. The Town and Country Planning Act, Chapter 283 of the Laws of Zambia**
- 3. The Lands Tribunal, Act No**

4. *The Penal Code Chapter 87 of the Laws of Zambia*
5. *The Law Reform (Miscellaneous Provisions) Act, Chapter 74 of the Laws of Zambia*
6. *The High Court Rules, Chapter 27 of the Laws of Zambia*
7. *The Judgments Act, Chapter 81 of the Laws of Zambia*
8. *The Urban and Regional Planning Act No 3 of 2015*
9. *The Housing (Statutory and Improvement Areas) Act, Chapter 194 of the Laws of Zambia*

OTHER WORKS REFERRED TO:

1. *Megarry and Wade, The Law of Real Property, 6th edition, London, Sweet and Maxwell*
2. *Roy Corde, Commercial Law, 2nd Edition, London and Dublin Butterworths, 1995*

The Plaintiff commenced this action by way of writ of summons claiming;

1. *Damages in the amount of K57, 000.00, being monies spent on building the house and the wall fence which the Defendant demolished.*
2. *An injunction restraining the Defendant whether by himself, his agents or whomsoever from further encroaching on the Plaintiff's Plot No 1951/20 Kanyama and constructing thereon.*

According to the statement of claim filed, the Plaintiff is the owner of Plot No 1951/20 Kanyama, which he obtained from the Kanyama Constituency, Lusaka West Land Allocation Committee, while the Defendant is the owner of Plot No 1951/19, a neighbouring plot with the Plaintiff's.

That the Plaintiff built a wall fence around his plot, and a three roomed house up to window level. It is stated in the statement of claim that on 4th January, 2016, the 1st Defendant attempted to demolish the Plaintiffs house on the plot, but the Plaintiff stopped him. However on 10th January, 2016, the 1st Defendant without any lawful authority or reason

