Edson Tamani v Godfrey Kamadzi Civil Cause Number 406 of 2021

Judgment

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Allan Hans Muhome
Cause Number:	Civil Cause Number 406 of 2021
Date of Judgment:	July 21, 2025
Bar:	Mr Luciano Mickeus, Counsel for the Claimant Mr Chikondi Kasambara, Counsel for the Defendant

1. This is a dispute on land ownership in relation to some portion of land situated at Mwanza Border, in Masokosa Village, Traditional Authority Nthache in Mwanza District. The land has two parts: a vacant plot and a building. The Claimant claims the vacant plot whereas the Defendant asserts ownership to both the vacant plot and the building.

2. The material facts, as gathered from the evidence, are that the Claimant, by an agreement dated 3rd November 2015 between himself and one Divala Moses,

bought the vacant land in issue at K300,000.00. The agreement was only endorsed by Senior Group Village Headman Masokosa in 2018 as the Claimant did not have money to pay for the stamping in 2015. The Claimant enjoyed his right of use and occupation without interference from the year 2015 until sometime in 2021 when the Defendant claimed to have bought the building together with the vacant land, in issue, adjoining thereto.

3. The Defendant purchased the property from the Sheriff of Malawi on 16th March 2021 and paid a sum of K2,086,165.00. The Defendant testified that when the Claimant was paying the purported purchase price in 2015, the land and the building were already under a claim in the First Grade Magistrate's Court at Mwanza under Civil Cause Number 203 of 2014: Agness Modius v Madalitso Lobeni (now deceased).

4. The said Madalitso Lobeni owned the house and due to failure to settle some loans, the Magistrate's Court ordered the sale of the buiding. It is on record that, on 27th July 2021, following the Claimant's complaint to Senior Group Nthache, the chief ruled that the vacant land and the building belonged to the Defendant.

5. The Court received evidence from the Claimant and his two witnesses: firstly, George Chaganda who is the chief in Masokosa Village and also witnessed the sale agreement: secondly, Ireen Moses, a sister to the seller (Divala Moses who has since migrated to Zambia) and she also witnessed the sale agreement.

6. On the part of the Defendant, the Defendant himself testified together with Agness Modius, Paul Nsakambewa, Damiano Bokosi (Senior Chief Nthache) and Jonathan Maliwa. The totality of the defence evidence is that when the deceased pledged her property as security for the repayment of the loans, she pledged both the vacant land and the building. The Court noted that the defence did not tender a copy of any document from the deceased pledging her property. It is suspect that the deceased deliberately misled the parties: that having sold the vacant portion to the Claimant, she offered the same together with the house to the group of creditors. It is evident though that the sale of the property emanated from an enforcement process by the Sheriff of Malawi.

7. At close of trial, the Court received written submissions from both Counsel, for which the Court is grateful. 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 Claimants: see Commercial Bank of Malawi v Mhango [2002-2003] MLR 43 (SCA).

8. 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.

9. Having examined the law and the evidence on record, this Court finds that the Claimant, by an agreement dated 3rd November 2015 between himself and one Divala Moses, bought the vacant land in issue at K300,000.00. The fact that the

agreement was only endorsed by Senior Group Village Headman Masokosa in 2018 does not affect the Claimant's right to property as entrenched in section 28 of the Constitution.

10. The Court further finds that the Defendant bought the house which was owned by the late Madalitso Lobeni. If, which is a great possibility, that the Defendant was advised that what he was buying was both the building and the land was the case, the same is ruled in favour of the Claimant who appears, to this Court, to have been unaware of or at least not to be a party to the proceedings in the Magistrate's Court.

11. This Court therefore makes a declaration that the Claimant is the rightful owner of the vacant land. Hence, the Defendant is not entitled to enter, farm, develop, use or in any way deal with the vacant land in issue. An order of permanent injunction is hereby granted restraining the Defendant from interfering with the enjoyment, use, occupation and development of the land in issue.

12. However, looking at the facts of this case, this Court does not find the Defendant liable for damages for trespass. He was under the impression that what the Sheriff of Malawi had sold to him was both the house and the vacant land which was incorrectly confirmed by the ruling of Senior Group Nthache. The legal question whether the Sheriff had legal mandate to sell the house does not affect the outcomes herein. In addition, when the Claimant obtained an injunction, the duly Defendant complied with its terms.

13. Each party shall bear their own costs considering the conduct of the parties herein and Order 31 r. 3(4) of the CPR.

Made in Open Court this 21st day of July, 2025.