



## **INTRODUCTION**

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In *Molosoni Chipabwamba and 12 Others v Yssel Enterprises Limited and 7 Others*, a community in challenged their forced eviction, destruction of their properties and assets, and uncompensated taking of their customary land. The petitioners argued that the commercial farmers, the local authority, and the government violated their constitutional rights by uncompensated compulsory acquisition of their land and their forced and violent displacement. Since their eviction, the petitioners have been living in the Musangashi Forest Reserve without proper housing or necessities.

This case sought to protect the property rights of women whose land rights are guaranteed under customary law. The case is important in protecting the customary land rights of communities in Zambia from unlawful displacement, an [ongoing problem](#) throughout Zambia and Southern Africa.

## **PARTIES IN THE CASE**

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The petitioners are Internally Displaced Persons (IDPs) who are currently living in the Musangashi Forest Reserve in Serenje District of Central Province of Zambia. Before their forced and violent displacement from their ancestral land, the petitioners were subsistence and small-scale farmers. The respondents include five commercial farmers as well as the Serenje District Council, the Attorney General, and the Commissioner of Lands.

## **FACTUAL BACKGROUND OF THE CASE**

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The Petitioners have lived in Milumbe, along the Mulembo River, and have cultivated, utilized, and inherited the land through generations. On 22 January 1996, a businessperson (1<sup>st</sup> Respondent) applied for Farm No. 26 in Luombwa Farm Block, and his application was approved by the Works, Development and Social Services Committee for Serenje District Council on 24 January 1996. The Full Council for Serenje District also approved the 1<sup>st</sup> Respondent's application on 28 March 1996. At the time of approval by the District, Senior Chief Muchinda had not yet authorised the 1<sup>st</sup> Respondent to settle as commercial farmer in his Chiefdom. Senior Chief Muchinda authorised the 1<sup>st</sup> Respondent to settle as commercial farmer on 10 December 1997. However, Senior Chief Muchinda specifically described the land he authorised the 1<sup>st</sup> Respondent to settle on as commercial famer as the land along the Luombwa River and near the Mulembo River. Thus, the Chief did not authorize the 1<sup>st</sup> Respondent to reach the Mulembo River where the petitioners lived on both sides of the Mulembo River.

Farm No 26 Luombwa Farm Block was originally recorded to be 360 hectares. It was a small piece of land along the Luombwa River that the Chief authorized, leaving out most of the land that was occupied by the petitioners. On 30 July 1998, the 1<sup>st</sup> respondent was issued with a certificate of title relating to Farm No. F/9597, Central Province which was 2040 hectares in extent and which included all of the land on which the petitioners lived and farmed.

In 2001, the community first learned that the 1<sup>st</sup> Respondent was claiming the entire land they occupied. The petitioners raised their customary right to the land and refused to give up their ancestral land. In 2003, another businessperson (2<sup>nd</sup> Respondent) told the community that he was the new owner of the land. Again, the community members refused to give up their land for expansion. The community stopped hearing from the 2<sup>nd</sup> and 1<sup>st</sup> Respondents by 2004 and continued to utilize and cultivate their land without interruption until 2012.



In July 2012, the 4<sup>th</sup> and 5<sup>th</sup> Respondents came onto the Disputed Land, claiming that they paid money to the 3<sup>rd</sup> Respondent and the government to take over the land. On 4 June 2013, Abraheam Lodewikus Vileoan (5<sup>th</sup> Respondent) came onto the land with his workers and bulldozers. He and his workers destroyed the houses, fruit trees and other crops. The families on the land did not have time to salvage their household goods or other assets.

The community members fled into the Musangashi Forest Reserve. They sought help from the Serenje District Commissioner's Office and the Permanent Secretary for Central Province, but other than some assistance for a month's supply of food and tents, they did not receive any help regarding their land. Because they do not have access to basic necessities such as clean water and sustainable means of food, the quality of their lives deteriorated immensely. Their children have not been receiving proper education and health care due to their displacement from the original land.

On 15 December 2017, the community members filed their case in the Lusaka High Court challenging their forced eviction, destruction of their properties and assets, and uncompensated taking of their land to which they claim their customary rights.

## **LEGAL ARGUMENTS BEFORE THE COURT**

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The petitioners argue that the uncompensated displacement and forced eviction from their ancestral land violated their rights, specifically:

- The respondents turned the petitioners' customary land into state land and allocated their land without consulting the petitioners or obtaining their consent;
- The respondents violated the petitioners' right to dignity and self-worth by rendering them landless and jeopardizing their ability to meet the necessities of life;
- The respondents violated the petitioners' right to property by entering their premises without consent and destroying their houses, assets, and crops;
- The respondents restricted the petitioners' freedom of movement and ability to associate with their family and friends by fencing off the disputed land and employing security guards;
- The respondents subjected the community members, especially women, to indirect discrimination by forcing them to bear a disproportionate burden because of the loss of land and social networks;
- The respondents' taking of the petitioners' land amounted to compulsory acquisition without adequate compensation and not for a public purpose;
- The allocation of the land to the respondents was done by fraud, mistake, and misrepresentation, because the respondents claimed that the disputed land was free of village settlement, which was not true;
- The Lands and Deed Registry Act does not protect the petitioners' customary right to their ancestral land and is inconsistent with the Constitution and the Lands Act.

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

## **STATUS OF CASE**

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The hearing continued 2, 3 and 5 October 2019 and judgment was delivered in favour of the petitioners on 30 April 2020.