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Topic: "Land Registration and Land Title
Under the Housing (Statutory and
Improvement Areas) Act, Cap 441: The
Case of the City of Lusaka."

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LAND REGISTRATION AND LAND TITLE UNDER THE HOUSING
(STATUTORY AND IMPROVEMENT AREAS) ACT CAP 441: THE
CASE OF THE CITY OF LUSAKA.

By

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Being a paper submitted in partial fulfilment of the
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DEDICATION

To My Children

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PREFACE

The Housing (Statutory and Improvement Areas, Cap 441 was enacted in 1974. Apart from regularising tenure in the site and services area and upgraded squatter settlement, the Act introduced a simplified system of land law for areas to which it applied. For example, all dealings in land covered by the Act are registrable, not with the Lands and deeds in Ministry of Lands but at the City Council's Deeds Registry.

The enactment of the Act was therefore, an attempt to provide a suitable legal framework for the construction of houses in site and service schemes by avoiding the problems incumbent in housing development in other areas such as the furnishing of survey diagrams, complex building standards under the Public Health (Building Regulations).

The ultimate objective is therefore, to make land transactions in these areas as easy, affordable and time-saving as possible but at the same time retaining the benefits of the system of registration. To what extent have these ideals been achieved?

In view of the above, the Essay will examine and evaluate the extent to which the Act has been applied in resolving the issues of housing provision and land ownership in the City of Lusaka.

In doing so, the Essay traces the historical background to the problem of home ownership in Lusaka. In analysing the extent of the application of the Act, the Essay examines the role of the

key players and the institutional framework. This is done through the appraisal of the administrative and technical capacity and the political will.

The Essay further discusses the issue of housing finance with particular reference to the status and acceptability of occupancy licences and Council certificates of title as collateral by lending institutions and concludes with a general appraisal of the utility of the Act.

INTRODUCTION

THE CONCEPT OF LAND OWNERSHIP AND LAND HOLDING

Ownership

A study of Land registration and title is best started by reflecting on the meaning of the very concept of land ownership. According to Professor Nwabueze,¹ "the most comprehensive of relations that may exist in land is that expressed in the notion of ownership. It is the most comprehensive of the relations because "it connotes the totality of rights and powers that are capable of being exercised over a thing."² These rights and powers are summarised by Lawson as "the right to make physical use of a thing, the right to the income from it, in money, in kind or in services, and the power of management, including that of alienation"³ This implies that an owner can do with the land in any manner that he feels correct for as long as it does not conflict with the existing law.⁴ He can use it in any manner which is wasteful, beneficial, or even harmful. He also has the right to derive income from the use of his land by way of receiving rent from its use. It further implies that the owner has the right to dispose of it on whatever terms. Of course this "assumes .. the marketability of land, in other words, that the owner has power to alienate."⁴ The 'most conclusive way in which a person can demonstrate that he is the owner of a thing is if he can alienate it outright to anyone he likes."⁵ This is because the right of disposal is not only the most conclusive but it is also the most valuable incident of ownership.⁶

Nwabueze argues on this point that a thing cannot command a market value if the owner cannot alienate it. It is therefore on the basis that an owner can let it out in return for an economic rent, mortgage it as security for a loan or sell it and so realise its entire value, It is therefore its marketability which gives ownership of land its true potency. A person with the power of management over land also enjoys the rights to defend his enjoyment of the land against unauthorised interference. In this regard, ownership "implies the fullest amplitude of rights of enjoyment, management and disposal over property or that the owner's title to these rights is superior and paramount over any other rights that may exist in the land in favour of other persons. His right however, does not have to be exclusive of rights of all other persons so long as these others are not superior to his own. Ownership has therefore, an allodial character."⁷

The basis of English land law is that all land in England is owned by the Crown. By the doctrine of "Nulle terre sans seigneur," there is no allodial land in England, that is to say, there is no land owned by a subject and not held of some lord. All a subject can ever hope to have in a right to occupy and use land for a period of time which may be finite (e.g term of years) or infinite (fee simple). The result has been the evolution of two basic doctrines in English land law thus:-

- a. The doctrine of tenures - all land is held of the Crown either directly or indirectly, on one or other of the various tenures; and

b. The doctrine of estates - a subject cannot own land, but can merely own an estate in it, authorising him to hold it for some period of time i.e. fee simple, fee tail and life estate.

The import of this is that although a subject in England cannot in law own the physical land, he does however in fact own his estate in it. In relation to the land itself, his ownership of his estate, however extensive it may be, cannot be allodial, the allodial or ultimate title being vested in the Crown.⁸ There are some rough parallels in the Zambian land tenure system to some English property concepts.

By virtue of Section 4 of the Land (Conversion of Titles) Act Cap. 289, all land in Zambia is vested absolutely in the President and held by him in perpetuity for and on behalf of the people of Zambia. Under Section 5 and 6 of the said Act, the greatest estate one could hold in the land in Zambia is a 100 years statutory leasehold. All freehold tenures were abolished and replaced by statutory leasehold for a renewable maximum period of 100 years. Bare land per se has no commercial value hence mortgages, charges or trusts could only operate against unexhausted improvements on the land. Presidential consent is required for all transactions in land, "No person can sub-divide, sell, transfer, sublet mortgage, charge or in any way encumber or part with possession of his or her land or any part thereof or interest therein without the prior consent in writing of the President."^{8a}

Possession on the other hand means actual physical possession, quite apart from the right by virtue of which it is had. The right to possession is an incident of ownership but

also by virtue of grant from the owner. But possession need not be based upon a right to possession, as is the case where a person takes possession of land without right. Possession without right is wrongful against the person to whom the right to possession belongs, the possessor, but, although it be wrongful, adverse possession does nevertheless constitute a state of fact of which the law cannot but take cognisance.⁹ Possession refers therefore to the physical condition constituted by the fact that a person is in physical control of a thing, with an intention so to control it. The element of intention is important, since control necessarily involves an act of will.

"The legal significance of possession ... lies in the rights to which it gives rise to rights known as possessory rights or rights of possession (to be distinguished from the right to possession.) The primary right which possession confers is the right to exclude intruders. This right exists even where the possession is without right and therefore wrongful; it arises from the mere fact of actual physical possession irrespective of whether the possession is by virtue of a right to possession. This protection given to the fact of actual physical possession, but not against the person to whom the right belongs. A possessor can therefore exclude all those with a better right to immediate possession. Even the latter is expected first to go to court to obtain an order of possession before entering upon the Land."¹⁰

Another right flowing from possession relates to the presumption of ownership. A person in possession of land is presumed to be the owner until the contrary is proved. As between two claimants to a piece of land, neither of whom can satisfactorily prove his title, the person in possession is the party entitled to the protection of the law. On the other hand an adverse possession is wrongful. It is a title that is liable to be defeated at the instance of the real owner. Nevertheless, although it does not confer ownership as such, it is capable of ripening into ownership by lapse of time or by acquiescence and

laches on the part of the real owner.

From what has been stated above, ownership in itself can be hollow or simply empty of the right to use land and even the power to control that use. Title to land is therefore dependent largely on 'security of tenure' rather than ownership. A person can be said to have security of tenure if he is secure or safe in his holding of land and this is what registration of land and title ensures.

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2. Ibid
3. Lawson, Law of Property p. 8 (see Ibid p.7)
4. Op. Cit p.7
5. Ibid
6. Ibid
7. Ibid
8. Ibid
- 8(a) Section 13(1) Land (Conversion of Titles) Act No. 15 of 1985. The Courts in Zambia have interpreted the requirement of Presidential consent as a condition precedent and have demanded Presidential consent for every transaction dealing with land no matter how minute and have struck down transactions that have not complied with this Law.
9. Nwabueze, p.8
10. Ibid p. 10

CHAPTER ONE

HISTORY OF URBAN SETTLEMENT

HISTORICAL BACKGROUND

The history of urban settlement in Zambia can be traced to 1928 when the Northern Rhodesia Crown and Reserves Order-in-Council was enacted dividing land into "Crown Land" for European occupation and "reserve land" for African occupation. The main reason for this segregation was to concentrate Africans in one place which was to be a reservoir for cheap labour on European farms and the mines. The Land Orders-in-Council restricted African settlements and movements. Prior to this, the Europeans' view was that the town centres were to be the preserve of whites only thus, Africans were only allowed to live in town centres if they were domestic servants for the whites. As a result, only males were, initially, permitted to stay in urban areas and only for short periods.

The few that were allowed to reside in urban centres provided cheap labour to the mines and the European households.¹

Probably, one major push factor to the urban centres was the poll and hut tax which was introduced by the colonial authority. The result was that thousands of villagers were forced to leave their homes and look for employment out of which they earned cash to pay the tax.

Under the Native Labour Regulations of 1928, employers were

made legally responsible for either supplying their workers with accommodation or with money in lieu.² Arising from this, employers built houses for their African employees in what came to be known as "locations." and "African suburbs". This was followed with another legislation in 1948³ which established African Housing Areas. Local authorities were made responsible for providing or paying for accommodation.⁴

In spite of the Land Orders-in-Council restricting African Settlements, rural Africans moved to urban areas along the line of rail but their "right to hold plots of land and live in urban areas were much conditioned on their being in employment."⁵ If employment was found, the tendency was to construct a temporary dwelling on a site and later be joined by the rest of the family. Those lucky enough would be housed by their employers, especially the mines or alternatively they were given a local authority house to live in. Those who constructed temporary shelters were unauthorised and became squatters in the sense that they settled on the land without permission or consent from the landlord.

The continued shortage of housing in urban areas led to the continued settlement by African migrant labour on privately owned land in the vicinity of the major towns. These temporary homes soon became permanent and kept growing as people flocked in from the rural areas in search of employment. Attempts to demolish these settlements in order to discourage further unauthorised settlement failed as the settlements continued to attract new comers.

Lusaka, in particular was planned to be a spacious "garden city" for British and South African settlers. Thus Lusaka was established by colonial mining companies in the early twentieth

century. The nucleus was a siding on the railway line from Copperbelt. The original plan for Lusaka did not mark out any housing areas at all for Africans, except for servants houses in the background of the colonials' bungalows. The plan was, however, modified in 1933, and African housing areas at Kabwata (1935) and Kamwala (1936) were built on the southern outskirts of the town.

In 1945 Chilenje was built further south-east and in 1947, Chinika far from the city in a westerly direction. During the 1950s some African townships were planned by the City Council. The largest was Matero. Special compounds were also built for the Police, for the hospital workers and for private employees as well. Private developers built housing estates for middle income groups. One such example is Lilanda, west of Matero, which was built in the early 1960s.^{5a}

POST INDEPENDENCE HOUSING STRATEGIES

At the time of Independence in 1964, rural dwellers continued to seek urban life. "With Independence White Expatriates lost control over Africans, pass regulations and related laws were abolished and a large number of Europeans vacated enormous areas of peri-urban land, Africans sought to take up these lands to build houses for shelter and it was evident that there was a sharp growth of squatter settlements in the large number of vacant lands which ringed the towns."⁶

The achievement of Independence was not "followed by a revolutionary change in housing policies."⁷ The Colonial rental housing policies continued to apply. Local authorities continued to provide rental housing. Government policy was still based on

the premises that, squatter settlements were only temporary and that all low-income households were to be housed in site and service accommodation and council housing. As a result of this, the First National Development Plan (FNDP), 1966-1970 placed emphasis on the provision by council of low-cost houses for rent. Under this plan, Government allocated K8.4 million each year on low cost housing. Previously between 1956 and 1965, Government spent only just over K2 million per year.⁸ The FNDP further provided for 30% of all new housing units to be in the form of site and service plots. The site and service housing strategy was expected to increase the number of housing units. The increase in capital expenditure did not however result in a four-fold increase in the number of low cost houses because of corresponding rise in building costs from K640 to K1,000 per house.⁹ The plan did not provide for the construction of high cost houses.

Prior to 1964, employers (especially Government Departments) provided accommodation for employees at sub-economic rent. Largely as a result of the requirements of the Employment Act than their desire to meet the housing needs of employees.¹⁰ S. 41 (1) of the Employment Act stipulates that "... an employer shall at all times and at his own expense cause every employee in his service to be adequately housed." Shortly after independence, the Government introduced subsidies for every local authority low-cost house.^{10a} Subsidy arrangements continued to apply until 1972 when under the Second National Development Plan (SNDP), it was decided to phase out rental subsidy. This was to be achieved through the promotion of house ownership by way of the sale of Council houses. However, Councils failed to sell many of their

houses mainly due to lack of title arising from inability to survey housing areas for this purpose. This was necessary because in order to sell, there was need for each housing unit to be separately surveyed and demarcated.

(a) Home Ownership

The home ownership housing constituted only 5% of the total housing stock under the Third National Development Plan (TNDP).¹¹ This category of housing is available to those who can afford to purchase or acquire a plot and thereafter construct a house of high standard in accordance with stringent building standards. Because of these arrangements, only a few well to do individuals belonging to the middle class income group can afford to build a house under home ownership. A person wishing to provide himself with a home under this scheme may either acquire the house from a vendor by way of purchase or gift or proceed to build the house. The latter method involves a complicated procedure which requires an application for a plot to the Commissioner of Lands followed by another application for development permission under the Town and Country Planning Act¹² to the Town Planning Authority to start construction.¹³ The house must then be built in accordance with the building standards required under the Public Health (Building) Regulations.¹⁴ Under these Regulations, local authority officers are empowered to inspect the progress of work and may compel demolition or alterations where the developer does not comply with relevant provision and the prescribed standards.¹⁵ Home ownership outside site and service does not receive government financial support. Home developers rely almost entirely on financial lending

institutions for loan finance the security of the house to be built or purchased.¹⁶

(b) Site and Service Schemes

A Site and Service Scheme is where a local authority provides demarcated land after it has been provided with basic services such as water, sanitation, roads etc.

The primary objectives of the Site and Service housing strategy is to provide building plots with supporting services. The Site and Service housing strategy has among others, security of tenure as an advantage.¹⁷ In Site and Service areas, local authorities survey and demarcate plots known as Sites and provide basic minimum services such as water, sanitation, roads etc. Participants in the Site and Service schemes build their own houses. Local authorities provide technical, advice and grant limited loans for the purchase of building materials. The beginnings of Site and Service in Lusaka could be traced through several schemes which been experimented with starting with Kanyama in 1963. Conceiving the scheme as a 'temporary resettlement area,' the council only provided rudimentary services to New Kanyama. It was only in 1970 that the area was formally accepted and recognised as permanent. Roads and other community services were then up graded. After New Kanyama, the Mandevu - Marrapodi Scheme was launched to re-house squatters. Mtendere was established in 1967 as an emergency settlement for the residents of Chaisa. The World Bank assisted the Site and Service schemes at Kamwala/Kabwata, Matero East, Emmasdale and Lilanda in 1975.^{17a}

¹⁷The objective of the Site and Service projects was for the

government to prepare the ground by providing serviced plots and granting a simple and suitable form of land tenure for this purpose and thereby enable the people themselves to construct a large number of low cost houses by self-help effort.¹⁷

(c) Squatter Up-Grading

'Prior to the publication of the SNDP (1972-1976), squatter settlements were considered temporary housing units. Squatter settlements were frowned upon and regarded as intolerable, eye-sore and breeding ground for crime. The City Council's response was to demolish the illegal structures and resettle the inhabitants elsewhere.'

After Independence, however, the new government resisted, somewhat, this attitude because squatters represented a decisive political force by virtue of their numerical numbers. The SNDP therefore recognised that whilst squatter settlements were unplanned, they nevertheless, represented assets both in social and financial terms.

The task of demolition is wasteful of investment and resettlement is costly. In any case, squatters do not like to move from their neighbourhood as this breaks up the social fabric to which they are accustomed.¹⁸

According to Mutale,¹⁹ the policy of squatter up grading was a grudging compromise between two options. Demolition, according to him, could render many families homeless in the absence of alternative accommodation and this could lead to unpredictable political consequences.

'In 1966, the government then decided to improve some squatter settlements and install piped water in Kanyama Squatter

Settlement and allocated funds for water supply in Roberts and Bauleni Compounds.²⁰ In 1968, the water supply project was approved for Chawama in Lusaka and later extended to some Copperbelt towns.²¹ These projects however, have been criticised as having been half hearted attempts, the government having avoided a policy commitment to update squatter settlements.²²

In 1972, under the SNDP, government recognised that "although squatter areas are unplanned, they nevertheless represent assets both in social and financial terms."²³ It was also accepted that wholesale demolition of good and bad houses alike was not a practical solution. Squatter upgrading was therefore no longer a temporary expedient but an official government policy.²⁴ The project in Lusaka was partly financed by the World Bank Loan of K26 million. The government was to constitute the balance of the total project cost.²⁵

"In view of the vexing housing problem and in an attempt to provide a suitable legal framework in which to provide secure housing, the Housing (statutory and Improvement Areas) Act was enacted in 1974.²⁶ The Act was enacted to provide for the control and improvement of housing in the areas to which it applied. Apart from creating land interests, it also provides for machinery of registering those rights as an assurance of their existence.²⁷"

"It must be appreciated that before the Housing (Statutory and Improvement Areas) Act was passed, the City Council issued Land Record Cards to the tenants in the Site and Service Schemes. The Land Record Cards evidenced title to Land. The Cards also represented an agreement entered into between a tenant and the City Council. The agreement entitles a tenant to occupy a parcel

or piece of land for a minimum period of 10 years. with provision for renewal if the conditions of the agreement are not breached. Holders of the cards undertake to pay rent and use the premises as dwelling houses. These cards, notwithstanding the enactment of the Act, are currently used as stop-gap documents before declaration of site and service scheme as a Statutory Housing Area.²⁸ The legal status of the Land Record Card was however, examined by the High Court in the case of the **MUNICIPAL COUNCIL OF LUANSHYA v. DAKA.**²⁹ In this case Gardner J. held that the interest created was that of a monthly tenancy. It is assumed that the judge premised his decision on the fact that tenants paid rent monthly. This decision has been criticized by Prof. M.P. Mvunga who has argued that the test by which rent is payable is only applicable where there is no express provision as to the duration of the lease.³⁰

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CHAPTER TWO

LAND TITLE AND REGISTRATION

In the last Chapter we traced the history of urbanisation in Zambia and the growth of townships in Lusaka. In that Chapter, it was observed that one of the most vexing problem or off shoots of urbanisation is housing shortage. It was also observed that official policy did not provide for adequate or effective land tenure systems in African urban housing areas. Even the introduction of Site and Service schemes and squatter upgrading did not redress the problem of home ownership as the question of extent of the interest acquired by the participant in the said schemes was not determined. The only document that evidenced title to land was a 'Land Record Card'. The best the card provided was the record of particulars of the registered owner and fails to indicate other interests that may lie in such 'ownership' such as mortgages etc.

In this Chapter, we shall discuss the concepts of Land title and registration and briefly review the law pertaining to land registration viz-a-viz the Housing (Statutory and Improvement Areas) Act.

GENESIS OF LAND REGISTRATION

"Because of its very nature transactions in Land can be quite complicated. It cannot easily ¹"be said of Land who its owner exists in it." However, in the case involving the University of Zambia and Mr Joe Male inspite of the fact that the Commissioner of Lands had issued title deeds to Mr. Male in February, 1995

this did not stop the University from claiming title to their piece of land situate on plot number sub. H/19 of Farm 488 a Middleway, Kabulonga.² This is because one can only be sure if the person claiming its present ownership is capable of tracing his title back to the earliest time when the land first came into some one's ownership.³ However, what is of greater concern to the transferee or purchaser of land is the need to connect the transferor or vendor to the original title and to discover any lesser interests or incumbrances that may have been created in the Land in favour of others.⁴ A good title needs to be free from incumbrances (such as leases, rent charges, mortgages, easements, restrictive covenants). Rowton Simpson⁴ notes that land transactions are distinctly different from those affecting movable property.

⁴"Since land as an item of property cannot be moved... Nor is it safe to assume that the person in occupation of land is its owner, for frequently he is not; he may be a lessee, or merely a squatter, or even a trespasser. In any case... the ownership of land is itself peculiar because very often it is not the simple straight forward matter of a single individual person having complete ownership. In fact, so many and so varied are the interests in land- so many different sorts of stick in the bundle⁵ that there can be, without any intention to defraud, quite genuine misunderstanding or ignorance of what the true position is."

Simpson records that in the days when communities were small and close-knit, and people knew their neighbours and all about their affairs, an oral declaration and the handing over of a turf or twig were sufficient evidence of the transfer of land. Some such symbolic act performed in the presence of witnesses upon the land itself was adequate to safeguard not only the purchaser but also any third party who might have an interest in the land.⁶

⁶He notes however, that as society became more complex, writing took the place of public ceremony and mere oral enquiry in the

neighbourhood of the land was no longer adequate to prove ownership; nor would third parties know when there was a dealing. It therefore became apparent that the person who appeared to be the owner may in fact be the owner, but, if he had bought the land, he would have obtained ownership not by a public ceremony but by virtue of a written document which had been privately negotiated and seen only by the parties to it.⁷ He would then be able to produce it in evidence. This document will merely show that he acquired the land from somebody who would also, by producing relevant documents, be able to prove that he had acquired it from somebody who similarly proved his acquisition and so on. But there were also possibilities of some other interests such as leases, though affecting the title, may not be revealed merely by examining the document of purchase. In addition the definition of land itself posed an area of difficulty and dispute.

Proof of ownership therefore, became a complicated technical process and as a result, this system became slow and costly, and above all, it was not conclusive.⁷ In response to the above problem, the Real Property Commissioners, appointed in 1829 to enquire into English Land Law, had this to say:

"In all civilised countries the title to land depends in a great measure on written documents, and the purchaser looks, and is empowered by the law to look, for proof of the seller's right beyond the fact of his possession. It is obvious that a documentary title cannot be complete, unless the party to whom it is produced can be assured, that no document which are shown to him, is kept out of sight. It follows, that means should be afforded by the law for the manifestation of all the documents necessary to complete the title, or for the protection of purchaser against the effect of any documents, which for what of the use of such means have not been brought to their knowledge; in other words, that there should be a General Register."⁸

Registration of Deeds developed before the registration of

title. Registration of deeds entails the maintenance of a public register in which documents affecting interests in land are copied or abstracted. Its basic principle is that registered deeds take priority over unregistered deeds or deeds registered subsequently. Under common law, registration does not affect the legal force of any deed but merely determines its priority by reference to the date of its registration and not the date of its execution. "Its main defect is that a deed does not in itself prove title, it is merely a record of an isolated transaction."⁴ No matter how well it is indexed, a deeds register will not show matters which affect a title but are not the subject of a deed.

'To remedy the defects of registration of deeds, a system of registration of title was introduced into England as far back as 1862.^{8a} Registration of title is a system designed to simplify the transfer of land.' It accomplished this, firstly by providing for the registration of title to land in a register, and secondly, by compelling all transfer of that title to be by way of a change of entry in the register. In this way the

"cumbersome method of private conveyancing based on deeds recording the history of the ownership of the land is dispensed with. Moreover a title, once registered, is hence forth state guaranteed."⁹ "A register of title is an authoritative record, kept in a public office, of the rights to clearly defined units of land as vested for the time being in some particular person or body, and of the limitations, if any, to which these rights are subject."¹⁰

The register is at all times the final authority and the state accepts responsibility for the validity of transactions, which are effected by making an entry in the register, and only by this means. The objective of registration of title is as defined by the Judicial Committee of the Privy Council in **GIBBS V. MESSER**¹¹ to save persons dealing with registered

land from the trouble and expense of going behind the

Register, in order to investigate the history of their author's title and to satisfy themselves of its validity. That end is accomplished by providing that anyone who purchases bonafide and for value, from a registered proprietor, and enters his deed of transfer or mortgage on the register, shall thereby acquire an indefeasible right not withstanding the infirmity of his author's title."

The case ¹² involved the name of a registered owner having been removed in favour of a fictitious and non-existent transferee as the result of a forged transfer, a mortgage purporting to have been executed by such transferee was subsequently put upon the register by bonafide mortgagees and the perpetrator of the fraud. It was held that the plaintiff's name must be restored to the register. Further, that the mortgage was invalid and did not in favour of the mortgagee constitute an incumbrance of the plaintiff's title.

The essence of this is that the Transfer of Land Statute¹³ protects those who derive a registered title bonafide and for value from a registered owner." Accordingly they need not investigate the title of such owner, for they are not affected by its infirmities. However, they must ascertain his existence and identity, the authority of any agent to act on his behalf and the validity of the deed under which they claim. In the case of **WILLIAMS AND GILBY'S BANK V. BOLAND**¹⁴ Lord Wilberforce explained that subject to overriding interests, it is an essential feature of registration of title that a purchaser is entitled to rely and act upon the information shown on the register and nothing else. In other words, the register itself recording all the transactions is proof enough and registration of title provides conclusive evidence behind which an intending purchaser need not go in notifying himself as to the proprietorship of any given land. In this system registration is a guarantee as to the

accuracy of the registered title.

Registration of title to land achieves three basic advantages. First, that the title of every land owner is thoroughly investigated once and for all and placed on the public register. A perusal of which will give an intending purchaser all the necessary information about any previous dealings with reference to the piece of land in question. Secondly, that the registration of a land owner's title is an insurance against any adverse claims by others and is indispensable for the validity of all transactions relating to that land. Thirdly, that instruments are registered not merely as documents executed between the parties to the contract but by reference to the land in question. The crucial point to note is that when the purchaser is registered as proprietor of the estate, the fact of registration vests the legal estate in him. While with an unregistered conveyancing, the vendor proves his ownership of the legal estate by giving the purchaser details of the documents and events that have passed the estate from owner and eventually to the vendor himself and this cannot guarantee that the vendor owns the estate.

According to Sir Charles Fortescue - Brickdale,¹⁵ in order to obtain these desired results the registration system should aim at combining the features of security, simplicity accuracy, expedition, cheapness and suitability to its circumstances. Security not only refers to that of the purchaser but the man who lends him money on the security of the land and also the security of the man who has interests in the land but who is in possession of it. "In other words, security is bound up with proof of title so the safe custody of the documentary proofs of title is of

paramount importance. Simplicity and accuracy are crucial elements of any system.¹⁶ A system which is cost saving and expeditious produces efficiency as long as the whole system is suitable to circumstances into which it is introduced.¹⁷

THE LAW GOVERNING LAND REGISTRATION IN ZAMBIA

"Prior to the introduction of modern systems of land records, holders of rights in land in the traditional Zambian societies, like all other societies held and exchanged these rights without the use of any written documents or reference to a public authority. The only record available was the "public memory" which arose due to the ceremony, the ritual and the publicity of each transaction in land.¹⁸"

With the advent of colonial rule, Zambia inherited many of its policies with regard to land tenure and registration from England. The process of registration of rights and interests in land in the Northern Rhodesia, however, only started after 1899 when the North-Eastern Rhodesia Order-in-Council was passed.¹⁹ The Lands and deeds Registry Proclamation of 1910,²⁰ inter-alia, provided that

"There shall be an office styled the Registry of Deeds (hereinafter termed 'the Registry') in Livingstone for the registration of Deeds and Transfer or conveyance of land and of Deeds, Mortgages or charging land, for the payment of money or fulfilment contractual obligations and of other Deeds and instruments required or permitted by this or any other proclamation or by any law to be registered."^{20a}

What constitutes registration is provided for in the Proclamation and section 16 of the Lands and Deeds Registry Act as follows:

"Registration shall consist in the filing of a copy of the document for registration in the 'register document file' Such a copy to be duly certified by the Registrar as a true copy and an entry in a book to be called 'the Land Register' of the following items:-

The names of the parties

The date of the document

The date of Registration

And, briefly the nature of the documents"²¹

These legislative provisions provided the basis of the current law regulating registration in Zambia. The main Act establishing the institution for registration, the Lands and Deeds Registry and the procedure itself are the Lands and Deeds Registry Act²² and the Land (Conversion of Titles) Act.²³

In 1974, the Housing (Statutory and Improvement Areas) Act²⁴ was enacted to provide for the control and improvement of housing in certain areas. Apart from creating land interests covered by the Act, it also provides for machinery to register these rights as an assurance of their existence. The Act provides under Section 11 that

"In every Council where there is a Statutory Housing Area or Improvement Area, there shall be a registrar who shall keep and maintain a register to be called the register of titles, and shall file therein all copies of all grants and of all certificates of title issued under this Act. Each grant and the relative certificate of title shall constitute a separate folio of such register and the registrar shall record therein the particulars of all the documents, dealings and other matters by this Act required or permitted to be registered or entered in the register affecting land contained in each grant and certificate of title."²⁵

The Act further provides for the various title registries and constitutes respective councils as registries of the Statutory housing and improvement areas falling within their boundaries. One important feature is that the Act expressly excludes certain Acts from applying to any piece or parcel of land to which it applies. These Acts are:-

1. The Lands and Deeds Registry Act (Cap 287)

2. The Land Survey Act (Cap 293)
3. The Rent Act (Cap 438)
4. The Town and Country Planning Act (Cap 475)
5. The Stamp duty Act (Cap. 664)

Under Section 4 of the Act,²⁶ the Minister may make a statutory order declaring any area of land within the jurisdiction of a Council to be a Statutory Housing Area and may under Section 37 of the same Act²⁶ by statutory order declare any area of land within the jurisdiction of a Council to be an Improvement Area. The import in this distinction is that in the case of a Statutory Housing Area is that the "Statutory Housing Area Plan" is required to be deposited with the Surveyor General, the Commissioner of Lands and with the Registrar of Lands and Deeds.²⁷ In addition the plan should indicate the area and dimensions of each piece or parcel of land identified by a serial number. In the case of an Improvement Area, the plan needs only to be deposited with the Surveyor-General and the Registrar of Lands and Deeds.²⁸ It is important to note that for an Improvement Area, it is enough to identify the location of each building by a serial number.²⁹ This difference can be traced to the history of the respective areas statutory Housing Areas have always been estates of the Council and consequently, they have had the benefit of planned and organised growth. Evidently, it becomes easier in such areas, to determine the dimensions of any particular parcel of land with a serial number identification. On the other hand improvement area have had an haphazard and spontaneous growth. The areas lacked any planning hence their growth were unregulated. These areas have, in common parlance, been referred to generally as 'shanty compounds.' The

consequence of this is that it would be practically impossible to insist on dimensions requiring precision.

The essence of the plan is that it makes it possible to grant a registrable interest whenever a Council grants any interest in respect of a plot of land. Under the Housing (Statutory and Improvement Areas) Act,³⁰ this doesn't need to be accompanied by an exclusive diagram describing the particular parcel or plot of land as is the case under the Lands and Deeds Registry Act,³¹ instead it provides that for a Statutory Housing Area -

"S 13 (1) Any transfer or other documents purporting to transfer or in any way to affect any land, shall be deemed to be registered as soon as a memorial thereof..... has been entered in the register.

(2) Every document to which subsection (1) applies shall be accompanied by particulars identifying the house, building or plot in question by reference to its appropriate number on a Statutory Area Plan."³²

and for an Improvement Area that-

"S.39(4) Every occupancy licence and any other document relating to any dealing with land shall be registered in such manner as may be prescribed".³³

Under this provision, an occupancy licence is registrable without any reference to the general plan. The reason is mainly due to the practical difficulties of surveying plots in an area whose development is unregulated and follows no pattern.

As with the Land and Deeds Registry Act³⁴ the consequences for non registration under the Housing (Statutory and Improvement Areas) Act ³⁵ are to render an unregistered document 'null and void.' Section 16 of the Act stipulates that "any documents which is required to be registered under the provisions of this Act and is required to be registered under the provisions of this Act and is not so registered shall be null and void." The Judicial interpretation of the words "null and void" was given

in the case of **SUNDI V. RAVALIA**³⁶ as meaning that the documents is of no legal effect whatsoever. However, the proviso to section 16 states that the above does not apply to a person who has knowledge of any document required to be registered but not so registered. Notice of an unregistered document has a vitiating effect. As with the Lands and Deeds Registry Act, the Housing Act also provides for priority of documents at the time of registration and not execution of the document. Section 14 (1) of the Housing (Statutory and Improvement Areas) Act provides.

"S.14(1) Except as hereinafter otherwise provided, any document required or permitted to be registered under this Act shall be in the prescribed form and shall be registered in the order of time in which it is presented for the purpose."³⁷

CHAPTER TWO: END NOTES

1. Nwabueze B.O., Nigerian Land Law, (Nwamife Publishers Limited., Enugu, 1972) p. 513
- 1a. Zambia Daily Mail, 2nd May, 1995
2. Ibid
3. Ibid
4. Rowton Simpson, S. Land Law and Registration (Cambridge University Press, Cambridge, 1976)p. 12
5. Ibid p.7 He likens the collection of rights pertaining to any one land parcel to a bundle of sticks with the bundle of sticks varying in number, in thickness; and in length.
6. Ibid p. 13
7. Ibid p.14
8. Real Property Commissioners - Second Report (1830) 3 (see Op Cit p. 14
9. Maudsley R.H. and Burn E.H., Land Law: Cases and Materials (Butterworths, London, 1986) p. 562
10. Rowton Simpson S. Land Law and Registration Op Cit. p. 16
11. Gibbs v Messer (1891) AC 248 and 254
12. (1891) AC 248
13. Land Transfer Act of 1875
14. (1981) AC 487
15. Fortescue - Brickdale, Methods of Land Transfer (in Rowton Simpson p. 17)
16. Fatima Mandhu LL.M Thesis 1995
17. Re Chowood's Registered Land (1933) Ch 574
18. Hansungule M.K. "Land Tenure Reform in Zambia, Another view' in the Report of the National Conference on Land Policy and Legal Reform in the Third Republic of Zambia,

- July, 1993. UNZA.
19. See Articles 16 and 17 of the 1899 NER Orders in Council
 20. Proclamation No. 57 of 1970 para 4
 - 20a Registry now transferred to Lusaka under section 3 of the
Lands and Deeds Registry Act, Cap. 287.
 21. Para. 18 of Proclamation No. 57 of 1910 and Section 16 of
the Lands and Deeds Registry Act, Cap 287.
 22. Cap. 287
 23. Cap. 286
 24. Cap. 441
 25. Ibid
 26. Cap. 441
 27. Section 4(1) (ii)
 28. Section 4(2) (f)
 29. Section 37 (1)(ii) and Section 37(2)(f)
 30. Cap. 441
 31. Section 13 of the Housing (Statutory and Improvement Areas)
Act Cap. 441
 33. S. 39 (4)
 34. Cap. 287
 35. Cap. 441
 36. 5 NRLR 345
 37. See marginal notes for clarification.

CHAPTER THREE

LAND ACQUISITION AND ALLOCATION

The preceding Chapter discussed the concepts of land title and registration. It later briefly reviewed the law pertaining to land registration under the Housing (Statutory and Improvement Areas) Act.

In this chapter, the paper traces the history of acquisition and allocation of urban land with special reference to that land under the Housing (Statutory and Improvement Areas) Act. It concludes with an over view of the establishment of the Lusaka city Council Registry.

Before 1930, all alienation of land in urban areas were made under freehold. From 1930 no further alienation of freehold land in urban areas were made except in municipalities and townships along the line of rail up to Broken Hill (Kabwe) and Fort Jameson (Chipata). In all other townships, plots were alienated in leasehold only. ¹

The Eccles Land Tenure Committee was later appointed in 1943 and as a result of its recommendations, as from 1st January, 1943, the policy of land alienation in leasehold for periods of 99 years was extended to include all townships. In 1950, a select Committee of the Legislative Council was appointed to inquire into the advisability of reverting to the system of freehold tenure. The Committee, however, recommended the conversion of leasehold title into freehold title in respect of agricultural land only and no recommendation was made with regard

to urban land.

Another committee on the Tenure of Urban Land in Northern Rhodesia under the Chairmanship of H.M. Williams was appointed in 1957.

"To examine the present policy and system of land tenure in urban and peri-urban areas and, having particular regard to the need for encouraging capital investment and other development, to make recommendation on the necessity for, or desirability of, effecting revisions or changes"²

The Committee recommended that government should adopt a policy of freehold tenure in urban areas except in African townships and African housing areas in European Municipalities and townships and that all unalienated land in municipal areas should be granted in freehold to municipal councils which would then alienate such land on the basis of an initial period of leasehold with an option to convert to freehold on completion of minimum development requirements.^{2(a)} These recommendations resulted into the enactment of the Crown Grants Ordinance, 1962. Under this Ordinance, leases for 99 years were convertible to freehold upon completion of the requisite minimum developments, compliance with all the conditions in the lease and payment of the appropriate charges.

Urban land tenure under the colonial system therefore allowed home-ownership only in the low-density areas excluding high-density residential areas. In the African housing areas, no individual alienation were possible. Similarly, in the unauthorised settlements, a small rent was often paid for the use of the land, but the land was never 'owned' by the occupants. As a result the majority of Africans did not come into contact with the buying and selling of land in urban areas.³

Under the Crown Grants ordinance, state Grants Act⁴ already

referred to above, land could be leased to local authorities, normally for up to 99 years and certificates of title issued to local authorities. Local authorities in turn sub-divided the land and after servicing it could sub-let it to tenants of their own choice, for the same period less the last three days. The head-lease system was however, abolished and replaced by a system of direct leases with effect from 10th November, 1972.

Direct Lease System

Under this system, the prospective whether an individual or institution, local authorities had to apply to the Commissioner of Lands who, on behalf of the President, issued plots. In so far as local authorities were concerned, the procedure ran as follows:-

<p>a. The Local authority had to obtain permission from the state through the Commissioner of Lands to develop an area within its boundaries in accordance with its zoning schemes</p>	<p>b. Once authority had been obtained, the local authority, in conjunction with the Commissioner for Town and Country Planning, prepared the necessary layouts in respect of the land, which was unalienated at that stage;</p>
<p>c. Land was then serviced by the local authority, At that stage the plot premium or development charge would also be fixed in accordance with a formula circulated by government</p>	<p>d. The local authority would notify the Commissioner of Lands of the existence of those serviced plots, the numbers, street names, plot sizes etc,</p>
<p>e. The Commissioner of Lands would then arrange public notices in the Government Gazette and in the National Press, Inviting potential developers to apply for the plots;</p>	<p>f. After the closing date for the receipt of the applications, the Commissioner of Lands forwarded all duplicate copies of the applications to the local authority concerned, which was asked to make recommendations on the suitable applicants, giving reasons for its selection of the recommended applicants in writing</p>
<p>g. On receipt of the recommendations, the Commissioner of Lands sat with a panel of Senior Civil Servants drawn from Ministries of Lands and Agriculture and Local Government and Housing for final allocation of the Plots. Thereafter the Commissioner of lands made formal written offers of direct leases to the successful applicants, with copies of the offers to the local authority concerned</p>	<p>h. The applicant, having accepted the offer and having paid the development charges and other expenses, was finally given a lease to the plot and a certificate of title was issued in his favour in respect of his individual plot. The applicant could then commence construction on the plot.</p>

Special instructions were issued laying down the procedure for reserving land for government's use as well as that required for a local authority's various statutory or ancillary purposes. The local authority however, paid a nominal charge as consideration.⁵

As a result of land speculation and rising costs, the Land (Conversion of Titles) Act was passed in 1975 because of the belief that land must remain the property of the State and that no individual should be allowed to own land in perpetuity.⁶ Addressing the 6th National Council of UNIP on 30th June, 1975, President Kaunda gave an example of a conveyance dated 3rd April, 1975. One George Lonis Lipschild of Lusaka sold to a Company known as Solar Investments (Zambia) Limited, with registered office at Sackville House,

Akapelwa Street, Livingstone, the following properties which are opposite the Lusaka City Council Library namely:-

1. S/D 1 of S/DA of plot No. 29, Size 0.0405. Hectare (0.100 of an acre).
2. The remaining extent of S/DA of S/D No. 29, Size 0.0716 Hectare (0.177 of an acre):
3. The remaining extent of plot No. 29, Size 0.0927 Hectare (0.229 of an acre)

These three plots each less than a quarter of an acre cost Solar Investments (Zambia) Limited K150,000 made between Solar Investments (Zambia) Ltd, and the Development Bank, the third plot i.e. the remaining extent of plot No. 29, size 0.0927 (0.229 of an acre) was sold for a sum of K100,000 yet Solar Investments (Zambia) Limited bought three plots for K150,000 one of which had a building standing on it an antique shop. This incensed the

President and called it day light robbery.

The Land (Conversion of Titles) Act introduced a statutory leasehold system in Zambia.

The Statutory Leasehold System

The essential features of this system are as follows:

- (a) All land belongs to the state and is vested absolutely in the President and shall be held by him in perpetuity for and on behalf of the people of Zambia.⁷

"The words of Section 4 make it clear that the President is a trustee of the land, with all the onerous duties and obligations associated with the concept of trust."⁸

- (b) The land (Conversion of Titles) Act⁹ did not only do away with freehold titles but also replaced them with statutory leaseholds for a term of one hundred years, renewable, commencing from 1st July, 1975.¹⁰

- (c) The interests of building developers and land users are restricted to a leasehold interest created by operation of law and subject to statutory terms, conditions and covenants.¹¹

- (d) Bare land perse ceased to attract any commercial value. Mortgages, charges or trusts could only operate against the unexhausted improvements on the land.¹²

- (e) No person can subdivide, sell transfer, assign, sublet

mortgage, charge or in any manner whatsoever encumber or part with the possession of his land or any part thereof or interest therein without the prior consent in writing of the President.¹³ The President may in granting his consent impose such terms and conditions as he may think fit, and such terms and conditions are binding on all persons and are not to be questioned in any court or tribunal. The President may, in granting his consent, fix the maximum amount that may be received, recovered or secured.

In fixing the amount in any of the circumstances laid down in Section 13 of the Act, no regard is had to the value of the land apart from unexhausted improvements thereon.

The President's power to approve all transactions in land have been delegated to the Commissioner of Lands. The Courts have interpreted the restriction of sub-division and alienation very restrictively in such a way as to demand state consent for every transaction, no matter how minor and to strike down every transaction which does not comply with Section 13.

In **MUTWALE V. PROFESSIONAL SERVICES LIMITED**¹⁴ the appellant took possession of a flat which the respondent company held as tenants from a superior landlord from December, 1978 until she vacated it in January, 1981. No rent was ever paid. No consent from the state for the subletting was obtained. The question of the lack of consent to the subletting was argued before the learned trial judge, who held that, as the Land (Conversion of Titles) Act, 1975 did not state that any dealings in land

made without the Presidents' consent would be void and unenforceable, he was unable to agree that the agreement was void ab initio.

In an appeal against the judgment of the High Court awarding the respondent K5,000 in respect of arrears of rent for the flat, it was argued for the appellant, inter alia, that the legislation was intended to prohibit the exploitation of tenants by requiring that all tenancy agreements must have Presidential consent and that, a contract without consent amounted to a contract to commit an illegal act and was therefore unenforceable.

Gardiner J.S; delivering the judgement of the Supreme Court, found that as the purported subletting by the respondent was without prior Presidential consent as required by S.13(1) of the Land (Conversion of Titles) Act, 1975 the whole of the contract, including the provision for payment of rent, was unenforceable. (C.F. Krige v. Christian Council of Zambia (1975) Z R 162)

It may be argued that a well managed leasehold system should provide developers and investors with a high degree of security and certainty for making their building development and investment decisions. It is also argued that the separation of ownership of unexhausted improvements from the ownership of the underlying land has an obvious advantage in that it maximises incentives for private investment in buildings and improvements while giving the state the right to assert claims with respect to increments attributable to changed land uses, subject to

payment for value of unexhausted improvements. However, Mba¹⁵ disagrees with this view. In his view abolition of the sale of undeveloped land for value has meant that 'bare' land can no longer be used as a collateral for loans or mortgages. The prospective developer has to meet the costs of land survey, registration and services from his own resources before he can draw down on mortgage advance. This is so because the letter of offer of a plot from the Commissioner of Lands requires that service charge and other incidentals must be paid to the relevant council within 30 days of receipt to signify acceptance of offer. Service charges must be paid to the Council before the state can issue title and without title no mortgage can be released.

Nevertheless, the shift towards home-ownership in the national housing policy necessitated a new land tenure system for:

- (a) Council housing areas to permit the sale of Council housing to individual occupiers;
- (b) Sites and Services schemes; and
- (c) Squatter areas, where even if the land was owned by the state there was no provision for any form of alienation to individual occupiers.

TENURE IN STATUTORY HOUSING IMPROVEMENT AREAS

In consequence of the above factors, the Housing (Statutory and Improvement Areas) Act was enacted in 1974 to provide for the control and improvement of housing in certain areas in

particular, the letting or transfer of land and buildings in council estates and Sites and Services schemes both of which may be declared Statutory Housing Areas, and land in up-graded squatter settlements which may be declared as Improvement Areas.

Declaration of Statutory Housing Areas

A statutory housing area is a site services scheme which has been fully developed as planned by the Council or a Council housing estate previously developed with a view of renting out its properties to members of the public and public organisations.

Under Section 4(1) of the Act the Minister, may by Statutory order declare any area of land within the jurisdiction of a Council to be a Statutory Housing Area, and may at any time thereafter declare that the whole or part of the land comprised in the Statutory Housing Area shall cease to be part of a Statutory Housing Area.

There are two pre-requisites to these declarations.

1. The area must be owned in fee simple or in leasehold from the state. In view of S.4 of the Land (Conversion of Titles) Act converting freeholds and leaseholds for periods in excess of 100 years into statutory leases of 100 years the local authority must be a statutory lessee for a period of 100 years.
2. the local authority responsible must prepare a statutory housing area plan. The plan should indicate the name and description of the area, existing roads and dimensions of each piece or parcel of land identified by a serial number. The plan should first be approved by the Surveyor-General (who retains one

copy) and then the other copies are deposited with the Registrar of Lands and Deeds and also the Commissioner of Lands.

Declaration of Improvement Areas

An Improvement Area is a settlement which has been established without the initial approval of the local authority (Council). However, the Council may decide later to improve the living conditions in that settlement and grant land rights to the inhabitants.

Under Section 37(1) the Minister, may by statutory order declare any area of land within the jurisdiction of a Council to be an Improvement Area and may at anytime thereafter declare that the whole or part of the land comprised in the Improvement Area shall cease to be part of an Improvement Area.

As with the Statutory Housing Areas, there are two prerequisites to these declarations. However, unlike the Statutory Housing Area, in the case of an Improvement Area, the plan needs only to be deposited with the Surveyor general and the Registrar of Lands and Deeds. It is imperative to note that for an Improvement Area, it is enough to identify the location of each building by a serial number. This difference is necessitated by the fact that whereas Statutory Housing Areas have always been estates of the Council and consequently have had the benefit of planned and organised growth, Improvement Areas have had an haphazard and spontaneous growth. These areas lacked any planning as a result it would be practically impossible to insist on dimension requiring precision.

Since the coming into effect of the Housing (Statutory and Improvement Areas) Act in 1975 the following areas have been declared either Statutory Housing Areas or Improvement Areas under the Act in the Lusaka City Council area.

STATUTORY HOUSING AREAS

A.	<u>SITE AND SERVICES AREA</u>	<u>DATE OF DECLARATION</u>
	KABANANA	31/10/80
	CHAWAMA WEST	01/05/86
	MATERO EAST	01/04/85
	KAMWALA/KABWATA	01/10/80
	EMMASDALE SITE I	01/10/79
	KAUNDA SQUARE I	01/07/85
	KAUNDA SQUARE II	01/07/85
B.	<u>COUNCIL ESTATES</u>	<u>DATE OF DECLARATION</u>
	CHILENJE SOUTH	01/03/77
	LIBALA STAGE I	01/10/82
	HELEN KAUNDA	01/08/78
	EMMASDALE BANK HOUSES	01/06/88

IMPROVEMENT AREAS

GEORGE	01/01/76
CHAWAMA	01/06/75
CHAISA	01/01/79
KALINGALINGA	01/04/86

MTENDERE	26/02/90
CHIPATA	01/06/90

(Source: L.C.C. DEEDS REGISTRY)

The following areas of Lusaka have not been declared neither as Statutory Areas nor Improvement Areas.

CHIBOLYA
 JOHN LEIGH
 MISISI
 KANYAMA
 MANDEVU/MARAPODI
 CHAINDA
 BAULENI

The reasons advanced for not having the above stated areas declared under the Act are that these areas still remain by and large illegal settlements.¹⁶ The other reason is their proximity to the City Centre hence they are situate in areas considered to be areas for future expansion of the City Centre, the industrial area and other exclusive housing estates. Legalising them will therefore pose a hurdle in the town planning process generally as their layouts are considered to be very cumbersome.¹⁷

The implications in these areas are that as tenants in illegal settlements, they are tenants at will with no legally recognised security of tenure. They could therefore be removed at any time. However, in Kanyama and Marapodi, they seem to have some form of recognition in the sense that although they are essentially in unauthorised areas, tenants are allocated plots by the Council and Land Record Cards are issued for a period of 10 years. The reason for this favoured status is that these two areas are a bit farther off from the City unlike, say Chibolya

and Misisi. A Land Record Card gives some kind of tenurial protection in that a Council may not just wake up one morning and throw out the tenants.¹⁸ The Land Record Card also gives some benefit in that in exceptional cases it could be used as collateral by some liberal lending institutions.

THE LUSAKA CITY COUNCIL DEEDS REGISTRY

As could be observed from the above discussion, the principal objective of the Act¹⁹ is to give local authorities the power to regularise and legalise low income settlements by providing title of ownership to the pieces of land in the area declared under the Act.

The low-income settlement earmarked for declaration will only be considered legal after the Council has acquired title from the State, and the area declared by the Minister. The acquisition of Title and Declaration of area forms the basis for the establishment of the Council Deeds Registry.

The Lusaka City Council Deeds Registry is a section of the Legal Services Department of the Council. It was established²⁰ in 1980 with a view of catering for areas that were being declared under the Act²¹ and deals mainly with conveyancing in land matters affected in the Statutory Housing Areas and Improvement Areas.

The Deeds Registry has an approved establishment of ten. Currently it is manned by 6 personnel out of which only two are legally qualified. All the work of the Registry is performed manually as it is not computerised. As a result records are to be found heaped up and loss of documents is not unlikely. At the time of a visit to the Registry, there were complaints of

shortage of stationery and filing cabinets and participants failing to receive speedy assistance because of the time it takes to retrieve records.

Similarly a sister department crucial in the implementation of the Act was crippled by shortage of qualified manpower, equipment, transport etc. A pathetic example is that whereas the approved establishment for the Council's Land Survey Department is 33, there were only 5 out of which there was only one qualified surveyor and was pending retirement at the end of the year.

COUNCIL CERTIFICATES OF TITLE AND OCCUPANCY LICENCES

Tenants in Statutory Housing Areas are issued with Council Certificates of title valid for ninety-nine (99) years.²² At the end of the 99 years, the lease may be renewed if the conditions of the lease are observed. Occupants of land in Improvement Areas are granted Occupancy Licences for a period of 30 years pursuant to Section 39 of the Act.²³

While the Council Certificate of Title purports to confer full title to participants, the Occupancy Licence does not. The reason is that, while the Council Certificate of Title provides a security of tenure valid for 99 years, the occupancy licence does not provide any tenancy but only permission to occupy that particular parcel of land.

Before the Council issues a certificate of title or the occupancy licence the participants have to make sure that service charges and loan repayments are up to date.²⁴ To this effect, Council does not issue the relevant documents to persons with

arrears. The administrative procedure adopted by the Council is that participants should approach the site office and get a letter stating that he requires a certificate of title or occupancy licence. After paying up the arrears i.e. service charges on loans etc, the Collection Unit issues a clearance certificate and is directed to the Deeds Registry where he is requested to pay K5,000 and K4,000 for Certificate of Title and Occupancy Licence respectively.

Thereafter the relevant documents are then issued. The procedure here is that when it comes to the issue of lease, it involves the signatures of the Mayor and the Town Clerk. In cases of change of ownership, there is no requirement for written consent. Once change of ownership forms are completed it is deemed every thing has been complied with. However, delays are experienced and participants kept waiting for their documents for unnecessarily long time. One reason for this delay is that the Town Clerk is usually busy and files tend to pile up and hence takes longer to issue leases thereby defeating the spirit of the Act. It was reported during a research visit to the Registry that sometimes there is political interference in the operation of the Registry especially during the rein of Councillors Chilambwe as Mayor of Lusaka sometimes Councillor felt certain applicants, due to their political leanings, were not entitled to plots and the Mayor would then withhold the file for over six months. This again defeats the purpose of the Act.²⁵

CHAPTER THREE: END NOTES

1. Mbaio M.L. "Law and Urbanisation in Zambia Ph.D Thesis, 1987 p. 148
2. NRG, Report of the Committee on the Tenure of urban land in Northern Rhodesia (Lusaka: Government Printer, 1975)
- 2a Ibid
3. Mbaio Ibid p. 150
4. Cap. 87, Section 2
5. Fixed at K10 by Circular 1/73 dated 28th March, 1973 of Circular LA/20/001 dated 12th February, 1968
6. kaunda K.D. Humanism in Zambia, Part 2, Lusaka 1972, p. 74; kaunda, K.D Watershed speech, speech to the 6th UNIP National Council, Mulungushi hall, Lusaka, 30th June, 1975)
7. Land (Conversion of title) Act, 1975 - S.4
8. M.L. Mbaio, Ph.D Thesis, 1987
9. land (Conversion of Titles) Act, 1975.
10. Ibid Section 5
11. S.6 (C.F. The Land (Conversion of Titles) Regulations, 1975
12. S.10
13. S.13(1)
14. (1984) ZR 72
15. Mbaio p. 161
16. S.4 Housing (Statutory and Improvement Areas) Act
17. Interview with Mr. Phiri, Council Advocate and Mr. Munalula, Council Survey Section
18. See page 14 for treatment of subject of Land Record Card
19. Housing (Statutory and Improvement Areas) Act, Cap 441
20. Pursuant to S. 11

21. SS. 4 and 37
22. S.7
23. Housing (Statutory and Improvement Areas) Act Cap. 441
24. Some participants in Sites and Services Schemes and Upgrading areas received loans to put up their core houses
25. By kind permission of Mr. Phiri, council advocate in charge of Deeds Registry.

CHAPTER FOUR

CONSTRAINTS AND PROSPECTS

The Housing (Statutory and Improvement Areas) Act¹ was enacted not only to regularise tenure in site and service areas and up-graded squatter settlements, but was also envisaged to introduce a simplified system of land law for areas to which it applied. For example, all dealings in land covered by the Act are registrable, not with the lands and Deeds Registry in the Ministry of lands but at the City Council Deeds Registries. The ultimate objective is to make land transactions in these areas as easy, affordable and time-saving as possible but at the same time retaining the benefits of the system of registration.

This chapter looks at the some of constraints faced in the implementation of the Act and tries to high light some prospects of its successful implementation.

Deeds Registry and Survey Section

With the above in mind, the Lusaka City Council has established a Deeds Registry with a view of catering for areas that were being declared either as Statutory Housing Areas or Improvement Areas.

However, our discussion in Chapter 3, reveals that the Deeds Registry is under staffed and ill equipped to handle the transactions in the most expeditious and satisfactory manner. It was also found that due to lack of surveyors and survey equipment, most areas that needed to be declared statutory housing or improvement areas, such as Chibolya, John Leigh,

Misisi, Kanyama, mandevu/Marapodi, Chainda and bauleni still remain undeclared.

It is submitted that one of the policy objectives behind the enactment of the Act² was to provide for security of tenure to low-income groups staying in areas that were hitherto illegal or unplanned settlements. Hence, it is against the spirit of the Act that people in the above stated areas continue to be denied the right to acquire title to the pieces of land they occupy inspite of the existence of the law conferring such rights. It is in this light that it is urged that both the Deeds Registry and the Survey Section of the Lusaka City Council be strengthened by providing enough professionally qualified personnel and equipment. It is also suggested that the Registry be decentralised to the localities in order to cut down on the cost of travelling as well as to provide an almost on the spot service.

Status of Council Certificates of Title and Occupancy Licences

In the preceding Chapter, it was stated that a Council Certificate of Title confers full title and security of tenure of 99 years. However, it was also stated that the occupancy licences issued by the Council to participants or occupants of land in Improvements Areas only gave permission to occupy that particular parcel of land for 30 years and did not confer any rights in the land itself.

One of the policy objectives behind the Act was to confer security of tenure on participants in areas declared either as statutory Housing areas or improvement areas, so as to stimulate private investments in housing. Title to land is an important

consideration where land is offered as security for credit.

Ironically, a Council Certificate of Title has generally been accepted as enough security for collateral and a "Council Certificate of Title has never been doubted by either commercial banks or the Zambia National Building Society."³ For instance, in 1994, sixty five(65) mortgages were registered on Council Certificates of Titles and twenty one (21) further charges were registered in the same period bringing the total of mortgage advances approved on the basis of a Council Certificate of Title to eighty six (86) in 1994 alone.⁴

In the case of occupancy licences, the position in terms of acceptability is somewhat similar to certificates of titles. In the same period of 1994, forty four (44) mortgages and fourteen (14) further charges were registered on the strength of the occupancy licence.⁵

With regard to the Zambia National Building Society (ZNBS) however, the position is different. ZNBS has of late changed its policy. Previously, an occupancy licence received the same status as a Certificate of Title but this is now seen as an insecure title. In the words of the Assistant Mortgages manager at ZNBS, "A Minister of Local Government may at any time order the demolition of houses in those areas and besides, there was no guarantee of renewal of an occupancy licence upon its expiry" The other reason for reluctance of lending institutions is that in areas such as Chawama which was declared an Improvement Area in 1975, a period of 30 years is running "close". Participants could not benefit from the mortgage facility unless their occupancy licences are renewed

The other reasons are that the Land (Conversion of Titles)

Act⁶ diminishes the value of mortgages. The effect of the provision that mortgages, charges or trusts could only operate against unexhausted improvements on land diminishes the value of mortgages in that it lowers the value of credit.

On the other hand, ZNBS interest rates are very high, and most common Zambian are not likely to benefit from ZNBS advances due to low income levels. ZNBS demands 56% of the monthly income as payment towards mortgage repayment. Age is also a determinant, the older the more unlikely one is likely to benefit. This is because ZNBS itself has no funds to lend out, consequently it has to borrow from commercial banks and then re-lend at higher interest rates to prospective home buyers/builders.⁷

It must be appreciated that a title deed, without additional collateral, will remain a mere piece of paper unless one is a (Wo)man of substance. Again this sounds like a defeat of the well meant objectives of the Act.

Home Ownership Schemes

The other policy objective behind the introduction of the Act⁸ was to facilitate home ownership by making it possible for the City Council to sell its low cost homes in Council housing estates and transferring title to the purchasers of the houses. Except for Chilenje where 741/houses have so far been sold to sitting tenants, the picture in other housing estates is not as encouraging. The table below depicts the picture as at 30th May, 1995.⁹

<u>HOUSING ESTATES</u>	<u>HOUSING UNITS SOLD</u>
CHILENJE	741
CHELSTON	6
LIBALA STAGE II	3
LIBALA STAGE III	2
LIBALA STAGE IV A	1
LIBALA STAGE IV B	1
KABWATA	4
KAMWALA	1
	<hr/>
TOTAL	759
	<hr/>

Some of the reasons advanced by the Housing Department of the Lusaka City Council, for this kind of scenario are that of lack of clear cut government policies with regard to the sale of Council houses and the fact that houses are offered to sitting tenants who may not have immediate plans or means to purchase the houses. As such these houses remain on rental as they could not be offered to the public while occupied by sitting tenants.

Legislative Hiccups

One other significant aspect which the Act was envisaged to solve was the problem of appropriate legislation. Section 48 of the Act removes the application of the following Acts from the areas declared statutory housing or improvement Areas. **10**

1. The Lands and Deeds Registry Act (Cap 287)
2. The Land Survey Act (Cap. 293)
3. The Rent Act (Cap. 438)
4. The Town and Country Planning Act (Cap. 475)

5. The Stamp Duty Act (Cap. 664)

Although the Act excludes the application of the Town and Country Planning Act and somehow replaces the Public Health Act Building Regulations by simpler procedures, the questions of planning have not been done away with completely. For example, we observed that one of the conditionalities before an area is declared a statutory housing area or improvement area is that it must have a "Statutory Housing Area Plan"¹¹ and an "Improvement Area Plan."¹² respectively, showing particulars or details of the area.

It was also observed that one of the reasons for not having areas such as Chibolya, John Leigh, Misisi, Kanyama, Mandevu/Marapodi, Chaina, Bauleni not declared is their proximity to the City Centre. Some of the areas could not be so declared under the Act because the survey diagrams have not been prepared, apparently due to lack of surveyors. All in all, even though the Lands and Deeds Registry Act¹³ and the Stamp Duty Act¹⁴ have been made inapplicable to Statutory Housing and Improvement Areas, their provisions have only been transmuted into the Housing (Statutory and Improvement Areas) Act¹⁵ and administrative procedures adopted by the City Council. For example, there is quite an elaborate procedure for obtaining the Council Certificate of Title or occupancy licence with the Mayor being the final signatory at the apex only in this regard replacing the President. Again, before the Council issues a Certificate of Title or occupancy licence, the participants have to pay K5,000.00 and K4,000 respectively.

In conclusion, it is worthy to note that the aim of the Housing (Statutory and Improvement Areas) Act was to simplify the

acquisition of title and registration and was a noble search for simpler and cheaper ways of providing easy access of the poor to land. It envisaged a situation where complicated legal conveyancing was not required. A situation where a participant could more or less just walk into the Council Offices and in no time walk out with a Certificate of title or an occupancy licence or change of ownership, as the case may be.

However, it is submitted that the objects of the Act have not been wholly achieved. This is because in terms of time spent, from the time an area is identified as eligible for declaration as either a statutory housing area or an improvement area, to the time of issue of title the procedure is long and cumbersome. It involves expenses both by the Council in the preparation of diagrams plans as well as participants in that the certificates and occupancy licences are not free. Considering that the Act is targeted at low income groups, the procedures and the language in which the documents are framed still remain technical enough to require the services of a more articulate mind. There is evidently a number of people in the affected areas who are not aware of the services, benefits and even where to go for assistance.

It is also evident from our discussion that while the Act was trying to redress a situation where a number of people still remained without secure title by providing them with registrable title, there seems to be discrimination against the areas not declared which still remain vulnerable to the rudiments and inconveniences of other Acts such as the Land Survey Act and the Town and country Planning Act not meant to apply to statutory and improvement areas.

CHAPTER FOUR: END NOTES

1. Cap. 441
2. The Housing (Statutory and Improvement Areas) Act Cap. 441
3. Mr. Phiri, Council Advocate, Lusaka City Council
4. Source, Deeds Registry, 30th May, 1995
5. Ibid
6. Cap. 289
7. Interview with the Assistant Mortgages Manager, Zambia National Building Society, Society House on 14th August, 1995
8. Cap. 441
9. Lusaka City Council, Department of housing and Social Services
10. Cap. 441 Schedule
11. S. 4 (2) Cap 441
12. S. 37 (2) Cap. 441
13. Cap. 287
14. Cap. 664
15. Cap. 441
16. Ibid

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