

SOUTHERN AFRICA LITIGATION CENTRE

CASE SUMMARY: ASA LATO AND 30 OTHER VILLAGE OWNERS v CHIBALE AND OTHERS

INTRODUCTION

In *Asa Lato and 30 Other Village Owners v Chibale and Others*, a community in Zambia is challenging the allocation of their customary land to commercial farmers without the community's knowledge, consent, or compensation. The petitioners argue that this compulsory acquisition of their land violates their constitutional rights.

This case is important in protecting the customary land rights of communities in Zambia from unlawful displacement, an ongoing problem throughout Zambia and Southern Africa.¹ In particular, this case seeks to protect the property rights of women whose land rights are guaranteed under customary law.

PARTIES IN THE CASE

The petitioners are subsistence and small-scale commercial farmers who reside in the Serenje District of the Central Province of Zambia. The respondents include two commercial farmers as well as the Serenje District Council, the Attorney General, and the Commissioner of Lands.

FACTUAL BACKGROUND OF THE CASE

In 1995, a businessman (1st Respondent) was engaged to construct a bridge across Munte River and was allocated land in Munte Farm Block by the local authority. The community was not aware of his application and allocation of the land as Munte Farm Block is far from land they occupied. Later in 1999, Senior Chief Muchinda authorised the 1st Respondent to settle as a commercial farmer along the Munte River. From that time until 2014, the community was aware only that the 1st Respondent was a local resident who has been given a small plot of farm land by their Chief as any villager would.

In 2014, the community first learned that the 1st Respondent was in fact claiming the entire land they occupied. Unbeknownst to the community, the 1st Respondent had been issued a Certificate of Title on 10 July 2013. On 8 September 2014, members of the community met with several local government officials to discuss the issue. According to the community, the result of this meeting was the demarcation of the 1st Respondent's land as part of the Nansanga Farm Block and without disturbing the land a majority of the community occupied and farmed. At this time, the entire land claimed by 1st Respondent was already part of the Nansanga Farm Block. The community thought that the issue had been resolved amicably.

In 2016, a commercial farmer (2nd Respondent) arrived in the area and informed the community that he had purchased the land from the 1st Respondent and that he owned all of the land occupied by the community. It was at this time that the community learned that their customary land had been converted to State land as part of the Nansanga Farm Block and that a Certificate of Title was issued to the 1st Respondent in 2013.

¹ See a 2017 research report by Human Rights Watch on commercial farming and displacement in Zambia, https://www.hrw.org/sites/default/files/report_pdf/zambia1017_web.pdf.

SOUTHERN AFRICA LITIGATION CENTRE

On 8 November 2016, another meeting was held where the District Commissioner told the community members that the 2nd Respondent did own the entire land and that they were to vacate the land within two weeks.

In December 2016, in the company of armed police officers, the 2nd Respondent used a bulldozer to demarcate a boundary line and then informed the petitioners that they had to vacate the land by April 2017. The 2nd Respondent has since started erecting poles along the boundary for purposes of building a wire fence that would enclose the entire land.

On 29 November 2017, the community members filed their case in the Lusaka High Court challenging the taking of their land without consultation or compensation.

If displaced, the affected community will lose access to the land they depend on for their livelihood as farmers and could face criminal trespass charges if they attempt to re-enter their customary land. In addition, if the surrounding forest is fenced off, the community will also lose access to many resources they rely on.

LEGAL ARGUMENTS BEFORE THE COURT

The petitioners argue that the allocation of their land without consultation of and compensation for the community violated their rights, specifically:

- The respondents have turned the petitioners into squatters on their own land and have denied them adequate compensation.
- The respondents have violated the petitioners' customary rights and their right to dignity.
- The respondents have violated the petitioners' right to liberty and freedom of movement by preventing them from using their land as they wish and forcing them to stay home for fear that if they leave, they will not be able to return to their homes.
- The respondents have subjected the petitioners to psychological and physical torture, and inhuman and degrading treatment in violation of the Constitution in coming to the petitioners' lands with police and guns.
- The respondents' actions in entering the land and creating a boundary violated the petitioners' right to not be subjected to entry by others on their premises without their consent as protected under the Constitution.
- The respondents' actions amount to the compulsory acquisition of their customary land without following the mandatory legal procedures and providing them with adequate compensation which violates the Constitution and the Lands Act.
- The inadequate protections in the Lands and Deeds Registry Act violate the constitutional protections for customary land owners by granting secure tenure to those who live on State land to the detriment of those living on customary land.

The respondents argue that the transfer of land was done with the consent of the Chief in accordance with the law and deny any constitutional violations.

STATUS OF CASE

The matter is scheduled for hearing on 31 August 2018.