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Link to full judgment: <https://zambialii.org/zm/judgment/court-appeal-zambia/2022/31>

**MOLOSONI CHIPABWAMBA AND 12 OTHERS V YSSEL ENTERPRISES LIMITED AND OTHERS**

**Media Neutral Citation [2022] ZMCA 31**

The appellants were villagers settled in Luomba area in Chief Muchinda’s chiefdom in the Serenje District of the Republic of Zambia. In 1997, the 1st respondent applied for the said land and was given a 14 year right of occupancy and was later given a certificate of title in 1998. The land in dispute was later sold to the 4th respondent who subsequently acquired a certificate of title. This land was then established into a commercial farm. Because of this, the appellants were forced to vacate the land and settled in the Musangashi Forest Reserve under difficult living conditions. In December 2017, the appellants commenced legal action in the High Court for Zambia in which they challenged their forced eviction. The appellants sought 15 reliefs from the High Court including:

1. An order and a declaration that the taking over of their customary land without following the required procedure is unconstitutional and therefore null and void;
2. A declaration and an order that they be allowed to enjoy their land in accordance with the customary law of the area and its attendant rights; and
3. An order directed at the 3rd and 5th Respondents to cancel any allocation, assignment or Certificate of Title that was issued to the 1st and 2nd Respondents, which covers the land which the community occupied, used and enjoyed under customary tenure.

The High Court found that the alienation procedure for acquiring customary land was not followed with respect to the third parties living on the land and thus the alienation and subsequent conversion of the land into statutory tenure was null and void. Furthermore, the court deemed the conversion of the land in dispute as compulsory acquisition of land and the court ordered the 7th and 8th respondents in consultation with the chief to grant the petitioners land with a value not exceeding the value of the disputed land in an area where they can enjoy their cultural rights as Lala people subject to such land being available.

The court further stated that, the forced eviction of the petitioners from their land was a violation of their constitutional rights and ordered the respondents to compensate the petitioners. However, the court held that it would not be in the public interest to cancel the certificate of title issued to the new owners because they had settled on the disputed land as commercial farmers, most likely in furtherance of the government’s policy to create farm blocks which are beneficial for national development.

The petitioners appealed against the decision of the High Court to the Court of Appeal. In particular, the refusal of the High Court to cancel the certificate of title to the 4th respondent. On appeal, it was the appellant’s view that because the conversion of land was found to be null and void, the Certificate of Title should have been cancelled and the community enabled to return to their land.

The Court of Appeal rendered its judgment in favour of the appellants. It held that the High Court was correct in its finding that the conversion of the land was contrary to the law and accordingly null and void. However, it ought to have cancelled the certificate of title. The Court of Appeal ordered that the certificate of title be cancelled. On the issue of the established commercial farm the court held that “We are alive to the fact that the 4th Respondent has invested heavily in the land to turn it into a commercial farm. However, since the acquisition of the land was a nullity, the losses and gains shall lie where they have fallen.”