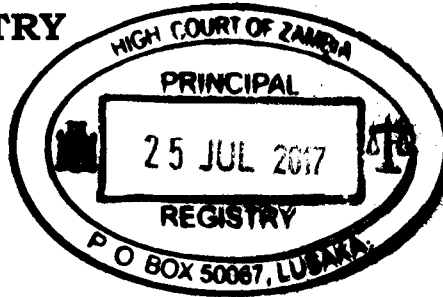


**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**  
(Civil Jurisdiction)

2012/HP/1073

**B E T W E E N:**

CHOONGO HAMANYATI MWEEMBA

**PLAINTIFF****AND**

MUBANGA KASAKULA  
DIANA MOYO  
JOHN CHISHIBA  
SEVENTH DAY ADVENTIST CHURCH  
GEORGE CHAPENDEKA TEMBO  
SATELLITE FARMERS COOPERATIVE

**1<sup>ST</sup> DEFENDANT**  
**2<sup>ND</sup> DEFENDANT**  
**3<sup>RD</sup> DEFENDANT**  
**4<sup>TH</sup> DEFENDANT**  
**5<sup>TH</sup> DEFENDANT**  
**6<sup>TH</sup> DEFENDANT**

**Before Honourable Mrs. Justice M. Mapani-Kawimbe on the 25<sup>th</sup> day of  
July, 2017**

*For the Plaintiff* : Mr. M. Lungu, Messrs Lungu, Simwanza & Co.  
*For the Defendant* : Mr. I.C. Ng'onga, Messrs I C Ng'onga & Co.

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## **J U D G M E N T**

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**Cases Referred To:**

1. *Deventor v Rural Development Corporation Zambia* (1973) ZR 282
2. *Nkongolo Farms Limited v Zambia National Commercial Bank, Kent Choice Limited and Charles Harupe* (2007) ZR 78
3. *Rosemary Phiri Madaza v Awadh Keren Coleen* (2008) ZR 12
4. *Anti-Corruption Commission v Barnet Development Corporation Limited* (2008) ZR 69
5. *David Howes & 8 Others v Betty Butts Carbin* (sued in her capacity as Trustee of the Estate of the late Butts) SCZ Judgment No. 5 of 2012
6. *Zambia Consolidated Copper Mines Limited v Eddie Katalayi and Max Sichilonga* SCZ Judgment No. 2 of 2001
7. *Mijoni v Zambia Publishing Company Limited* (1987) ZR 23

8. *Zambia Building and Civil Engineering and Contractors Limited v Georgopollos*
9. *Wesley Mulungushi v Catherine Chomba*

**Other Works Referred To:**

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

By Writ of Summons and Statement of Claim, the Plaintiff seeks the following reliefs:

- i. **A declaration that the Plaintiff is the rightful owner of Subdivision No. 5 of Subdivision C of Farm 175a and that the Defendants have no legal interest or claim therein.**
- ii. **An order that the fourth Defendant removes his property from the Plaintiff's property.**
- iii. **An injunction restraining the Defendants and each of them whether acting through their agents, servants and employees from trespassing on Subdivision No. 5 of Sub division C of Farm 175a.**
- iv. **Mesne profits**
- v. **Damages for trespass**
- vi. **Costs**

The particulars given in the Statement of Claim are that sometime in 1995, the Plaintiff through his deceased father, Mr. Raymond Himalambo Mweemba (the deceased) verbally agreed to host Munyewu SDA Church congregation on his property. Whilst the Plaintiff was away in the United States of America, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants without his knowledge, and authority unlawfully subdivided and sold 10 and 7 acres of land to the 5<sup>th</sup> and 6<sup>th</sup> Defendants respectively. Further, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup>

Defendants without the Plaintiff's consent and any planning permission constructed a substandard structure on his land.

The Plaintiff states that when he returned to Zambia on 11<sup>th</sup> February, 2012, he issued the Defendants a notice to vacate his property on 13<sup>th</sup> May, 2012 and revoked the consent given to the Church to congregate. The Plaintiff states that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants met on 13<sup>th</sup> May, 2012, and resolved to vacate the Plaintiff's property. However, on 7<sup>th</sup> June, 2012, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants recanted their decision and instead claimed that the Plaintiff's father had given the land to the Church as a gift.

The Plaintiff states that he evicted the Defendants and their caretakers from his land, but without authority, they returned to his property and continued to occupy it. The Plaintiff avers that the 5<sup>th</sup> and 6<sup>th</sup> Defendants are not bona fide purchasers for value with notice neither are they his tenants. The Plaintiff states that the Defendants' continued trespass has impeded his quiet enjoyment of the property.

The Defendants settled a Composite Defence. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants aver that they do not know that the Plaintiff is the registered proprietor of Subdivision No. 5 of Subdivision C of Farm 175a, Lusaka. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants aver that they have no legal capacity to represent Mutuwa SDA Church.

The 4<sup>th</sup> Defendant avers that in late 1994, the deceased, persuaded three families to establish Mutuwa SDA Branch at his farm No. 175a, Lusaka. The 4<sup>th</sup> Defendant states that at a meeting held in 1995, the deceased in the presence of his wife and other family members told the congregation that he had given the Church 25 acres of land as a gift and to appreciate what the Lord had done for him. The deceased also told the congregation that he desired a permanent Church structure to be built on the land as well as a clinic, school and community centre.

The 4<sup>th</sup> Defendant states that the deceased served as its Building Committee Chairman and obtained building approval for the permanent structure from the SDA Lusaka Central Church. The deceased also facilitated land sales of 10 acres to the 5<sup>th</sup> Defendant at K16,000,000.00 and 7 acres to the 6<sup>th</sup> Defendant at K21,000,000.00 on behalf of the Church.

The 4<sup>th</sup> Defendant avers that the Plaintiff acted as his father's agent in the transactions and the deceased never disclosed at the time of giving it land that it belonged to the Plaintiff. Further, the Plaintiff, in 1995, up to the time of his father's demise never challenged the decision. The 4<sup>th</sup> Defendant states that the Plaintiff is estopped from enforcing his alleged rights over its land.

The 4<sup>th</sup> Defendant avers that the Plaintiff maliciously revoked its worship rights and in the process, destroyed 16 Church benches and 2 ½ acres of mature cotton, which was ready for sale, without a Court Order. Further, at a meeting held on 13<sup>th</sup> May, 2012, and not amicably conducted, the Plaintiff and his Advocates forced the 4<sup>th</sup> Defendant to sign a vacation notice under duress and mistake, but it revoked the notice on 7<sup>th</sup> June, 2012.

The 4<sup>th</sup> Defendant avers that the Plaintiff's title deed in respect of Subdivision 5 of Subdivision C of Farm No. 175a, Lusaka was obtained by fraud and lists the following particulars:

- (i) *Filing the Deed of Transfer on 3<sup>rd</sup> October, 1996, in the Lands Registry when there was a caveat in force placed by the*

Commissioner of Lands on 30<sup>th</sup> September, 1993, and still subsisting till 7<sup>th</sup> January, 2004.

- (ii) *Filing the Deed of Transfer by the Plaintiff, which the deceased was not aware of till his death.*
- (iii) *Failure to disclose or inform the deceased that the piece of land he had given as a gift to the 4<sup>th</sup> Defendant in 1995, belonged to the Plaintiff by Deed of Transfer dated 3<sup>rd</sup> September, 1996.*
- (iv) *Failure to inform the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants, while the deceased was still living that the land belonged to the Plaintiff.*
- (v) *Failure to disclose to any member of his family that the deceased transferred 25 acres of land to the Plaintiff.*

The 4<sup>th</sup> Defendant prayed to the Court to dismiss the Plaintiff's claims with costs and to declare the Deed of Transfer filed on 3<sup>rd</sup> October, 1996, void. It also prayed to the Court to cancel the Title Deed held by the Plaintiff for Subdivision 5 of Subdivision C of Farm No. 175a, Lusaka and to stop him from enforcing rights he slept on from 1996.

In the counterclaim, the 4<sup>th</sup> Defendant avers that the Plaintiff confirmed at a meeting held in February, 2012 that the deceased gave the Church 25 acres of land as a gift and would not disturb it.

The Defendant counterclaimed:

- (i) **Damages for trespass to the 4<sup>th</sup> Defendant's land.**
- (ii) **Damages for unlawful eviction of the Church and the 4<sup>th</sup> Defendant's care taker from the house exposing the property to risk.**
- (iii) **Damages for mental torture, embarrassment and inconvenience.**

- (iv) **Special damages for destruction of 4<sup>th</sup> Defendant's sixteen benches, 2½ acres of cotton field at picking stage and other church items estimated at K10,000.00.**
- (v) **Any other relief the Court may deem fit.**
- (vi) **Costs of proceedings.**

The 5<sup>th</sup> Defendant avers that his sale agreement with the deceased was genuine and supported by a consideration of K16,000,000.00 paid in three installments. He had no notice that the Plaintiff was the owner of the land because the deceased gave the Church 25 acres of land as a gift. The 5<sup>th</sup> Defendant states that the deceased told him that his money would be used to complete the Church structure.

The 5<sup>th</sup> Defendant states that the deceased asked him to contact the Plaintiff for land survey and fixing of beacons after the sale. Further, the deceased told him that he would secure his title deed. The 5<sup>th</sup> Defendant states that in February, 2012, he met the Plaintiff who proposed to sell him the 25 acres of land given to the Church, but he declined. The 5<sup>th</sup> Defendant states that the Plaintiff threatened to revoke the deceased's gift because it had no supporting documents and lacked capacity to meet property transfer costs.

Eventually, the Plaintiff repossessed the land and asked the 5<sup>th</sup> and 6<sup>th</sup> Defendants to get back their money, which they declined. The 5<sup>th</sup> Defendant prayed to the Court to dismiss the Plaintiff's claims with costs.

The 6<sup>th</sup> Defendant avers that the deceased told the Board that he had given the Church 25 acres of land as a gift. The deceased was also the 6<sup>th</sup> Defendant's Land Acquisition Committee Chairman. It purchased 7 acres of land at K21,000,000 from the Church through the deceased's efforts. The 6<sup>th</sup> Defendant states that the deceased never disclosed at any time that the land belonged to the Plaintiff. It prayed to the Court to dismiss the Plaintiff's claims with costs.

The Plaintiff called two witnesses. **PW1** was **Stars Mulomba Mweemba**, the Plaintiff's biological mother who testified that the deceased demarcated land to all his children. The Plaintiff was given Subdivision No. 5 of Subdivision C of Farm 175a, where Mutuwa Seventh Day Adventist Branch is located.