REPUBLIC OF MALAWI

IN THE SUPREME COURT OF APPEAL

SITTING AT LILONGWE

CIVIL APPEAL NO. 71 OF 2019

(Being High Court of Malawi, Lilongwe Registry, Civil Cause No. 85 of 2017)

BETWEEN

PUMA ENERGY MLW LTD.....APPELLANT

AND

BISHOP ABRAHAM SIMAMA.....1ST RESPONDENT

SIMSO OIL & TRANSPORT LTD.....2ND RESPONDENT

CORAM: HON. JUSTICE L P CHIKOPA SC, DEPUTY CHIEF JUSTICE

HON JUSTICE F E KAPANDA SC, JA

HON JUSTICE J KATSALA SC, JA

HON JUSTICE S KALEMBERA SC, JA

HON JUSTICE D MADISE SC, JA

HON JUSTICE R MBVUNDULA SC, JA

HON JUSTICE NYAKAUNDA KAMANGA SC, JA

Nkhono SC, of Counsel for the Appellant

Kita of Counsel for the Respondent

Shaibu Principal Research Officer

Chimkono/Minikwa, Clerks

Mutinti/Namagonya Court Reporters

JUDGMENT

HON. L P Chikopa SC, DCJ

1. The dispute in this matter is over land, from which the appellant operated a filling station, known as Plot Number KK104 situated at Nkhotakota Boma.

2. The respondents took out an originating summons in the court below seeking a declaration that the first respondent was the owner of the said Plot Number KK104. Specifically, they sought orders for possession of the said piece of land and costs.

3. The summons was supported by affidavits sworn by Mr. Wapona Kita of counsel and the first respondent for the respondents and Mr. Joseph Chafumuka on behalf of the appellant.

4. After a full hearing the court below found that Plot Number KK104 in Nkhotakota belonged to the first respondent and consequently ordered that the first respondent was entitled to possession thereof. Costs were also awarded to the respondents.

5. The appellant was dissatisfied with the decision. It sought and was granted leave to appeal to this Court. Seven [7] grounds of appeal were filed. They are reproduced in *toto*.

   a. *The learned judge erred in fact and in law by holding that at the date Mtunthama Farming Ltd subleased to the defendant property called Plot KK104 Nkhotakota for 30 years Mtunthama Farming Ltd had no right to do so when the evidence showed that by a lease from Malawi Government dated 28th July , 2013[Deed No. 86782] prior to the said 30 year sublease dated 3rd October [Deed No. 86847] Mtunthama Farming Ltd had duly been granted a 99 year lease by Malawi Government and therefore had the right to grant the said sublease to the defendant;*

   b. *The learned judge erred in fact and in law by holding that the 30-year sublease from Mtunthama Farming Ltd to the defendant was not registered under the Deeds Registration Act when the evidence showed that the copy of Deed No. 86847 duly contained the memorandum of the Deeds Registrar duly evidencing registration under s. 24[1] of the Deeds Registration Act;*

   c. *The learned judge erred in fact and in law by holding that Mtunthama Farming Ltd granted the said 30-year sublease to the defendant out of a 99-year lease assigned to Mr. Timothy Kazombo in 2012 when the evidence showed that Mtunthama Farming Ltd granted the said 30-year sublease out of a 99-year lease dated 28th July, 2013[Deed No. 86782];*

   d. *The learned judge erred in law by holding the question as irrelevant whether the claimants proved that the property that*

Mtunthama Farming Ltd assigned to Mr. Timothy Kazombo in 2012 was the same as the one on which the defendant operated its filling station when it was precisely the property on which the defendant operated a filling station that the claimant sought possession and ownership;

e. *The learned judge erred in law to rely in his judgment on the cancellation on 8th May, 2017 by the Land Registrar/Minister of the 99-year lease held by Mtunthama Farming Ltd when, as the learned judge knew or ought to have known, the High Court, Principal Registry in Judicial Review Case No. 50 0f 2017 on 22nd January, 2018 suspended the effectiveness of the cancellation by the Land Registrar/Minister on the 99-year lease held by Mtunthama Farming Ltd pending judicial review;*

f. *The learned judge erred in fact and in law to find that the defendant did not challenge the cancellation by the Minister of the 99-year lease held by Mtunthama Farming Ltd in light of the said judicial review proceedings;*

g. *The learned judge erred in law when ordering ownership and possession of the subject property in favour of the claimants to ignore the effect of evidence from the defendant showing that by an offer dated 12th April, 2017 while Mtunthama Farming Ltd.'s 99-year lease subsisted, the latter offered the subject property to the defendant which offer the defendant accepted* [**Sic**].'

6. Before the appeal was heard the appellant appeared before a single member of this Court and asked for two things. An amendment of the notice of appeal and leave to adduce further evidence.

7. Both applications were granted. The further evidence was to the effect that it had come to the appellant's knowledge post the proceedings in the court below that the trial judge herein [Hon MCC Mkandawire J as he then was] was, during the subsistence of this matter in his court, in a lawyer-client relationship with the respondent's counsel namely Counsel Wapona Kita. The appellant thinks the Honourable Judge should have disclosed this relationship to the parties and allowed them to decide whether or not they were comfortable with the Honourable Judge proceeding to hear and determine the matter. To the extent that the Honourable Judge did not disclose that fact and yet proceeded to hear and determine the matter the appellant opines that the Honourable Judge was not sufficiently neutral. He was conflicted. He

should therefore not have heard and determined this matter. And because he did the appellant further opines that the Honourable Judge erred in law and fact. The appellant thus amended the notice of appeal, introduced two new grounds of appeal and prayed that the judgment herein be quashed.

8. The extra grounds of appeal are reproduced *verbatim*:

   h. The learned erred in fact and in law by failing to disclose to the appellant that at the time of commencement of the proceedings by the respondents in the court below or pendency thereof, he was in a lawyer- client relationship with the respondents' lawyers i.e. Messrs Kita & Co thereby placing himself in a position of real likelihood or potential bias and/or conflict of interest; and

   i. *The learned judge erred in fact and in law by not recusing himself and consequently proceeding to be seized with the conduct of the matter, hearing and determining the proceedings in the court below when he knew or ought to have known that by virtue of the existing lawyer-client relationship between him and Messrs Kita & Co, he was actually in a position of potential bias and/or conflict of interest that effectively or in fact compromised his impartiality as a judicial officer to the appellant's prejudice*[**sic**]'

9. As the appeal's date of hearing approached the respondents gave a notice of their '*intention to rely upon preliminary objections and to apply to strike out the notice of appeal*'. This was on the grounds that:

   a. 'The grounds of appeal allege a misdirection of error in fact and in law without clearly stating the particulars and nature of the error;

   b. The grounds of appeal are not concise but argumentative and narrative; and

   c. *The grounds of appeal are vague and/or general in terms and disclose no reasonable grounds of appeal[**sic**]*'.

10. On the date of hearing, this Court first heard the preliminary objection. We thought we could fully dispose of the appeal if the preliminary objection was sustained in the alternative proceed to immediately hear and determine the appeal if the preliminary objection was unsuccessful.

11. The gravamen of the objection was that the grounds of appeal were not compliant with Order III, Rule 2[2] of the Supreme Court of Appeal

Rules as applied in this Court's decisions in *Z M Dzinyemba t/a Tirza Enterprises v Total Malawi Ltd* SCA Civil Appeal Number 6 of 2013 (unreported) and *Professor A P Mutharika & Electoral Commission v Dr Saulosi Klaus Chilima & Dr Lazarus Mc Carthy Chakwera* SCA Constitutional Reference Number 1 of 202 (unreported). Put simply the grounds were not sufficiently particularized or clear.

12. Secondly and with specific reference to grounds of appeal 8 and 9 that they were incompetent in so far as they alleged impropriety on the part of the trial judge. The substance of the said grounds should not, in the view of the respondent, have been raised as grounds of appeal but rather as a misconduct complaint to the Judicial Service Commission (JSC). See *JTI Leaf [Malawi] Ltd v Kad Kapachika* MSCA Civil Appeal Number 52 of 2016 (unreported).

13. The appellant contended the exact opposite. Using the same legislative and case authorities as the respondents it argued that there is no set manner of crafting grounds of appeal. As long as the respondent and the court are able to understand the matters in issue the grounds should be deemed to have passed the test in *Dzinyemba v Total Malawi Ltd*. And applying the foregoing to the instant case it is the appellant's considered view that the grounds of appeal herein pass the *Dzinyemba* test.

14. About the fresh grounds of appeal being incompetent and before the wrong forum, the appellant contended that the grounds went to the trial court's ability to be the impartial and independent tribunal mandated by our Republican Constitution to hear and determine this matter and are a proper consideration in deciding whether or not to sustain the judgment from the court below.

15. The appellant therefore prayed that we dismiss the preliminary objections and proceed with hearing the appeal.

16. Having considered the procedural provisions, the arguments and this Court's previous decisions about and around the crafting of grounds of appeal it is obvious that this Court's position regarding the crafting of grounds of appeal cannot be in doubt. Certainly not since *Dzinyemba v Total Malawi Ltd* as confirmed by *Prof Mutharika & EC v Dr Chilima and Dr Chakwera.* Accordingly, grounds of appeal must be concise, to the point and not argumentative. They should state whether they are on a point of law or fact or both. And where they allege an error of law or fact, they should give particulars thereof so that both

the appellate court, the respondent and all involved in the appeal are in no doubt as to what the appeal is all about.

17. However, and without in any way intending to water down the above, this Court must agree with the appellant that there is no uniform manner of drafting grounds of appeal. Styles and fashions in fact abound. The questions, as said above, are whether the grounds, howsoever drafted, state whether they are on a point of law or fact or both, whether they give sufficient particulars about the points of facts and/or law and whether they are able to convey to the court, the respondent and all exactly what the appeal is all about. Whether the answer is in the positive to all of the above posers will depend on the circumstances of a particular case. Including the views of the court dealing with the appeal. But once the answer is in the positive in all respects it does not matter, in this Court's view, what words or linguistic stylistics a party has used. The grounds of appeal will have passed the test in *Dzinyemba v Total Malawi Ltd*.

18. This Court has looked at the grounds of appeal in the instant case. All nine of them. Admittedly they could have been better drafted. It cannot however be said that the same are, their obvious imperfections notwithstanding, unable to be what grounds of appeal should be namely to convey to the court, the respondent and all the essence of the appeal, to state whether the appeal is on a point of law or fact and to give sufficient particulars about the points of law and/or fact. True it might justifiably be said that this was a borderline pass, but we nevertheless came to the conclusion that the grounds complied with the test in *Dzinyemba v Total Malawi Ltd*. The preliminary objection was accordingly dismissed and an order made that the hearing of the appeal commences forthwith.

19. The respondents however indicated that they were unable to so proceed. They actually asked for an adjournment. They had not filed any arguments against the substantive appeal. As this Court understood them, they assumed one of two possibilities. Either that the appeal would be thrown out on the basis of the preliminary objection in which case the written arguments would not be necessary or if the preliminary objection was itself thrown out that the matter would be adjourned in order to allow them file written arguments against the substantive appeal. The appeal would then be adjourned to allow for the immediately foregoing.

20. With the greatest respect the respondents' way cannot be the best fashion of managing this appeal. It would result in a needless waste of time and finances. The proper case management regime was in our view for the respondents to have prepared for all/any eventualities. To accept that the preliminary objection was capable of succeeding in the same way it was capable of failure. They should therefore have prepared and filed their arguments against the substantive appeal in advance. If their preliminary objections succeeded the arguments would have remained unused. It would be the end of the appeal. If, as it turned out, it did not the appeal would be ready to proceed to hearing with minimum disturbance/delay. Accordingly, the application for an adjournment was refused. Not only was there was no good and substantial reason for so doing it also would have flown in the face of best-case management principles.

21. Regarding the appeal, firstly it should be stated that because the respondents had not, as of the date of hearing filed written arguments in support of their case, they were in breach of Practice Direction Number 1 of 2010. They thereby lost their right of audience and we proceeded to hear the appeal to their exclusion. A party must ordinarily not be allowed audience in a court whose rules of procedure it does not respect.

22. Secondly, we must reiterate the fact that appeals in this Court proceed by way of rehearing. In the words used in *Stewart Lobo v The Republic* MSCA Criminal Appeal Number 14 of 2017 (unreported):

> *'in determining this appeal, we will ask ourselves the question whether on the facts and law before the trial court and now before us we would have come to the very same conclusions arrived at by the said court. If the answer be in the positive in all material aspects the appeal will fail. If, however the answer be wholly or in part in the negative, the appeal will succeed either wholly or to the extent of the negative responses'.*

See also *Prof. Mutharika & another v Dr Saulosi K Chilima & Dr Lazarus M Chakwera(supra)* and *Chanthunya v R* MSCA Criminal Appeal No. 1 of 2021 (unreported).

23. We now turn to the grounds of appeal starting with grounds 8 and 9.

24. As we have said above, they essentially allege an appearance of bias. They contend that the lawyer-client relationship between the trial judge and Messrs. Kita & Co. gave rise to an appearance of bias in

favour of the respondents. That the trial judge should therefore have recused himself in this matter. In the alternative should have informed the parties about such relationship so that the parties, especially the appellant, should have had the liberty to opt out of the trial and demand a transfer to a new judge or took an informed decision allowing the trial judge to proceed.

25. The law relating to the rule against bias is not in dispute. The appellant brought to our attention various correct enunciations thereof. Of special interest in this jurisdiction in this Court's view are the sentiments of the High Court of Malawi sitting as a Constitutional Court in *The State v The President of the Republic of Malawi, The Minister of Finance and The Secretary to the Treasury ex parte Malawi Law Society,* Constitutional Case Number 6 of 2006 where it cited with approval especially two cases referred to hereinbelow.

26. In *Metropolitan Properties Co [FGC] Ltd v Lannon* [1969] 1 QB 577 at 579 Lord Denning MR said:

> *'the court does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people'*

27. In *Water Valente v Her Majesty the Queen* [1985] 2 SCR 673 the Canadian Supreme Court said:

> 'the *apprehension of bias must be a reasonable one, held by reasonable and right-minded persons applying themselves to the question and facts obtaining thereon ... the test is 'what would an informed person, viewing the matter realistically and practically- and having thought the matter through- have concluded?*

28. Applying such standard to the instant case it is a fact that the trial judge had engaged the respondents' lawyers in his matter against ESCOM. The matter was settled out of court in favour of the trial judge. Can such a relationship raise the possibility of bias in the minds of right-thinking persons properly appraised of the facts and circumstances of this case? With respect we think not. This was a purely professional interaction with a firm of lawyers if we go by the settlement order supplied by the appellant. Much like was the relationship between the appellant and their counsel. It is stretching matters a bit too far in our view to imagine that some would think that a judge would be biased merely because a lawyer for one of the parties

belongs to a firm that he once used in his own case. Ours is a relatively small jurisdiction. The pool from which to pick professional services is even smaller. Having to recuse oneself in the present circumstances would be unrealistic and cause practical difficulties in *inter alia* the administration of justice. True each case should be decided on its own facts but we are of the firm view that an appearance of bias against the appellant does not rise in the present circumstances.

29. Grounds 8 and 9 are dismissed for want of merit.

30. Coming back to grounds one to seven we think we will do better justice if we provided the factual context in this case.

31. The genesis is the assignment by Mtunthama Farming Ltd on November 8, 2012, of the lease over the land in issue herein i.e. Plot Number KK104 to one Timothy Kazombo for the sum of K11,000,000.00. This was on Deed Number 86470. Timothy Kazombo's interest in the said land was then sold to the first respondent for the sum of K150,000,000.00 in February 2017 on Deed Number 89760. It is on the strength of such sale/acquisition of the land that the first respondent is seeking possession of the land in issue.

32. The appellant's starting point is that they, and not the first respondent, are more entitled to the land in issue. It alleges that it was in 2013 approached by Mtunthama Farming Ltd over the sub-lease of the land known as KK104. A lease was thereafter entered into for a period of thirty years running from October 1, 2013 to September 30, 2043 for the global rental of K30,000,000.00. Subsequently the plot was offered to the appellant at a price of K250,000,000.00. An agreement in respect thereof was arrived at and a deposit in the sum of K20,000,000.00 paid by the appellant.

33. In March 2017 the appellant was advised by Timothy Kazombo that ownership of Plot KK104 had moved to the first respondent. Simultaneously the respondents wrote the appellant asking it to promptly move from KK104 and surrender vacant possession thereof to the first respondent. The appellant refused to do so. It claimed it had a sublease over the land from Mtunthama Farming Ltd and was in the process of purchasing the same. That it had actually paid a deposit in the sum of K20,000,000.00 towards a purchase of K250,000,000.00.

34. Maybe unsurprisingly, a squabble arose as to who between the appellant and the first respondent owned the land in question. The squabble was eventually referred to the Land Registrar. Discussions

followed in the course of which Mtunthama Farming Ltd admitted that they acted in error when they sublet the land in issue to the appellant. They had at that point in time already assigned their interest in Plot KK104 for good value to Timothy Kazombo who in turn sold such interest to the first respondent. Mtunthama Farming Ltd had, in a manner of speech, nothing to sell in so far as Plot Number KK104 was concerned. And to right the situation they surrendered the lease the basis of their transaction with the appellant to the Minister of the Government of Malawi Responsible for Land Matters and requested that the same be registered/confirmed as belonging to the said Timothy Kazombo.

35. In the court below a lot was said about deeds, leaseholds, assignments and the large sums of money the appellant paid towards the acquisition of a sublease from Mtunthama Farming Ltd. The long and short of it though is that the trial court found as a fact that Mtunthama Farming Ltd assigned its leasehold interest in KK104 on November 8, 2012 to one Timothy Kazombo for K11,000,000.00 who proceeded to transfer the same to the first respondent, namely Bishop Abraham Simama, for K150,000,000.00. The court also found as a fact that the sublease, in March 2013, of Plot KK104 from Mtunthama Farming Ltd to the appellant was about the very land that was the subject of the transaction between Mtunthama Farming Ltd and Timothy Kazombo. And finally, that the transaction was of no legal or factual effect. Mtunthama Farming Ltd did not, at the time of the purported sublease, have any interest capable of being transferred in Plot KK104. Mtunthama Farming Ltd could not, in other words, have sublet Plot KK104 to the appellant.

36. Returning to grounds of appeal one to seven, we will go straight to the conclusions. If we may this Court is of the firm view that the grounds of appeal miss the point[s] in issue, gloss over them when they encounter the issues while in some instances they emphasize the irrelevant.

37. Let us begin with the first ground of appeal. The contention is that the trial court erred in holding that the defendant did not have the right to sublease Plot Number KK104 to the appellant when there was a lease from Malawi Government via deed number 86782 granting a 99-year lease to Mtunthama Faring Ltd in respect of the very same land.

38. The appellant has clearly misapprehended the issues. The first respondent's claim to the plot is based on an assignment from

Mtunthama Farming Ltd to Timothy Kazombo and then to him. There has been no dispute, including from the appellant, about the veracity or propriety of these transfers.

39. On the other hand, the transfer that the appellant is seeking to rely on has been found by the court to be of no factual or legal effect. It was made in error and over land that the appellant had already assigned to Timothy Kazombo who later transferred it to the first respondent. The trial court did not therefore err when it held that the Mtunthama Farming Ltd did not have a right to sublease Plot Number KK 104 to the appellant.

40. The second ground of appeal alleges that the trial court erred in law and in fact in holding that the 30-year sublease from Mtunthama Farming Ltd to the appellant was not registered under the Deeds Registration Act when the same was clearly registered. With the greatest respect the appellant is making a mountain out of a molehill here. On page 9 of the judgment the trial court **wondered** whether the sublease was registered under the Deeds Registration Act. It then went on to opine that that the sublease would be void if it were not so registered. There was no holding that the sublease was not registered. Similarly, it was never said that the sublease was void for not being registered. The court only expressed an opinion, by way of *obiter* in our view, in relation to a supposed position. The trial court could never have erred as postulated by the appellant.

41. But the foregoing notwithstanding it is clear that whether or not the sublease was registered under the Deeds Registration Act is an irrelevance. The sublease to the appellant is a nonissue. Made in error over land in which the Mtunthama Farming Ltd had ceased to have any interest. It matters not in our view therefore whether or not the sublease was registered. It should equally not matter what *obiter* the trial court had about its registration status.

42. The third ground contends that the trial court erred in law and fact when it held that the sublease to the appellant came out of the very same lease that birthed the assignment of Plot Number KK104 to Timothy Kazombo. Again, clearly the appellant misapprehended the court's pronouncement. There is a difference between the interest one has in a piece of land and the documentation signifying/evidencing such interest. In the instant case we have been shown how Mtunthama Farming Ltd had a leasehold interest in Plot Number KK104. How this interest was assigned to Timothy Kazombo and how the same

Mtunthama Farming Ltd purported to dispose the same interest to the appellant. When the trial court therefore spoke of the 'same lease' it was talking about Mtunthama Farming Ltd.'s leasehold interest in the land and not the documents signifying such interest namely the Deed. In that vein the trial court did not err.

43. The fourth ground alleges that the trial court erred in law and fact by holding that it was irrelevant that the first respondent did not show that the land he was assigned is the one in issue herein. Yet again and with respect the appellant either did not apprehend the totality of the judgment or deliberately glossed over its purport or just did not care about what was in issue. If it had it would have noted that the question of the identity of the land in dispute was hotly contested. But also that it was easily resolved. Mtunthama Farming Ltd knew the land it assigned to Timothy Kazombo. It also knew the land it purported to sublet to the appellant. It is one and the same land. And it was pursuant to such knowledge that it held up its hands and admitted that it had sublet the land to the appellant in error. That it had in point of fact ceased to have any interest in the land in issue upon assigning the same to Timothy Kazombo. It cannot, with respect, be correct therefore that the trial court did not make any finding on the identity of the piece of land in dispute. Or regarded such question as irrelevant.

44. The fifth ground contends that the trial judge erred in law and in fact by placing reliance on the cancellation of the 99-year lease held by Mtunthama Farming Ltd when he should have known that the cancellation was itself suspended by the High Court on January 22nd, 2018 in Judicial Review Case Number 50 of 2017.

45. The appellant is making way too much of the alleged suspension of the cancellation of the lease, the basis of the purported sublease of the land in issue to the appellant, to Mtunthama Farming Ltd. The trial court did not find for the first respondent simply because the 99-year lease from the Malawi Government to Mtunthama Faring Ltd was cancelled. It did so on the basis of the assignment of Plot Number KK104 from Mtunthama Farming Ltd to Timothy Kazombo. Read as it should the reference to the cancellation was nothing more than a further confirmation, if any were needed, that the appellant could not be talking of a valid sublease when the headlease had itself been cancelled. Like the trial court said the cancellation was, in the larger scheme of things, largely irrelevant. And so was the suspension of the

cancellation. They both had no effect on the validity of the assignment to Kazombo or/and the first respondent.

46. The sixth ground of appeal contends that the trial court erred in law and in fact by holding that the appellant never challenged the Minister's cancellation of the 99-year lease to Mtunthama Farming Ltd because it did courtesy of High Court of Malawi, Principal Registry Judicial Review Case Number 50 of 2017. To be brutally honest this is a peripheral issue. Whichever way it goes has no effect on the validity of the first respondent's claim. But for whatever it is worth it is worth noting that the challenge, going by the information on the file seems to have been against the Commissioner for Lands and/or the Chief Land Registrar and not the Minister Responsible for Land Matters. See the letter from the Land Registrar to Mtunthama Farming Ltd Ref No: Deed Numbers 87146 & 86782 and that from Messrs Mbendera & Nkhono Associates on behalf of the appellant to The Commissioner for Lands Ref: 2017/03/0353/PCAN. The allegation against the trial court is therefore untenable.

47. But even if it were true that the challenge skipped the trial judge's eye, it is as we have said above an irrelevance. The assignment to Timothy Kazombo and thereafter to the first respondent is not premised on the cancellation.

48. In ground seven the appellant accuses the trial court of ignoring the fact that there was an offer and acceptance of the sublease of Plot Number KK104 from Mtunthama Farming Ltd to the appellant. If the trial court did so it did not do so in error. Like the evidence has clearly shown the purported sublease to the appellant was, if truth be spoken, an exercise in futility. Mtunthama Farming Ltd no longer had any interest in Plot Number KK104 which they could sublet to the appellant. Any interest it had had already been assigned to Timothy Kazombo. By the appellant's own admission in error. Can the trial court be blamed for ignoring such transaction? The answer can only be in the negative

49. The sum total is that the nine grounds of appeal are clearly without merit. The appeal is dismissed in its entirety with costs here and below but in this Court only to the extent of the respondents' lawyers' involvement herein. This is said bearing in mind that the respondents were not represented during the entirety of this appeal.

Kapanda SC, JA

50. I have had the privilege of reading the judgment in draft by the Deputy Chief Justice and fully concur with the reasoning and conclusions reached therein. However, I write separately to underscore certain critical aspects of the case that, in my view, merit further emphasis. As I reflect on the judgment authored by the Deputy Chief Justice, I feel it prudent to highlight and expand upon certain critical aspects that resonate deeply with me and warrant additional consideration.

51. First and foremost, I would like to draw attention to the implications of the judgement herein on statutory interpretation. The judgment underscores a pivotal moment in our jurisprudence, illustrating how courts must navigate the often-murky waters of legislative intent. The interpretation applied herein reinforces the necessity for clear legislative drafting and the significance of aligning statutory provisions with the evolving values of our society. In an era where laws can shape social norms, the careful dissection of statutory language invites a broader dialogue on the responsibilities of lawmakers and the courts alike.

52. Another aspect worthy of emphasis pertains to the equitable principles discussed in the judgment. The decision reflects a profound awareness of the necessity to balance competing interests and rights. This nuanced understanding is particularly critical in cases where the ramifications extend beyond the immediate parties involved. As we explore the underlying themes of justice and fairness, it becomes abundantly clear that ensuring equitable outcomes reinforces public confidence in the judicial process. Our role as judges extends beyond mere adjudication; we must aspire to deliver justice that resonates with the community we serve.

53. Furthermore, I would be remiss if I did not commend the emphasis placed on precedent within the judgment. The Deputy Chief Justice's conscientious citation of past decisions underscores the importance of consistency in legal interpretation, fostering predictability for litigants and legal practitioners alike. By grounding the current decision in established jurisprudence, the judgment not only fortifies its legitimacy but also serves as a beacon for future cases that may grapple with similar issues.

54. In sum, while I support the judgment rendered by the learned Deputy Chief Justice, I find it essential to shine a light on these critical aspects which, I believe, will enrich the overall understanding of this

case. The interplay of thorough analysis, statutory interpretation, equitable principles, and the reliance on precedent illustrates the multifaceted nature of our judicial system. As we move forward, I hope that these considerations will continue to guide our discourse and decisions in pursuit of justice.

Rule Against Bias

55. The appellant's assertion of bias against the trial judge is premised on the existence of a prior professional relationship between the judge and the legal counsel representing the respondents. Central to the concept of judicial impartiality is the rule against bias, which is deeply rooted in the principles of natural justice. This vital tenet stipulates that justice must not only be done, but it must also be perceived to be done by the public and all parties involved.

56. In assessing claims of bias, it is essential to apply the test articulated in the case of *Metropolitan Properties Co [FGC] Ltd v Lannon* [1969] 1 QB 577, which requires an evaluation of whether a reasonable and informed person, approaching the situation realistically and with an understanding of all pertinent facts, would apprehend a real possibility of bias influencing the judge's decision-making. This test serves as a safeguard against speculative claims of bias that could undermine the trust and integrity foundational to the justice system.

57. In the matter at hand, the relationship between the trial judge and the legal representative of the respondents was strictly professional and had been concluded before the litigation commenced. Notably, this professional interaction was devoid of any personal interests or continuing associations that might suggest a conflict of interest. Such a background should raise scepticism towards the appellant's claims of bias. To impose a duty of recusal under these circumstances would not only establish an impractical precedent—especially in a jurisdiction that may have a limited pool of qualified professionals—but it could also disrupt the efficacy of legal proceedings.

58. The implications of doing so suggest a troubling trend where any prior professional interaction could be misconstrued as grounds for bias, thereby encouraging parties to seek recusal on potentially spurious or trivial bases. In essence, the appellant's argument fails not only the reasonable apprehension test, which requires a balanced and rational analysis of the situation, but also the broader tests of

practicality and justice that are essential for effective judicial administration.

59. Consequently, the claim of bias lacks sufficient merit, as it does not depict a genuine apprehension of bias that a reasonable observer would recognize. Instead, the assertion seems to stem from a misunderstanding of the complexities surrounding professional relationships within legal contexts, thereby calling into question the intent and implications of such a challenge in pursuit of a fair trial. The judiciary must strive to maintain its independence and integrity, and the judiciary's capacity requires a careful weighing of relationships that do not equate to bias—a standard that should be upheld to further the principles of justice efficiently and effectively.

Doctrine of Nemo Dat Quod Non Habet

60. The crux of this appeal centres around the ownership of Plot KK104, a matter steeped in the foundational principles of property law. At the heart of this legal dispute lies a long-established principle: one cannot transfer an interest in property that one does not own. This adage serves as a cornerstone of property transactions, reinforcing the necessity for clear ownership and the integrity of land dealings.

61. In the case before us, the evidence presented is unequivocal. Mtunthama Farming Ltd, the original entity associated with the property, divested itself of any legal interest in Plot KK104 when it assigned the lease to Timothy Kazombo in 2012. This assignment effectively severed any further claims or interests Mtunthama Farming Ltd had in the property. As a result of this legal transfer, any subsequent dealings regarding the property must be viewed through the lens of Kazombo's ownership rights.

62. The appellant's reliance on a sublease purportedly created in 2013 is fundamentally flawed. Since Mtunthama Farming Ltd had already relinquished its interest in the property, it lacked the authority to issue any further subleases. Thus, the sublease to the appellant can be characterized as legally null and void. This outcome underscores a critical tenet of property law: legal authority is paramount, and defective titles breed uncertainty and potential conflict in property ownership.

63. This outcome underscores a critical tenet of property law: legal authority is paramount, and defective titles breed uncertainty and potential conflict in property ownership. There are many case

authorities that collectively emphasize that defective titles create a fertile ground for disputes and legal challenges, illustrating the fundamental requirement for clear and legitimate legal authority in property ownership.

64. The appellant's position, based on an invalid agreement, is untenable and does not hold up against the scrutiny of legal principles. The Court below, having examined the facts and the applicable law, was correct to find that no rights could arise from the invalid sublease. In affirming this decision, the integrity of property transactions is preserved, ensuring that only those with legitimate legal interests in property can confer rights to others.

65. In conclusion, the dispute over Plot KK104 serves as an essential reminder of the importance of clear, verifiable property rights. It highlights the risks associated with assuming ownership rights where none exist and the critical need for parties involved in property transactions to ensure that their titles are free from any defects. Only through adherence to these principles can the stability and trust of real estate dealings be maintained, facilitating the orderly and lawful exchange of property rights in our communities.

Registration Under the Deeds Registration Act

66. While the appellant maintained the position that its sublease had been duly registered under the Deeds Registration Act, it is crucial to note that registration of a lease or sublease does not remedy the fundamental issue of whether the entity or individual executing the transfer possessed the requisite legal authority to do so in the first place. The Supreme Court's stance on this matter is both clear and compelling: registration serves as a procedural safeguard aimed at ensuring transparency and providing public notice of interests in property. However, it in no way replaces the necessity for a substantive legal entitlement to effect such a transfer.

67. The distinction between process and substance underscores a vital legal principle: even a registration that adheres to all procedural requirements cannot legitimize an otherwise unauthorized transaction. If the appellant lacked the legal capacity or the right to enter into the sublease agreement, mere registration would not rectify this deficiency. As such, the act of registering the sublease cannot be viewed as a remedy for any deficiencies in the underlying legal authority. Therefore, this argument does not contribute meaningfully to the appellant's case,

as it rests on an erroneous assumption that procedural compliance can substitute for the necessary substantive legality. The focus must remain on whether there was a lawful basis for the original transaction, rather than solely on the procedural aspect of registration. This principle is fundamental to property law, reinforcing the idea that the integrity of property rights hinges on both lawful authority and adherence to procedural norms.

68. A further examination of the implications of this understanding reveals a broader legal context where the protection of property rights must encompass both clear procedural guidelines and robust substantive legal frameworks. As such, the courts will generally favour interpretations that uphold the sanctity of lawful property transfers over those that might appear to sidestep essential legal requirements, even if such interpretations may initially seem more expedient for parties involved in the transaction. Thus, the appellant's reliance on the mere act of registration, without a solid foundation of legal authority, ultimately weakens its case and underscores the critical importance of establishing both procedural and substantive compliance in property dealings.

Role of Procedural and Evidentiary Issues

69. I fully support the lead judgment, which articulates how the appellant's focus on procedural technicalities, particularly the suspension of lease cancellation, ultimately detracted from addressing the core substantive issues at hand. It is crucial to recognize that the cancellation or mere suspension of the head lease cannot alter the fundamental circumstances surrounding the property in question. Specifically, it is imperative to note that Mtunthama Farming Ltd had already executed an assignment of its interest in the property to Kazombo before the appellant's claims arose. This assignment fundamentally changes the landscape of ownership and rights concerning the property. Thus, any claim by the appellant to hold a valid interest through a purported sublease is rendered moot by the pre-existing transfer of interest. Moreover, the legal framework governing property transactions and leases is designed to ensure clarity and certainty. Allowing the appellant to rely on the suspension of lease cancellation to validate a sublease undermines the integrity of these legal principles. It sets a concerning precedent where procedural oversight could override substantive legal rights and interests established through proper assignment.

70. In essence, the appellant's contention overlooks a critical aspect of property law: that rights derived from assignments and transfers are paramount, especially when conducted in accordance with the relevant legal provisions. Consequently, regardless of any subsequent administrative actions regarding lease cancellation, the appellant cannot escape the reality that its purported sublease lacked legitimacy from the outset. This situation highlights the importance of adhering to the foundational tenets of property rights, where the legality of interests in real estate must be respected and upheld to maintain order and justice in property dealings.

Case Management and Costs

71. The respondents' failure to file arguments against the substantive appeal reflects a lack of diligence but does not affect the soundness of the trial court's findings. The decision to deny an adjournment and proceed in their absence was appropriate, ensuring efficiency and avoiding undue delay.

72. By opting to move forward despite the respondents' absence, the trial court demonstrated a commitment to upholding judicial efficiency. The absence of arguments against the appeal underscores a lack of engagement from the respondents, yet this does not undermine the integrity of the court's original findings. In fact, the court's refusal to grant an adjournment highlights its role in maintaining procedural order and expediting the resolution of the case. Moreover, the decision to award costs specifically for the respondents' representation during the appeal strikes an equitable compromise. It ensures that while the respondents are held accountable for their lack of diligence, they are not unduly penalized for their initial participation in the proceedings. This approach not only discourages negligence but also reinforces the principle that judicial resources should be utilized effectively, benefitting all parties involved in the legal process. Ultimately, the trial court's actions reflect a balanced application of justice, maintaining the integrity of the judicial system while promoting accountability among respondents.

Conclusion

73. For these reasons, I concur entirely with the dismissal of the appeal. The trial court's findings are well-founded, and the appellate grounds raised fail to disclose any error warranting reversal. Justice, in

this matter, has been done, and the appellant must now accept the consequences of engaging in a transaction predicated on defective title.

74. The appellant's claims, while presented with conviction, ultimately do not withstand scrutiny against the robust evidence and legal principles established during the original trial. The trial court examined the facts in detail, weighed the testimonies of witnesses, and considered the implications of the transactions involved. The conclusion reached was not only appropriate but necessary to uphold the integrity of our legal system.

75. Appeals exist to ensure fairness and justice, but they cannot serve as a means to revisit settled matters or to challenge the sound judgment made by a lower court when such judgments are based on a clear understanding of both the law and the facts. The arguments put forth by the appellant were insufficient to demonstrate that the trial court had acted outside its authority or that it had misinterpreted the law applicable to this case. Furthermore, the principle of "caveat emptor," or buyer beware, becomes particularly significant here. The appellant entered into the transaction cognizant of the risks associated with defective title, and as such, must now bear the repercussions of that choice. Therefore, upholding the trial court's decision not only reinforces the rule of law but also serves as a crucial reminder to all parties involved in future transactions to pursue due diligence and to engage in thorough investigation to mitigate potential risks.

76. In conclusion, the dismissal of the appeal is justified. The legal processes have been adhered to, the verdict is fortified by facts, and fairness has prevailed. Thus, I fully support the decision and the principled stance taken by the trial court.

Hon J Katsala SC, JA

77. I have read in draft the opinions by the Hon Deputy Chief Justice and Hon Kapanda SC, JA. I have nothing to add. I fully concur with the reasoning and conclusions therein.

Hon. Justice S Kalembera SC, JA

78. I had the privilege of reading in draft the judgment delivered by the Hon Deputy Chief Justice. I concur with the conclusions and reasoning therein.

Hon. Justice D T K Madise SC, JA

79. I read in draft the judgment delivered in this appeal by the Hon Deputy Chief Justice. I wholly agree with the conclusions and reasoning therein.

Hon. Justice R Mbvundula SC, JA

80. I had an opportunity to read in draft the judgment delivered in this appeal by the Honourable Deputy Chief Justice. I fully agree with the conclusions and reasoning therein.

Hon. Justice D Nyakaunda Kamanga SC, JA

81. I had the privilege to peruse in draft the judgment delivered herein by the Hon Deputy Chief Justice. I agree with the conclusions and reasoning therein.

Pronounced this 17th Day of December, 2024.

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HON. L P CHIKOPA SC, DEPUTY CHIEF JUSTICE

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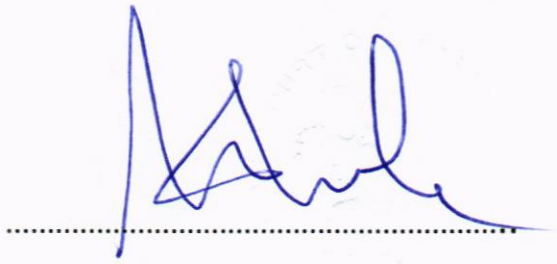
HON. F E KAPANDA SC, JA



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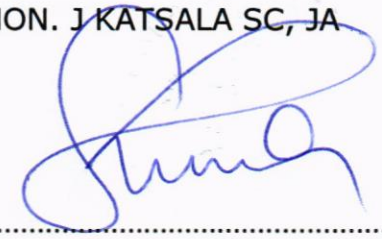
HON. J KATSALA SC, JA



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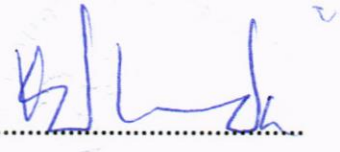

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HON. nyaKAUNDA KAMANGA SC, JA