

***COSMAS MWEEMBA AND 34 OTHERS v CHIKANKATA DISTRICT COUNCIL AND ANOTHER, ZAMBIA HIGH COURT, CASE NO. 2013/HP/1654.***

**FACTUAL BACKGROUND OF CASE**

**Introduction**

1. Relevant facts are as substantially contained in the Affidavit in Support of Ex-Parte Summons for Interlocutory Injunction sworn by Cosmas Mweemba and filed in the High Court of Zambia on 19 November 2013, further Affidavit dated 11 December 2013 and the Amended Statement of Claim dated 13 November 2015. Copies of Mr Cosmas Mweemba's Affidavits and the Amended Statement of Claim are attached as "CM 1-3". Additional facts are contained in the documents and photos attached.

**Summary of Facts**

2. The 35 Plaintiffs are among the 229 successful applicants who were allocated land under the Mogoto/Naluama Settlement Scheme established by the Ministry of Agriculture of the Government of the Republic of Zambia in the 1970s. The Mogoto/Naluama Settlement is part of farm No. 106, previously owned by an absentee landlord that was repossessed by the Government of the Republic of Zambia, surveyed, subdivided into farms, communal grazing land and residential plots which were offered to 229 successful applicants in order to meet food security needs in Zambia. This fact is confirmed in the Report of the Sakala Commission, which reported at page 27 in paragraph(c) that the Mugoto Naluama Settlement Scheme (the Scheme) was established in 1978 and farmers began to move in during 1979. The Report further states that the Scheme covered a total of 7, 953 hectares which was divided into arable units of 10 hectares each, communal grazing land and residential areas. According to the Sakala Commission's Report, the Scheme is organised on a village settlement basis. A copy of page 27 of the Commission's Report is attached as "CM 4".
3. In 1999, at the advice and invitation of the Mazabuka Municipal Council, the 229 applicants completed prescribed forms from the Ministry of Land which were required for the issuance of title deeds. Some copies of the completed and approved forms from the Ministry of Land are attached collectively as "CM 5".
4. On 28 March 2002, a meeting was held at Mazabuka Municipal Council at which the forms submitted by the 229 settlers were considered. Town Clerk for the Municipal Council, Mr. R.H Hamkuni, and area Member of Parliament for Chikankata Constituency, Amos N.M Nakalongo, also attended the meeting. The meeting resolved that the 229 settlers should be issued with title deeds and that their applications be sent to the Lands Department in Lusaka. A copy of the Extract of the Minutes of the Second Ordinary Council Meeting held on 28 March 2002 is attached as "CM 6".
5. On 3 August 2004, the Town Clerk for the Mazabuka Municipal Council forwarded the list of all the 229 settlers together with their approved forms to the Commissioner, of Lands and recommended that they be issued with title deeds. A copy of the Town Clerk's recommendation letter and the list of all the 229 settlers are attached as "CM 7-8".

6. Until 26 February 2014, the Commissioner of Lands was still processing offer letters for the 229 settlers who live about 145 kilometres out of Lusaka. According to the 35 Plaintiffs, they were advised by the Commissioner of Land that the delay in issuing them offer letters was because he wanted to process all 229 recommendations at the same time rather than on an individual basis and that such required setting aside ample time. It was also not easy for the 229 to be travelling to Lusaka to follow up because of the distance and challenges with transportation.
7. In 2007, 125 of the 229 settlers were displaced by Abidon Zambia Limited (the “Company”) after it was granted a Large-Scale Mining Licence No. 54 at Munali Nickel Mine. Fortunately, the company fully recognised the rights of the 125 settlers and agreed to compensate the 125 settlers; both those who were registered under the Mugoto Settlement Scheme and those who were not registered. A copy of the standard agreement entered between the company and the settlers indicates at page 3 under recital D that “[t]he Mugoto Area is an agricultural settlement established in the 1970s, by the Ministry of Agriculture of the Government of the Republic of Zambia”. Among other benefits under ‘Resettlement and Compensation’, it is stated in clause 3.1.1 that “[t]he Registered Settler Farmer shall be allocated one and a half times of land he/she holds within the company’s Mining Surface Rights Area.” A copy of the agreement between the company and a settler is attached as **“CM 9”**.
8. In 2012, the Government of the Republic Zambia established the Chikankata District Council pursuant to Statutory Instrument No. 41 of 2012. President Michael Chilufya Sata decided to turn Chikankata into a new district, rather than have it remain part of Mazabuka District, as an attempt to take development closer to the people. The expressed initial intention was not to displace or chase people away from the development.
9. Sometime in December 2012, the District Council decided to take over the land belonging to 35 Plaintiff settlers and their families so as to establish a new township, and started constructing administration offices, staff houses, a modern market and a Police Station on the communal grazing land. The District Council neither consulted the Plaintiffs nor obtained their consent before taking over their land.
10. The District Council was aware that the land they selected was occupied as it stated in paragraph 2 of the last page of the Minutes for the 3<sup>rd</sup> Meeting of Stakeholder over the Siting of the Chikankata District dated 3 January 2013, that “Mr Josi Lumina wanted to know the exact boundaries of the district as there was no land at Nega–Nega turn off the place which is proposed”. A copy of the Minutes dated 3 January 2013 is attached as **“CM 10”**.
11. From the Minutes attached as “CM10” above, it is clear at page 3 that of the two places that were proposed for siting of the Chikankata District, that is Nega-Nega Turn off and Turnpike, Turnpike was more suitable for the location of the administration blocks and the new township because it is within 1 kilometre from the Kafue river, one of the largest rivers in the country, unlike Nega-Nega which is supplied water by two earth dams and is about 23 kilometres from the Kafue river. Further, Turnpike is easily accessible through the Great North Road and the Chirundu Road while Nega–Nega turnoff is only accessible through the Great North Road.

12. The main reason why the District Council selected Nega-Nega Turn Off was because the District Council or the Government was not prepared to compensate and relocate the owners of Turnpike. The Minutes attach as “C10” above indicated at page 3 that Turnpike is “[p]rivately owned by Bhata Cooperatives”, while Nega-Nega Turn Off is “[c]ustomary”. The Provincial Planner confirmed that the Government of the Republic of Zambia is not prepared to compensate or resettle the 35 Plaintiffs when he said, in paragraph one of the last pages of the Minutes attached as “CM 10” that “during the meeting of the Southern [P]rovince [P]lanning [A]uthority which was chaired by the [P]rovincial [P]ermanent [S]ecretary, the matter was discussed after which the [P]ermanent [S]ecretary informed the meeting that the government had no money for purchasing land but only for infrastructure development”.
13. Further, in the Minutes of the Second Ordinary Council Meeting held 26 December 2012 and dated 22 March 2013, it is reported at page 9 in paragraph 4 that the Councillors were dismayed at some of the disparaging remarks by the District Commissioner for Mazabuka District during the meeting in “his attempt to respond to concern raised regarding the Government’s preparedness and willingness to resettle and compensate villagers currently occupying land identified for the siting of the District Centre and township”. In paragraph 5 of page 9 of the same Minutes, it was “reiterated that issues which involves resettlement or displacement of subjects to pave way for infrastructure development deserved serious and more careful attention and must not be grossed over by any official representing the Government in the District”. A copy of the Minutes of the Second Ordinary Council Meeting held 26 December 2012 and dated 22 March 2013 is attached as “**CM 11**”.
14. At all these meetings, the 35 Plaintiffs and their families and dependants were not involved and not aware of what was going on. Worse, the issues of compensation or resettling them has never been on the table despite the fact that they had occupied the land and developed it for 35 years. The District Commissioner for Mazabuka, as Government representative in the District confirmed that compensation or relocation is not on the table when he stated on the last page in paragraph 3 of the Meeting of Stake Holders held on 14 December 2012 and dated 3 January 2013 that “[a]s for perceived relocation of the people, the issue would be handled at a later stage”. A copy of the Minute is attached as “**CM 12**”.
15. Following the Stakeholders meetings above, the Site Plan for the Chikankata District and Township was prepared. Sadly, the Site Plan included not only the communal gazing area but also some of the 10 hectares farms and residential plots that were allocated to the 35 Plaintiffs in 1978. Chief Naluama endorsed on the Site Plan on 9 September 2013, that “[a]ccording to the site plan there will be no people who will be affected in terms of relocations as the people will be integrated in the new township”. A copy of the Site Plan endorsed by Chief Naluama is attached as “**CM 13**”. At the time of producing the Site Plan, the Plaintiffs were at this stage waiting for the issuance of offer letters and title deeds from the Commissioner of Lands, following the submission of applications and recommendations by the Mazabuka Municipal Council.
16. When word slowly went around that the newly established Chikankata District Council and township would be established and constructed at Nega-Nega Turn Off, the affected 35 Plaintiffs held a meeting on 19 February 2013 at which it was resolved that they should inquire from the Council Secretary the exact plans of the District Council.

A copy of the letter to the Council Secretary dated 19 February 2013 is attached as “**CM 14**”. However, the District Council proceeded and sent surveyors to survey the Mugoto Settlement which was already surveyed, subdivided and offered to the 229 applicants, including the 25 Plaintiffs. On 27 March 2013, the 35 Plaintiffs held a consultative meeting with Mugoto Settlement Committee at which all the 35 Plaintiffs resolved to reject the District Council’s plans to set up a new township and build administration offices on their land. A copy of the Minutes of the Consultative Committee Meeting is attached as “**CM 15**”.

17. On 14 September 2013, the Plaintiffs, their families and dependants watched helplessly as large commercial mobile machines moved onto their settlement and began uprooting, grading, levelling and doing other activities whilst surveyors pegged re- demarcated plots on the grazing and residential land for offer to the general public. The District Council started carrying out construction work and grading roads on the communal grazing land where the 35 Plaintiffs’ cattle, sheep and pigs grazed. All this was done without consulting the 35 Plaintiffs. Copies of photos of the Plaintiffs animals grazing on the grazing land are attached and collectively marked as “**CM 16**”.
18. On 2 October 2013, the 35 Plaintiffs wrote a demand letter to Chikankata District Council and the Attorney General demanding that they stop construction work on their land within three working days, failure to which legal proceedings will be commenced against them. Unfortunately, the Chikankata District Council and the Attorney General ignored the 35 Plaintiffs’ letter and continued with the construction work. A copy of the letter to the Chikankata District Council and the Attorney General is attached as “**CM 17**”.
19. On 14 November 2013, the 35 Plaintiffs commenced an action in the High Court challenging the District Council’s decision and actions. At the time of commencing the actions, the Plaintiffs also made an application for an interlocutory injunction which was accompanied by a certificate of urgency. The hearing of the application for an interlocutory injunction was set for 24 January 2014. However, the matter was adjourned at the request of the lawyers for Chikankata District Council and no date of hearing of an injunction was set until late in 2016 when the date was set for 29 March 2017. This is more than 3 years from the time the hearing of the application was adjourned on 24 January 2014. The Plaintiffs through their lawyer sent letters to the Clerk of Court requesting a date of hearing but to no avail. Copies of the letters to the Marshall to the Judge dated 4 February 2014, 24 February 2014, and 2 May 2014 are attached as “**CM 18-20**”.
20. On 28 February 2014, while the matter was pending in court and construction work under way, the Chikankata District Council wrote to the Chairman for Mugoto Settlement inviting him to a Stakeholders’ Meeting over the Township Boundaries. A copy of the letter to the Mugoto Settlement Chairman is attached as “**CM 21**”.
21. When the 35 Plaintiffs realised that the construction work was proceeding despite the matter pending in court without a hearing date for their injunction application, they turned to the media hoping that the Chikankata District Council would be persuaded to desist from further construction. However, this still did not yield any result. A news item titled “Over 4,000 families face displacement in Chikankata” was featured in the Daily Nation on 24 May 2014 and is attached as “**CM 22**”.

22. When all the above transpired, the Commissioner of Lands who exercises the President's power of administration and allocation<sup>1</sup> of land was not aware. That the Commissioner of Lands was not aware of Chikankata District Council's decision and taking over of the 35 Plaintiffs' land is confirmed by the Affidavit in Support of Summons for Misjoinder filed into Court on 16 December 2015 by the Legal Officer from Ministry of Land on behalf of the Commissioner which states in paragraph 6 that "we have no information on where exactly they want to put up Chikankata District Council..." and further stated in paragraph 8 that "clearly this is a matter which has to do with Chikankata District Council and not the Commissioner of Lands". A copy of the Affidavit in Support of Summons for Misjoinder is attached as "CM 23". That the Commissioner of Land did not know about the taking over of the Plaintiffs' land is also confirmed by the fact that the Commissioner continued processing the 229 settlers' application for title deeds and even issued three offer letters for L/ Mugoto /5, L/ Mugoto/41 and L/ Mugoto 71 on 26<sup>th</sup> February 2014 while the matter was already in court. A Copy of the offer letters from the Commissioner of Lands is attached as "CM 24".
23. The Chikankata District Council argues, in paragraph 9 of the Affidavit in Opposition to Summons for Interlocutory Injunction filed on 13 December 2013 that the 35 Plaintiffs have no interest in the land because they do not have title deeds, whether statutory or customary. The Council further argues in paragraph 10 of its Affidavit that the 35 Plaintiffs will not be affected because they will be integrated into the new township. A Copy of the Affidavit in Opposition to Summons for Interlocutory Injunction is attached as "CM 25".
24. However, it is practically impossible in Zambia to integrate famers with some owning as many as fifty cattle, goat, sheep and pigs in a residential township because the planning permission does not authorise that. Once the township is fully developed, the entire grazing land will be destroyed as there will be buildings with walls, fences and roads everywhere. There will simply be no space for animals to graze. The Chikankata District Council is attempting to indirectly force the 35 Plaintiffs to relocate in search of food for their animals, even without compensation. Copies of photos taken on 30 July 2016 of the 35 Plaintiff's animals grazing on the grazing land which has already been subdivided into residential plots and near the various District Council's buildings are collectively attached as "CM 26".
25. On 1 August 2014, 13 paragraphs of the 35 Plaintiffs' Statement of Claim were struck out by the High Court for being inconsistent with the rules of pleading. A copy of the Judgment of the High Court striking 13 paragraphs of the pleading is attached as "CM 27".
26. On 23 March, 2015, the 35 Plaintiffs and other members of the Mugoto Settlement Scheme wrote a letter to the Attorney General for the Republic of Zambia complaining about the Chikankata District Council's compulsorily taking possession of their land.

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<sup>1</sup> See the case of *Justin Chansa v Lusaka City Council* (2007) ZR 185(SC) in which the Supreme Court held that authority to consider applications for land allocation from members of the public is vested in the President of Zambia who has delegated this authority to the Commissioner of Lands.

They demanded that they should be compensated in a similar manner other settlement members were compensated by Albido Zambia Nickel Mining Company in 2007. Attached marked as “**CM 28**” is the letter to the Attorney General of the Republic of Zambia.

27. Transparency International Zambia conducted a fact finding mission after receiving complaints from the 35 Plaintiffs and other members of the Mugoto/Naluama Settlement Scheme. On 21 September 2015, Transparency International Zambia wrote to the Provincial Minister for Southern Province and brought to the Minister’s attention its finding concerning the displacement of the Mugoto Settlement residents at Nega-Nega Turn Off. The letter to the Provincial Minister is attached and marked as “**CM 28**” though it should have been “**CM 29**”.
28. After subdividing part of the Plaintiffs grazing and residential land into residential and commercial plots, on 23 September 2015, the Chikankata District Council issued an advertisement of “Plots for Offer” opening up the land in the Chikankata District Centre at Nega-Nega Turn Off along Mazabuka Road for sale. A copy of the advertisement of Plots for Offer is attached as “**CM 30**” for the 370 plots which also indicates the amount of money the council is making from selling part of the 35 Plaintiffs’ grazing land.
29. On 2 November 2015, the 35 Plaintiffs and other Moguto Settlement members wrote to His Excellency, The President of the Republic about the forced evictions of 4000 people and 4000 heads of cattle at Nega-Nega Turn Off by the newly created Chikankata District Council. In a letter signed by 60 members, including the 35 Plaintiffs, it was demanded in paragraph 8 and 9 that the Chikankata District Council stop demolishing their houses, their cleared 10 hectares farm land, demarcating residential plots for marketing, grading roads within residential areas where the District Council were exhuming dead bodies of their beloved ones. A copy of the letter to the President of the Republic of Zambia is attached as “**CM 31**”.
30. On 4 January 2016, the Attorney General, who is representing the government in the High Court proceedings, wrote a letter to the Office of the President, Provincial Administration, and Chikankata District concerning the “Compulsory Taking of Land Space Nega-Nega Turn Part of Mugoto Southern Province”. The Attorney General advised the District Commission on the position of the law on customary land. He also advised on the conditions under which the President can compulsorily take customary land in Zambia and the mandatory procedure to be strictly followed. In paragraph 9 of the letter, the Attorney General concluded that from “the information available regarding this matter, the settler appear to be legitimately enjoying customary land right over the land in question. They are entitled to be appropriately compensated if the land was lawfully acquired in accordance with the Lands Acquisition Act” and further that if “the correct procedure was not followed for the compulsory acquisition of the land, such acquisition is a nullity and the settlers are entitled to continue enjoying the use of the land in accordance with the customary law under which it was granted and its attendant rights”. The letter from the Attorney General is attached as “**CM 32**”.
31. In all their defences, the Chikankata District Council does not allege that they consulted or obtained consent from the settlers. The District’s Council’s defence and argument in all the papers filed in Court is that the 35 Plaintiffs have no interest in the land because they do not have title deeds, whether statutory or customary and that they will neither

be affected nor displaced as they will be integrated into the township. This is essentially contained in its Defence filed into Court in 2016 in which it states that “no single occupant of the land in question has been displaced as all inhabitants have been integrated into the new township”. A copy of the Chikankata District Council’s Defence attached as **“CM 33”**.

32. As indicated above, this cannot be true because it is not possible to integrate a farmer with animals in township. For example, the Police Station is built within the residential plot and the Council Houses are also build within 30 metres from a settler owning more than 50 cattle as can be seen in the photos attached as **“CM 34- 35”**.
33. On 28 April 2016, the Ministry of Lands, Natural Resources and Environmental Protection made a number of invitations to treat to some of the 229 applicants whose names were submitted to the Ministry of Lands by Mazabuka Municipal Council in 2004. On 14 October, the Office of the Commissioner of Land issued offer letters to some of the 229 whose names were submitted together with those of the 35 Plaintiffs. However, the Officer of the Commissioner of Lands has only issued offer letters to applicants residing outside the disputed land. The Invitation to Treat dated 28 April 2016 and the Offer Letters dated 14 October 2016 are attached collectively as **“CM 36 and 36A”**.
34. From 12 –17 November 2016, Chikankata District Council made further demarcation of plots for sale to the public. The demarcated plots are not just in the grazing land but the residential and in some cases, beacons have been placed in yards and on door steps of some community members. When the 35 Plaintiffs questioned the District Council when they observed that they have gone further with the subdivisions, the Council Secretary, a Mr Danson Mukwato, told them through text message, that there was no injunction that prevented them from continuing with the subdivisions.
35. On 12 December 2016, the High Court set a date for hearing of the application for an injunction on 29 March 2017. Meanwhile, the District Council intensified their construction and subdivisions and have even started shifting some people into the building before the injunction is heard and determined, in an effort to render it an academic. A copy of the Notice of Hearing is attached as **“CM 37”**.
36. On 13 February 2017, Chikankata District Council Secretary, a Mr Danson Mukwato, proposed to dig a canal across the grazing land but the 35 Plaintiffs objected. Despite the 35 Plaintiffs’ objections, Mr Mukwato brought in a scavator machine to dig the canal. When questioned as to why he proceeded, and dug up the canal in the face of the express objection by the 35 Plaintiffs, he again said that there was no injunction to stop him from digging the canal. Attached marked as **“CM 38”** are photos of canal dug up in February 2017.
37. Finally, the Chikakata District Council has ordered the Police Officer stationed at Nega-Nega to chase or arrest anyone taking animals near the buildings. This is contrary to the Chikankata District Council’s evidence before the Court that none of the 35 Plaintiffs will be affected as they will be integrated. This action is also threatening the well-being and survival of the Mugoto/Naluama Settlement residents, including the 35 Plaintiffs and their family because they depend on animals that are now starving as a result of the Chikankata District Council’s actions.

38. The Chikankata District Council did not consult and obtain the consent of the 35 Plaintiffs before taking over their land, subdividing it and constructing administrative buildings. The President also never gave any Notice that he intended to compulsorily acquire the Plaintiffs' land and inviting them to make representations. No Notice was issued in the Gazette as required by the law and the Commissioner of Land is not even aware of where administration offices for Chikankata District are being constructed. No compensation of any kind has been provided as it is alleged that the settlers will not be affected but rather integrated into the township.
39. The 35 Plaintiffs, their families and dependants who reside with them on the land have been seriously affected by the conduct and actions of the Chikankata District Council. They have watched the construction of buildings on their land reach completions, with some now even occupied. They have watched those that have purchased some of the plots offered by the Chikankata District, the elite from large cities and towns, start developing on their grazing land. In addition to watching Chikankata District Council grading roads and levelling the graves of their loved ones, they have helplessly watched Chikankata District Council dig up a canal across their grazing land and very close to their homes as the photos reveal. The Plaintiffs and the families and dependants who reside with them on the land have been so disturbed and tormented as they watch the surveyors accompanied by police officers carrying guns peg beacons in their yards.
40. The 35 Plaintiffs and their families have been subjected to inhuman and degrading treatment of the worst kind in a democratic country. The Chikankata District Council's conduct is not only in violation of the Constitution of Zambia but also rights and freedoms guaranteed under international human right treaties and the African Charter on Human and Peoples' Rights, including: the right to property; the right to human dignity; the right to not be subjected torture, inhuman and degrading treatment or punishment; the right to equality before the law; freedom from discrimination; freedom of movement; the right to life; the right to adequate housing; and the right to food.
41. The Plaintiffs have families and dependants who reside with them on the land. This case affects not only the Plaintiffs but also a community of 4429 people, including 830 married women, 370 female-headed homes and 2200 children.