

Eliza Misomali and Another v Esther Josephy and Another Land Causes Number 63 and 145 of 2023

Summary

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Allan Hans Muhome
Cause Number:	Land Causes Number 63 and 145 of 2023
Date of Judgment:	August 10, 2025
Bar:	Mr. Macmillan Chakhala, Counsel for the Claimants Mr. Masurool Daudi, Counsel for the Claimants

The Claimants appealed to the High Court of Malawi against the decisions of the Traditional Authority and District Commissioner, which had vested ownership of two pieces of land in Mulanje District in the Defendants. The dispute arose over two separate parcels of land. The first parcel was a gift to the Claimants' family member, Lucy Manjomo, from a friend who was part of the Defendants' family clan. Upon Lucy's death without an heir, the First Claimant, Eliza Misomali, inherited the land and occupied it until the Defendants took possession, claiming it was their ancestral property. The First Claimant then retaliated by reclaiming a

second piece of land that her grandfather had gifted to the Defendants' clan. The matter was heard by various traditional authorities and the District Commissioner, with conflicting rulings, leading to this action in the High Court.

The Court had to determine the rightful ownership of both pieces of land based on the principles of customary land law, particularly regarding inheritance and the revocability of gifts. The Court found that the First Claimant lawfully inherited the first piece of land from Lucy Manjomo, as Lucy was a duly accepted member of the clan and not a trespasser. Therefore, the Defendants' act of taking possession of that land and evicting the First Claimant was deemed unlawful and unjust. The Court further held that a customary gift of land, once given, cannot be lawfully revoked. While acknowledging the injustice of the Defendants' actions, the Court declared that the First Claimant could not revoke the gift of the second piece of land that her grandfather had given to the Defendants' family. The Court thus declared the First Claimant the rightful owner of the first piece of land and the First Defendant, Evelyn Mandala, the rightful owner of the second piece of land. The Court ordered each party to bear their own costs.