Henry M'Bwana and Muhammad Chingomanje (on their own behalf and on behalf of the other users and Occupiers of Kalindima Village dambo customary land) v The District Commissioner of Salima and Persons Unknown.

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	HH Elijah Blackboard Dazilikwiza Pachalo Daniels, Assistant Registrar.
Cause Number:	(Being Land Cause No. 100 of 2024) (and Judicial Review No. 26 of 2024)
Date of Judgment:	October 27, 2024
Bar:	Mr. Samir Chilupha, Counsel for the Claimant.

Head Notes

Civil Procedure – Abuse of Court process – Multiple claims on same subject matter – Filing summons and judicial review simultaneously constitutes abuse of Court processes.

Legislation Construed

Statutes

Constitution (s 28, 30, 43)

Customary Land Act (s 44)

Courts Act (s 3, 6A (2))

Land Acquisition and Compensation Act (s 3, 4, 9, 10)

Subsidiary Legislation

Courts (High Court) (Civil Procedure) Rules, 2017 (Order 5 r 10, 11, 13 and Order 6 r 9)

Judgment

... Thus, we have always maintained the view that, whenever a proceeding is commenced by the hand of Counsel, without first having a searching of his soul, as to whether the said proceeding should be brought to Court, solely on his usual confidence and or experience in his daily trade, and in the end, he omits to appreciate whether he should in the first place, bring that proceeding or not, (then he must either be overly confident of his art and therefore naive or that, he may simply be careless to know that his may be a hopeless proceeding) or that he casually omits to be careful enough, so as to be meticulous before he brings his case and thus, thinking to himself either that, the Court will share in his omission and therefore issue an originating process, which otherwise it would not have issued for want of merit (thereby perpetuating the vice of an abuse of the processes of the Court).[1]..

1.We will not partake in Counsel’s omission. This we say with greatest respect. Was it not foretold then, and now it is clear that our job is like that of a fortune-teller, the only difference we have is that, one speaks from the pedestal of their spiritual authority but to us, risk a we speak from the authority of the law, articulating what “is” the law and foreseeing through our judicial epistles what “ought to be” the law. When we speak with that authority, we situation where those that do not pay attention but have a privilege of our audience, may eventually be at a place we exactly must have foreseen and warned Counsel not to be ensnared by. What we forewarned in the extract above, is exactly what has happened now, Counsel has filled multiple claims on the same subject matter and the same transaction in our court by way of summons and at the same time by way of judicial review. The processes are both signed by Counsel on the same date and were also filed in our court on an a similar day. We will proceed to respectfully reject his originating processes for being abuse of court process. At the onset, we must mention that we should proceed to consolidate these cases on our own motion under the authority of Order 6 rule 9 of the Courts (High Court) (Civil Procedure) Rules, 2017. The processes which we will decline to issue were filed by KK attorneys.

Suffice to say that, we have read the statement of case attached to the summons and the judicial review Form 86A. The claim is the same and so is the effect of the reliefs sought. In sum, the claimants are arguing that the defendants have acted unreasonably by deciding to arbitrarily acquire their 10 hectares of land situated at Kalindima Village in Salima. They argue that the actions are contrary to sections 28, 30 and 43 of the Republic of Malawi (Constitution) Act as well as sections 3, 4, 9 and 10 of the Land Acquisition and Compensation Act. They allege that the preceding provisions have been violated by the defendants. They in both processes are alleging

that the unlawful acquisition of land herein by the defendants is to benefit a third party who has an interest to invest in sugar and other agricultural production on their alleged land. Reading the processes, it becomes apparent that they seek the same remedies from the same subject matter and cause of action. For a fact, this is a classic case where we must reject the processes. Respectfully, Counsel is unsure of what he seeks from the court. When they earlier filed the summons, we had sent them back to comply with section 44 of the Customary Land Act or to explain why they did not so comply. They only brought the summons later on 17 October 2024. Strangely, they have added a judicial review process as well as an application for an interlocutory order. In *casu,* our mind is already made and the fate of these cases is obvious, we will reject the invitation to issue them.

Perhaps, we must mention that the authority with which we proceed to hereby reject the documents is well informed from the script of reverend Mambulasa J who reinstated the law as follows:

> The Court has inherent jurisdiction to prevent its process from being abused. **Maintaining two applications or claims** either **in the same** or in two
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> different courts in respect of **the same subject matte**r is a classic case of abuse of court process.
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> (Emphasis added)

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[1]

See paragraph 4 of the case of Democratic Progressive Party v Malawi Electoral Commission Civil Case Number 127 of 2024 (Unreported)

[2]

See paragraph 12 of the case of Lucious Likongwe -v- Nutricom Food and Beverages Limited Personal Injury Cause No. 569 Of 2021 (Unreported)