

Ellen Ngalande v Lewis Kamundi and Persons Unknown Civil Cause Number 270 of 2022

Judgment

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| Court: | High Court of Malawi |
| Registry: | Civil Division |
| Bench: | Honourable Justice Allan Hans Muhome |
| Cause Number: | Civil Cause Number 270 of 2022 |
| Date of Judgment: | June 20, 2025 |
| Bar: | Mr. Mauya Msuku, Counsel for the Claimants Mr. Kirby Kasinja, Counsel for the 1st Defendant |

1. This is a dispute on land ownership. Both the Claimant and the 1st Defendant are claiming ownership of a piece of land (the property) situate at Mizenge Village Traditional Authority Kapeni in Blantyre District. The Claimant bought the land in the year 2021 and started construction. She later realized that the 1st Defendant had bought the same land earlier on in the year 2019. Discussions were held whereat the 1st Defendant proposed that he be paid a sum of K5,500,000 in place of the land. This sum was never paid and according to the Claimant, the 1st Defendant instructed persons unknown to trespass on the property and threaten to demolish it.

2. The Claimant seeks a permanent injunction restraining the Defendants from continued trespass. Damages for trespass and costs of this action. The 1st Defendant denies all the claims and asserts ownership of the same land.

3. The Court received evidence from the Claimant and the 1st Defendant mostly confirming the facts in paragraph one (above). The 1st Defendant also called Gift Mtambalika who sold him the land at a price of K1,600,000 in the year 2019. Robert Koloveni, who is Village Headman Mizenge also testified that he was duped by an agent, called Matiki, to endorse the sale of the land from the 1st Defendant to the Claimant in the year 2021, without the 1st Defendant's authorisation. The 1st Defendant stays in the United Kingdom.

4. 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.

5. The evidence establishes that the 1st Defendant was the first one to buy the property in 2019 for a sum of K1,600,000. Through fraud, the same property was sold to the Claimant in 2021. Upon discovery of the fraud, parties engaged each other and the 1st Defendant proposed that he be paid a sum of K5,500,000 and

that would settle the matter. However, a concrete agreement was not reached as the Claimant had to consult her husband who is resident in the United States of America and she considered the demanded sum to be on the higher side. Then followed these proceedings.

6. This Court considers that since the Claimant has already spent monies on the construction of some structures on the property, it would be inequitable to disentitle her. She has not proved damages for trespass. The Claimant shall pay the 1st Defendant the proposed sum of K5,500,000 with simple interest from 1st April 2022, within 60 days from the date of this Judgment. Each party shall bear their own costs.

Made in Open Court this 20th June 2025.