



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

CIVIL CAUSE NO 518 OF 2010

KAWALAZI ESTATE CO. LTD..... PLAINTIFF

and

VILLAGE HEADMAN LIKUNGWI
AND 7 OTHERS..... DEFENDANT

Coram: **Hon. Justice R. Mbvundula**
Mwaungulu, Counsel for the Plaintiff
Mhone, Counsel for the Defendants
Minikwa, Official Interpreter

RULING

This is an application by the defendants for an order for transfer of the present action from this registry to the Mzuzu District Registry. The grounds advanced in support of the application are firstly, that the applicants are people of little means and cannot afford to be commuting to Blantyre from Nkhatabay where they are resident, and secondly that the land which is subject of the dispute between the parties is located in Nkhatabay, which place is closer to the Mzuzu Registry than this it is to this registry. It was submitted that it would therefore be in the interests of justice and the parties that the matter be heard in the Mzuzu Registry which is closer to where the issues lie.

The application is opposed for two reasons. The first is that the costs that will be involved for the lawyers representing the parties to travel to and from Mzuzu will be high since both lawyers are based in Blantyre, and that since the defendants are of little means one cannot be certain that they will be able to pay costs should they not succeed in the matter. The second point of objection by the plaintiff is that the plaintiff is concerned about the their security and well being in Mzuzu

because the defendants are several in number and that the encroachment complained of “is more or less like a movement to grab as much of the plaintiff’s land as possible” and that there is likely to be tension if the matter is heard in Mzuzu. Counsel for the defendants was however emphatic that the foremost consideration in opposing the application is the fact that both counsel are based in Blantyre.

In his reply counsel for the defendants submitted firstly that the issue of security is neither here nor there as the court is capable of ordering that the police should provide ample security during the trial. Secondly counsel submitted that the indigence of the defendants should be taken into account in their favour rather to their disadvantage. Counsel cited the case of *Raphael Joseph Mhone v Electoral Commission and Symon Vuwa Kaunda* MSCA Civil Appeal No. 48 of 2009 in support of the defendants’ position. The dispute subject of that case arose from parliamentary elections which took place in Nkhatabay Central Constituency and an application was made to transfer the legal proceedings concerning that dispute from this registry to the Mzuzu District Registry. In arriving at the decision to transfer the proceedings to the latter registry the learned judge had this to say:

“The main consideration in determining this application is the appropriateness and convenience of having the case heard in one court as opposed to another. The convenience here does not in my considered view refer to the convenience of the main parties in the action only but all other participants in the proceedings such as witnesses. Of course the consideration of the convenience of the main parties in the proceedings is paramount but cannot be taken in isolation of the convenience of the other parties in the proceedings... The main petition concerns or arises from Nkhatabay Central Constituency... All the witnesses ... will at most come from the said constituency... The petitioner contends that he has no problem bringing his witnesses to Blantyre and accommodating them, whereas the 2nd respondent contends that he will not be able to do so... There are District Registries established in this country to cater for specific regions in which they have been established. In the northern region there is the Mzuzu District Registry under which the said Nkhatabay constituency lies. These district registries were established among other reasons to avoid the inconvenience of parties travelling long distances to the Principal Registry in Blantyre... and also to save such litigants the costs of travelling to the said Principal Registry.”

I am of the view that the foregoing reasoning should be applied in the present case. I must perhaps add that if the application to transfer the proceedings to the Mzuzu Registry was to be refused it might have the consequence that the main action, which is paramount, might fail to take place or delay on account of the parties’ and witnesses’ inability to meet their travel expenses. I am inclined to be of the view that it is better that the issues between the parties should be accorded a fair chance of being heard and determined and that the issue of costs should be secondary thereto. In addition, the fact that the land in dispute is closer to the Mzuzu Registry

by hundreds of kilometres than it is to this registry further persuades this court to allow the application since it would be easier and less costly, should the need arise, for the court to visit the land.

For these reasons I allow the application and order the transfer of this matter to the Mzuzu District Registry.

Costs of this application are awarded to the defendants.

Made in chambers at Blantyre this 11th day of March 2011.



R. Mavundula
JUDGE