CASE SUMMARY: *JOHN CHISENGA KAPABILA AND OTHERS v NKALONGA INVESTMENT COMPANY LIMITED AND OTHERS*

INTRODUCTION

In *John Chisenga Kapabila and Others v Nkalonga Investment Company Limited and others*, a family in Zambia is challenging the allocation of their customary land to commercial farmers without the family’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]](#footnote-1) In particular, this case seeks to protect the property rights of a family whose ancestral land rights are guaranteed under customary law.

PARTIES IN THE CASE

The petitioners are subsistence farmers who reside in the Serenje District of the Central Province of Zambia and have resided on their customary land for generations. The respondents include a foreign private limited company and its Managing Director, as well as the Serenje District Council, the Attorney General, the Commissioner of Lands, and the Zambia Environmental Management Agency (ZEMA).

FACTUAL BACKGROUND OF THE CASE

The land in question was first owned and occupied by the grandparents of a Zambian subsistence farmer (1st Petitioner) and subsequently inherited by the 1st Petitioner’s parents and the 1st Petitioner.

In 2015, a white commercial farmer (2nd Respondent) approached the 1st Petitioner and told him that the 2nd Respondent was the owner of the land upon which the 1st Petitioner was residing. In March 2015, an employee of the 2nd Respondent handed the 1st Petitioner a Contract of Tenancy which included several stipulations that regulated how the petitioners could continue living on the land. The 1st Petitioner refused to mark the Contract with his thumbprint or sign the Contract because he is illiterate and no independent party was present to explain the contents of the document.

The family was not aware of any application and allocation of the land. In 2016 after the petitioners refused to leave their ancestral lands amid the 2nd Respondent’s insistence that they vacate, the 2nd Respondent expanded his clearing and cultivation activities without the 1st Petitioner’s permission. The areas cleared included a nearby forest, trees near the 1st Petitioner’s house that provided subsistence, and the graveyard of the 1st Petitioner’s parents and grandparents. Additionally, the 1st and 2nd Respondents destroyed the cassava field and other crops of the 1st Petitioner with a bulldozer. The only crop upon which the petitioners are now living is maize.

Later in 2016, the 2nd Respondent approached the 1st Petitioner again, demanding that the 1st Petitioner vacate the land. The 1st Petitioner then approached the Serenje District Council (3rd Respondent) and explained the problems they were facing with the 2nd Respondent. Consequently, the 3rd Respondent sent a letter to the 2nd Respondent advising him to follow the established procedures if he wanted to relocate local residents. Upon approaching the 3rd Respondent, the 1st Petitioner was informed for the first time that his customary land had been allocated to the Commissioner of Lands (5th Respondent) and then reassigned to the 1st Respondent.

Unbeknownst to the community, the 3rd Respondent approved the 1st Respondent’s application for land in the Luombwa Farm Block in April 2002. In 2007, the 3rd Respondent recommended to the 5th Respondent that a Certificate of Title be issued to the 1st Respondent, but the application could not be processed because it required Presidential Approval given that the land requested exceeded 250 hectares.

In 2015, the 3rd Respondent recommended that the 1st Respondent’s application for dividing the requested land into seven subdivisions of 250 hectares be approved upon inspection. On 27 February 2015, the application was approved by the 3rd Respondent and the 5th Respondent acknowledged receipt of the application and recommendation by letter on 14 August 2015, as well as advised that it was waiting Presidential Approval. On 10 November 2015, the 3rd Respondent inspected the farm land and reported that there was no settlement within the 250 hectares of land requested. On 4 November 2016, a lease for 99 years from 1 October 2016 was entered into between the President of Zambia and the 1st Respondent for four of the subdivisions.

Since occupation by the 1st and 2nd Respondents, the houses and fields of the petitioners are frequently sprayed with chemicals and covered in dust from ploughing without prior warning. Furthermore, the water the petitioners depend on for drinking and other household use has now been contaminated as a result of the 2nd Respondent’s employees mixing pesticides and other chemicals by the river. The petitioners have not even been able to travel for business or leave their homes because the 2nd Respondent releases his dogs for intimidation. On 28 July 2017, the 4-year-old daughter of the 1st Petitioner died after several complaints of stomach pains.

On 29 November 2017, the family 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.

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 jeopardized the petitioners’ bare life necessities, including housing, nutrition, clothing, water, and shelter in violation of the Constitution.
* The respondents have entered the petitioners’ properties without their consent, destroying houses and uprooting trees around the houses in violation of the Constitution.
* The respondents have subjected the petitioners to psychological and physical torture, and inhuman and degrading treatment in violation of the Constitution in destroying the petitioners’ houses, food crops, and fruit trees.
* The respondents have violated the petitioners’ right to liberty and freedom of movement by preventing them from using their land as they wish, fencing off and closing routes and roads, 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 indirectly discriminated against the 2nd Petitioner and the wives of the 3rd and 4th Petitioners as rural women, contrary to 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 1st and 2nd Respondents argue that the transfer of land was done properly in accordance with the law and deny any constitutional violations.

The 3rd Respondent allege that of the 1801 hectares that the 1st respondent applied for, it only approved 250 hectares which was inspected and found to be free of any indigenous villages. The 3rd respondent further allege that it is equally shocked that the 1st respondent has proceeded to open up faming activities in more farm blocks which it never inspected and approved.

The 4th and 5th Respondents allege that the land in dispute was neither allocated to the State nor compulsorily acquired. They further allege that the 5th Respondent issued offer letters for the disputed land to the 1st Respondent based on the recommendation from the 3rd Respondent and the undertaking the 3rd Respondent made to enforce a resettlement plan.

ZEMA did not file any answer or opposing affidavit. Instead, it independently investigated the matter and prosecuted the 1st Respondent for violating the Environmental Management Act No. 12 of 2011 (EMA), ON 15th November 2018, the Serenje Magistrate Court convicted the 1st Respondent for contravening the Environmental Management Act No. 12 of 2011 (EMA) and fined it ZMW 140,000.00 payable within 30 day.

STATUS OF CASE

The matter come up for hearing on 25 September 2018. The 1st and 2nd Respondent’s lawyers requested that the matter be adjourned to enable parties to attempt an out of court settlement. When the matter come up for hearing on 4th April 2019, the 1st and 2nd Petitioners requested for another adjournment to enable them engage another lawyer following the withdrawer of their initial lawyers. Trial will continue on 7th, 8th, 9th 16th and 17th October 2019.

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.   [↑](#footnote-ref-1)