

# Mrs Angelina Gilbert (on her own behalf and on behalf of the beneficiaries of the estate of Mr K.J. Chisale) vs Mrs Felister Cup (on her own behalf and on behalf of the Namilazi and Namagaseni families)

## Judgment

<b>Court:</b>	High Court of Malawi
<b>Registry:</b>	Civil Division
<b>Cause Number:</b>	Civil Cause Number 135 of 2024
<b>Date of Judgment:</b>	April 09, 2025
<b>Bar:</b>	For the Claimant: Mr Asma Kapoto For the Defendant: Mr Elliot M'bwana

The Claimant commenced the present proceedings against the Defendant, seeking a declaration that the land in contention at Nguluwe Village, Sub Traditional Authority Nguluwe in Thyolo District belongs to her; an order restraining the Defendant from preventing the Claimant from peaceful enjoyment of the land; damages for trespass and costs of this action. The Defendant denies being liable to the Claimant as claimed or at all.

The matter was set down for a scheduling conference on 27th November 2024. At that hearing directions for the further conduct of the matter were agreed upon. A trial date was set for 11th March 2025. Counsel for the Defendant sought an adjournment on the ground that his practice licence was yet to be issued by the Malawi Law Society. The matter was adjourned to a specific date being 9th April 2025 whereat it was reported that Counsel was still unlicensed and was seeking a further adjournment.

As observed by Kalua J. in *Annies Nyirenda v Proto Feeds and Another* Commercial Cause Number 385 of 2022 at para. 4:

"For a legal practitioner, renewal of a practicing licence is not a "sudden event" akin to some unforeseen natural disaster, unleashed without warning or mercy on some unsuspecting human kind by mother nature, no. Its occurrence is scripted in the law. In black and white. It really ought to take no lawyer by surprise, in all fairness. Every licence to practice expires on 31st January next following the date of its issue, and every legal practitioner desirous of practicing thereafter has to renew his licence. A legal practitioner shall not be entitled to practice unless he has had issued to him a valid licence to practice. (see s30(2) and (3) of the Legal Education and Legal Practitioners Act, Cap 3:04 of the Laws of Malawi) ... "

Having previously adjourned this matter on the same ground that Counsel for the Defendant was unlicensed, it would be an affront to justice to allow adjournments to the infinity. The Defendant's defence is therefore struck out and Judgment is hereby entered in favour of the Claimant. It is so ordered.

Made in Chambers this 9th April 2025.

Allan Hans Muhome

