

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)

Summary

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

The Court, sitting in the High Court's Civil Division, entered judgment for the Claimant after striking out the Defendant's defence. The Claimant had commenced proceedings seeking a declaration of ownership over land at Nguluwe Village in Thyolo District, an order restraining the Defendant from interfering with her peaceful enjoyment of the land, damages for trespass, and costs. The Defendant had filed a defence denying any liability. Following a scheduling conference, a trial date was set for 11 March 2025. On that date, the

Defendant's counsel successfully sought an adjournment on the ground that his practice licence had not yet been issued by the Malawi Law Society.

The matter was adjourned to 9 April 2025. At that subsequent hearing, it was reported that counsel for the Defendant was still unlicensed and was seeking a further adjournment on the same basis. The principal issue for the Court was whether to grant a further adjournment for this reason. The Court dismissed the application for a further adjournment. It struck out the defence and entered judgment in favour of the Claimant as sought in the statement of claim, including costs of the action. The Court held that to allow indefinite adjournments on the ground that counsel was unlicensed would be an affront to justice. Citing with approval the decision in *Annies Nyirenda v Proto Feeds*, the Court affirmed that the renewal of a practicing licence is a predictable requirement scripted in the Legal Education and Legal Practitioners Act and ought not to take a legal practitioner by surprise. A legal practitioner, it noted, shall not be entitled to practice without a valid licence.