

Annie Mazinga vs John Mazinga and others

Judgment

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Allan Hans Muhome
Cause Number:	Land Cause Number 93 of 2023
Date of Judgment:	April 03, 2025
Bar:	Mr Asma Kapoto and Mr Abdullrahman Bengo, Counsel for the Claimant Mr Prisca Masumba, Counsel for the Defendant

The Claimant seeks a declaration that the Defendants are not entitled to inherit a piece of land situate at Samuti Village, Traditional Authority Boid in Thyolo District and that she is the rightful owner of the land. She seeks damages for loss of property and loss of use and costs of this action. The Defendants deny all the claims and counterclaim the same land.

The Claimant testified that around 1964, her parents, particularly her mother, were gifted a piece of land by Dr Kamuzu Banda, the first President of the Republic of Malawi. The father to the witness had 3 children and later remarried

moving out of the said piece of land to stay with the new wife. The Claimant has continuously used the disputed land since. However, when his father retired, he sought permission to stay on the land with his children from the second marriage, being the Defendants herein. The Traditional Authority and the District Commissioner had previously determined that the land belongs to the Claimant. In cross-examination, it was established that the Claimant's father had not left a valid will upon death. No new evidence was received in re-examination.

James Gwenyengwe, the Claimant's brother and Adamson Kampute who is Group Village Headman Samuti in Thyolo District, corroborated the Claimant's evidence. The former insisted that he was aged enough to follow the gifting of the land whilst the latter admitted in cross-examination that he was only told about the donation.

The second Defendant, Mcheche Mazinga, testified that the land in dispute is owned by his late father and that the Defendants are entitled to the same. He referred to a will which was allegedly left by his father. The Court observed that the will was invalid as it was not witnessed in accordance with the law. In cross-examination, the witness stated that he was born in 1990 by which time the Claimant was already using the disputed land. He further stated that his mother comes from Mponda Village. That in a matrilineal system of marriage his father had to live at his mother's village.

Clement Kajogola, the third Defendant, testified that he is a grandson to the Claimant's father and was born in 1997 on the disputed land. That upon the

death of the Claimant's father, the Claimant dispossessed the land in dispute from the Defendants. In cross-examination, the witness maintained that the Claimant destroyed crops on the disputed land and that she was arrested but there was no evidence of the same.

The fourth Defendant, Andrew Jumbe, testified that he is the nephew to the Claimant's father who owned the land in question. That the Defendants are entitled to the land which was snatched from them by the Claimant. In cross-examination, he stated that he is 40 years old and he was not born when the land was acquired. He did not know the person to whom the land was gifted. He was untruthful that the Claimant's father was working in the tea estates whilst occupying the land in dispute.

The standard of proof in civil matters is on a balance of probabilities and the burden of proof lies on he who asserts the affirmative, in this case the Claimant: see *Commercial Bank of Malawi v Mhango* [2002-2003] MLR 43 (SCA). The right to property is well entrenched under section 28 of the Republican Constitution of Malawi (1994) as discussed by the Supreme Court of Appeal in *Attorney General v MCP and Others (The Press Trust Case)* SCA [1997] 2 MLR 181.

This Court has examined the evidence on record and is of the view that the Claimant has proved her case on a balance of probabilities. This Court has established that in 1964, the property was gifted to the Claimant's parents. That the Claimant's father remarried and left the land only returning after divorce. The customary law of the area being matrilineal, the land herein belonged to the

Claimant's mother and she duly inherited the same. The Defendants, who were born to the second wife much later cannot lay claim on the disputed land, coupled with the fact that the alleged will is invalid.

This Court, therefore, declares that the Defendants are not entitled to inherit the disputed piece of land and that the Claimant is the rightful owner of the same. The claim for damages has not been made out and each party shall bear their own costs.

Made in Open Court this 3rd April 2025.