JUDICIARY

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 556 OF 2007

BETWEEN:

VERA SACRANIE ……..…….PLAINTIFF

-AND –

SHEILA SACRANIE…….DEFENDANT

CORAM: THE HONOURABLE JUSTICE E. B. TWEA
Absent, of Counsel for the plaintiff
Absent, of Counsel for the defendant
M. Manda – Official Interpreter

R U L I N G

Twea, J

The applicant filed this Originating Summons seeking three declaratory orders: that the respondent be stopped from restraining her from selling plot number NM 11/137, that the plaintiff be declared owner of the said plot, and that she be allowed to change ownership of the said plot to her name. Further she sought cost and any other such orders as the court would deem fit.

The respondent did not appear at the hearing. However she filed an affidavit in opposition.

The gist of this case is that the applicant and the respondent are sisters. It is on record that their late mother bought and owned a plot in Namiyango Township in the city of Blantyre. However, she never managed to change ownership of that plot, on which she put a structure, into her own name because she failed to trace the vendor. Eventually on 14th, June, 1994 she swore an affidavit declaring ownership of the land and the development thereon. Further, she directed that the said plot and development be registered in the name of her daughter, the respondent, who was then 23 years of age.

The deponent then died in 1999. She left five issues, the respondent being second born and the applicant last born. She died intestate. There is evidence, Exhibit SS1, that her estate is being administered by the Administrator General. This was not disputed.

The applicant contended that respondent and one Dr Kalinde Kowet, allowed her to occupy the plot in issue, demolish the developments put up by her deceased mother and put thereon a new structure. It is now her claim that the respondent allowed or caused her to spend money on the development and that, therefore, she has an equitable interest in the land which gives rise to proprietary estoppel against the respondent. She seeks the declaratory orders, as mentioned, herein - before.

Proprietary estoppel is an equitable doctrine. It applies where a land owner stands by, that is, suffers or allows a person to spend money improving his own or the landowners land in the expectation that some covenant will not be revoked or, for that matter, invoked: ***Ramden V Dyson (1866) L.R. I.H.L. 129.*** This doctrine creates an irrevocable licence to occupy or use the land. However, like all equitable remedies, it depends on the discretion of the court and the circumstance of the case. In cases where the irrevocable licence would be too burden - some on the landowner, the court may impose a lien on the land for the outlay, consequently revoking the licence on repayment of the expenditure: ***Dodswoths V Dodsworth [1973] E.G.D. 233.*** What is of essence in such cases is expenditure, sufferance or licence and ownership of the land.

In the present case, the applicant deponed that she spent a lot of money demolishing and old structure and putting up a new one. She filed two affidavits. Be this as it may she proferred no evidence of any expenditure at all. I would have great difficulty in accepting that she spent money or built

thereon a new structure. I am more persuaded by the evidence of the respondent that the structure thereon is the one their late mother left.
Secondly, I have to consider the issue of sufferance or permission to enter the land and construct. The evidence of the applicant is not consistent. In her original affidavit, she averred that the land in issue was given to her in 2000 by the respondent. She contended that the differences arose when the respondent refused to issue a letter or affidavit for change of ownership. In her affidavit in reply she averred that she went on the land on licence of the respondent and Dr. Kalinde Kowet to finish the construction of the house thereon.

On the other hand, the evidence of the respondent was that the applicant left the family home to live on her own. When she fell on hard times, they allowed her to move back to the family home. Later, it was said that the applicant was wasting the estate of their late mother. The administrator General wrote all family members to stop such practices. The respondent also wrote the Blantyre City Assembly not to change ownership of the land without her consent: exhibits SS1 and SS2 respectively. Further she averred that the plot was part of their deceased mothers estate.

As I stated earlier, the evidence of the applicant is not consistent. I accept the evidence of the respondent. I find that the attempt to sale the plot was part of the wastage by the applicant. That is why she had to protect the estate by entering a caveat with the Blantyre City Assembly.

Lastly, I wish to consider the issue of ownership.

The applicant made several contentions, apart from her other claims, that the land – was given to her and that the plot belonged to the responded because their late mother gave it to her. The respondent however, averred that it was part of the deceased estate.

I have examined the affidavit in issue. It was sworn on 14 June, 1994. The essence of paragraph 7 was to nominate in whose name the plot should be registered. The deponent died in 1999, five years after swearing the affidavit. During all this time, or at all, there was no evidence of the respondent over exercising proprietary rights over the land or structures there on than the deponent. In the absence of such evidence, the document: affidavit exhibit VS, was about registration and did not vest property in the

plot in the respondent. Clearly, exhibit VS is not a will and cannot be construed a such.

On the evidence before me therefore, I find that the respondent was a mere nominee for the registration of the land. She did not have any proprietary rights. The land in issue was vested in the deceased and therefore became part of the deceased estate. The land was vested in the Administrator General as the administrator of the deceased estate. There was no sufferance or permission given by him to the applicant to deal with the land in issue at all.

It is my finding therefore, that the proprietary estoppel does not arise. This application must fail entirely with costs to the respondent.

Pronounced in Chambers this 11th day of July. 2008 at Blantyre.

E. B. Twea
JUDGE