

Esnart Khomba v Dorothy Gatoma and Another

Land Cause Number 93 of 2023

Summary

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 15, 2025
Bar:	Mr Patrick Kalanda, Counsel for the Claimant Mr Fostino Maele and Mr Patrick Kalimbuka, Counsel for the 1st Defendant., 2nd Defendant: Unrepresented and absent

The Claimant, residing in the United States, brought this claim to the High Court, Principal Registry, against the Defendants concerning a residential property in Blantyre that she had purchased in 2014. The dispute arose after the Second Defendant, a friend of the Claimant, who was entrusted to assist with a boundary dispute, fraudulently sold the property to the First Defendant. The Claimant sought damages for trespass, mesne profits, and a declaration of her ownership. The First Defendant argued she was a *bona fide* purchaser for value. The Second

Defendant did not file a defence, and a default judgment was entered against him. The Court was tasked with determining whether the First Defendant qualified as a *bona fide* purchaser and whether her occupation of the property constituted trespass.

The Court found in favour of the Claimant. The Court determined that the First Defendant did not meet the conditions of a *bona fide* purchaser for value without notice. The decisive rationale was that she failed to make reasonable inquiries, specifically by not engaging with the 'tenants' who were occupying the boys' quarters on the property, and that a valuation report or utility bills were not proof of ownership. The Court also held that while the First Defendant's initial entry might have been justifiable due to a stakeholder meeting resolution, her continued occupation was no longer legally justifiable in light of the judgment. The claims for damages for trespass and mesne profits were dismissed as being unsupported by the law on the given facts. The Court ordered the First Defendant to permit the Claimant to inspect and take inventory of the house immediately, and to hand over the property within 30 days. Each party was ordered to bear their own costs.