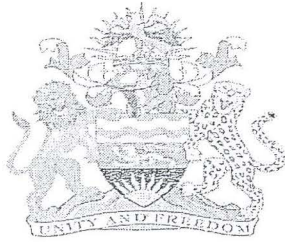


11 Sep 2017



SIGNED BY: *[Signature]* HIGH COURT
LIBRARY

IN THE HIGH COURT OF MALAWI

MZUZU REGISTRY

CIVIL DIVISION

CIVIL CAUSE NUMBER 142 OF 2017

BETWEEN:

FAINALA MONICA MKANDAWIRE

(ON HER OWN BEHALF AND ON BEHALF OF
THE CHIMAYE FAMILY)

ELINA NYBITI MKANDAWIRE

-AND-

TROPHA ESTATE LIMITED

VILLAGE HEADMAN CHIMAYE MKANDAWIRE

1ST DEFENDANT

2ND DEFENDANT

MEDIATOR'S REPORT TO COURT ON THE OUTCOME OF MEDIATION SESSION

May it Please you, my Lady!

1. Introduction

1.1 This is the formal report on the outcome of the mediation session held in this matter. The mediation was conducted on 6th September, 2017 at the location of the disputed land in the area of Village Headman Chimayi Mkandawire, T/A Chikulamayembe, in Rumphi District of the Republic of Malawi.

Served on Racine Associates
This 11th day of Sept 2017
at 4:30 pm
Signed: *[Signature]*

Can't Received and
adopted as is
Justice D.A. Delabnile
[Signature]

13/09/2017

1.2 The action was commenced in this Division of the High Court of Malawi at Mzuzu on 24th August, 2017, by the 1st Plaintiff on behalf of the Chimaye Family and the 2nd Plaintiff on her own behalf. In the action, the Plaintiffs are seeking a permanent injunction restraining the 1st Defendant from doing the following things:

- developing, or trespassing on customary land located in the aforementioned area or;
- installing a pumping station on the said land; and
- interfering with the customary land rights the members of the Chimaye Family claim to have in the disputed land.

1.3 The Plaintiff also seeks a permanent injunction restraining the 2nd Defendant village headman from surrendering the disputed land to the 1st Defendant for the purpose of installing their intended water pumping station.

1.4 The Defendants' position appears to be that the disputed land is not within customary land but is within an intersection of the road reserve along the M-24 main road and the buffer zone along the Runyina River. As such the Defendant claims that the Plaintiffs are not entitled to customary rights in the said land while the Defendants have obtained the requisite authority to install a water pump and associated works or equipment on the said land.

1.5 The Court ordered that the parties should identify a mediator to attempt to resolve the dispute between them and to report the outcome of the mediation to court by 11th September, 2017. The parties accordingly appointed Mr. Victor Charles Gondwe, the author of the present report, to be the said arbitrator and the session was conducted at the site of the dispute on 6th September, 2017.

1.6 Specifically, the mediation involved ascertaining the boundaries of the disputed land to determine whether or not the land was located within the buffer zone-road reserve intersection or whether it was located on customary land over which the Plaintiffs have customary land rights.

2. Definitions of important terms:

2.1 The parties understood the 'road reserve' as being any land reserved for use as a road in terms of the Public Roads Act (Cap. 69:02) and being the land on either side of the road, the centre line of the reserve width being the centreline of the carriage way for the road. The reserve width for the road involved in the

present dispute was agreed to be 30 metres, the said road being the road leading from Bolero to Rumphu.

2.2 The 'buffer zone' was understood between the parties as comprising the bed and banks of the relevant watercourse and the adjacent strip of land as per the requirements of the Waterworks Act. In this case the buffer zone was agreed to be 15m from the centerline of the watercourse, i.e. the Runyina River.

3. Evidence

3.1 The Mediator heard the testimony of several witnesses. The first was Edwin Banda, PW 1, who testified that he works as a Lands Assistant at Rumphu District Council. He further stated that in August, 2017 he came on site to the disputed area to verify the proposed location for the water pump in relation to whether it was within the buffer zone-road reserve intersection as has been claimed by the Defendants. He stated that the road reserve applicable to the M-24 road is thirty metres and the buffer zone in relation to the Runyina river was 15 metres. He tendered in evidence a map of the disputed area which showed the proposed location of the water pump and an aerial photograph of the area. The map and aerial photograph are attached to this report and marked "M-1" and "M-2".

3.2 He also stated that the water pump and associated waterworks are proposed to be located within the following co-ordinates:

C-1 East: 585742.49 South: 8781807

C-2 East: 585734.82 South: 8781805.84

C-3 East 585736.98 South: 8781794.35

C-4 East 585744.65 South: 8781795.78

3.3 He concluded that the proposed location for the water pump and associated works was within the intersection of the buffer zone along the Runyina River and the road reserve along the M-24 road.

3.4 The second witness was PW 2, Mr. Sydney Phiri, who stated that he was the maintenance engineer for the Roads Authority and confirmed that the road

reserve for the M-24 road in that area was 30 meters and its centre lay along the centreline of the carriageway of the road.

3.5 The next witness was DW1, Mr. Simeon Kent, who stated that he was an Engineer for an entity known as Agricane. He stated that the building to house the pump will have the dimensions of 12 metres by 6 metres and will be located within the intersection between the road reserve and the buffer zone. He tendered drawings of the proposed water pump and works. Copies of the said drawings are attached to this report and marked "M-3".

3.6 He stated that the pathway which passed through the intersection and was used by the Plaintiffs and their families would be closed and a new pathway constructed around the pump building and the associated works.

3.7 The Mediator also heard the evidence of Mr. Arnold Thumba, the Regional Commissioner for Lands, who also confirmed the location of the proposed site for the pump and works as being located within the intersection between the road reserve and the buffer zone.

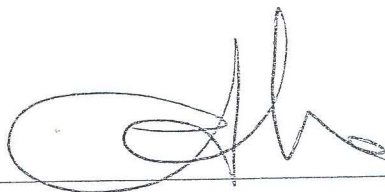
4. Specific outcomes of the mediation

At the conclusion of the mediation and in the light of the foregoing evidence the following was established:

- The proposed site for the water pump, the pump house, pipes and associated works are within the intersection between the road reserve along the Bolero Rumphi road and the buffer zone along the Runyina River.
- The Plaintiffs and other persons who occupy customary land outside the intersection have no customary land rights within the intersection itself, which is public land: see section 6 of the Waterworks Act.
- The land outside the road reserve, the buffer zone and their intersection is customary land over which the Plaintiffs have the right to use and occupy.

- The Plaintiffs and their families have not given consent to the Defendants in relation to the construction and installation of the water pump and associated works outside the road reserve and the buffer zone.
- Therefore, the 1st Defendant will not be in violation of the Plaintiff's customary land and property rights if they confine their construction of the water pump and associated waterworks to the location proposed which is within the road reserve-buffer zone intersection. However, if the 1st Defendant constructs any portion of the proposed water pump project outside the road reserve/ buffer zone then it will be in violation of the customary land rights of the Plaintiffs and the Plaintiffs may be entitled to the injunctions sought in this action.

Dated the 11th day of September 2017



VICTOR CHARLES GONDWE
The Mediator

To: 1. The High Court of Malawi
General Civil Division
Mzuzu Registry.
MZUZU

2. Kawelo Lawyers
MZUZU

3. Racane Associates
MZUZU

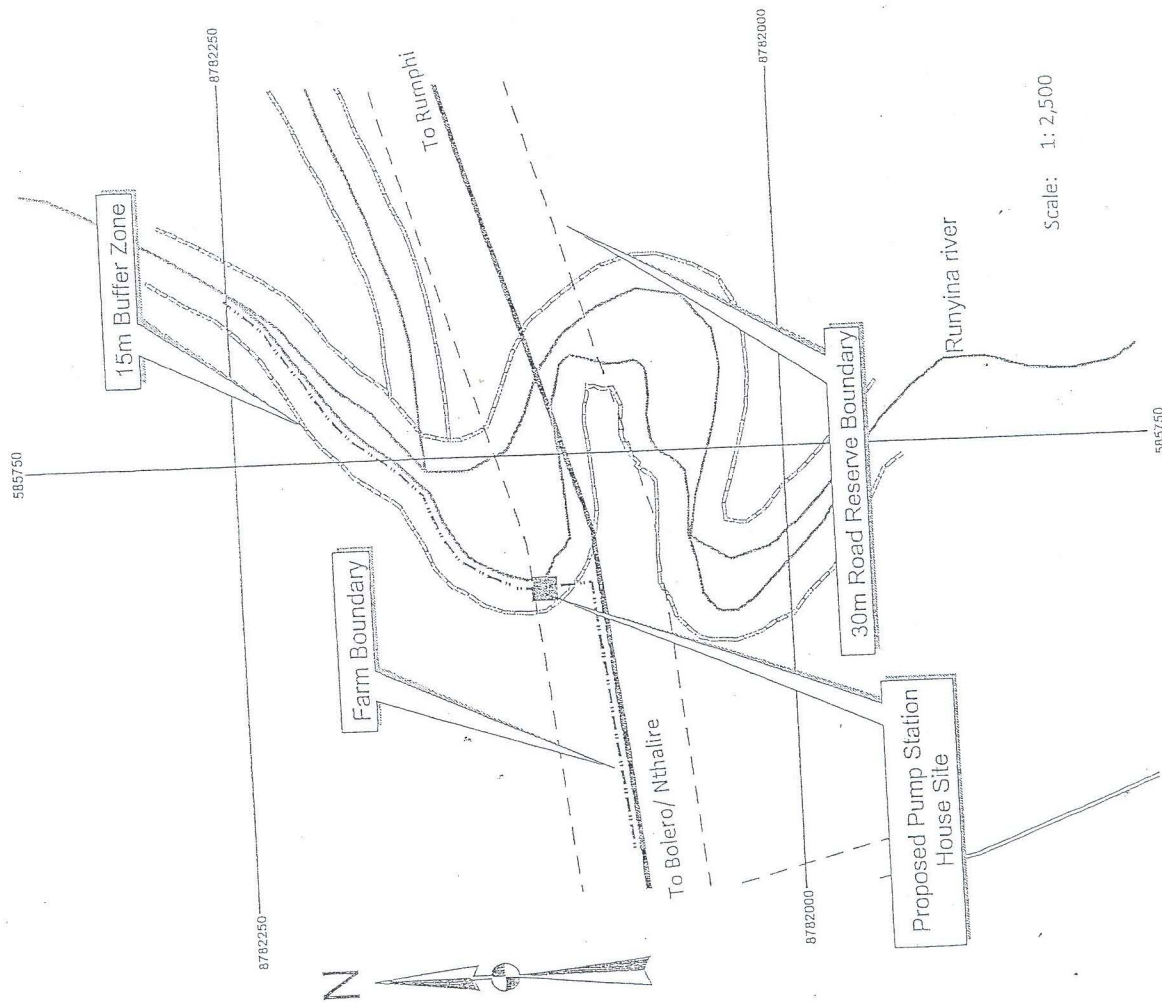
M-1

MAP OF THE DISPUTED AREA

M- 2

AERIAL PHOTOGRAPH OF
DISPUTED AREA

MAP SHOWING SITE OF PROPOSED TROPHA ESTATES WATER PUMP AT CHIKWAWA BRIDGE, RUNYINA RIVER.



Surveyed By: MS
Drawn By: Mawerera

M- 3

DRAWINGS OF PROPOSED WATER
PUMP AND ASSOCIATED WORKS

Pivot - Layout

C-1 East: 585742.49 South: 8781807.28
 C-2 East: 585734.82 South: 8781805.84
 C-3 East: 585736.98 South: 8781794.35
 C-4 East: 585744.65 South: 8781795.78

| Revision History | | | | |
|------------------|--------|--------------|------|-------|
| Rev | Layout | Description | Date | Appr. |
| 00 | - | CLIENT ISSUE | | |
| 01 | - | - | | |
| 02 | - | - | | |
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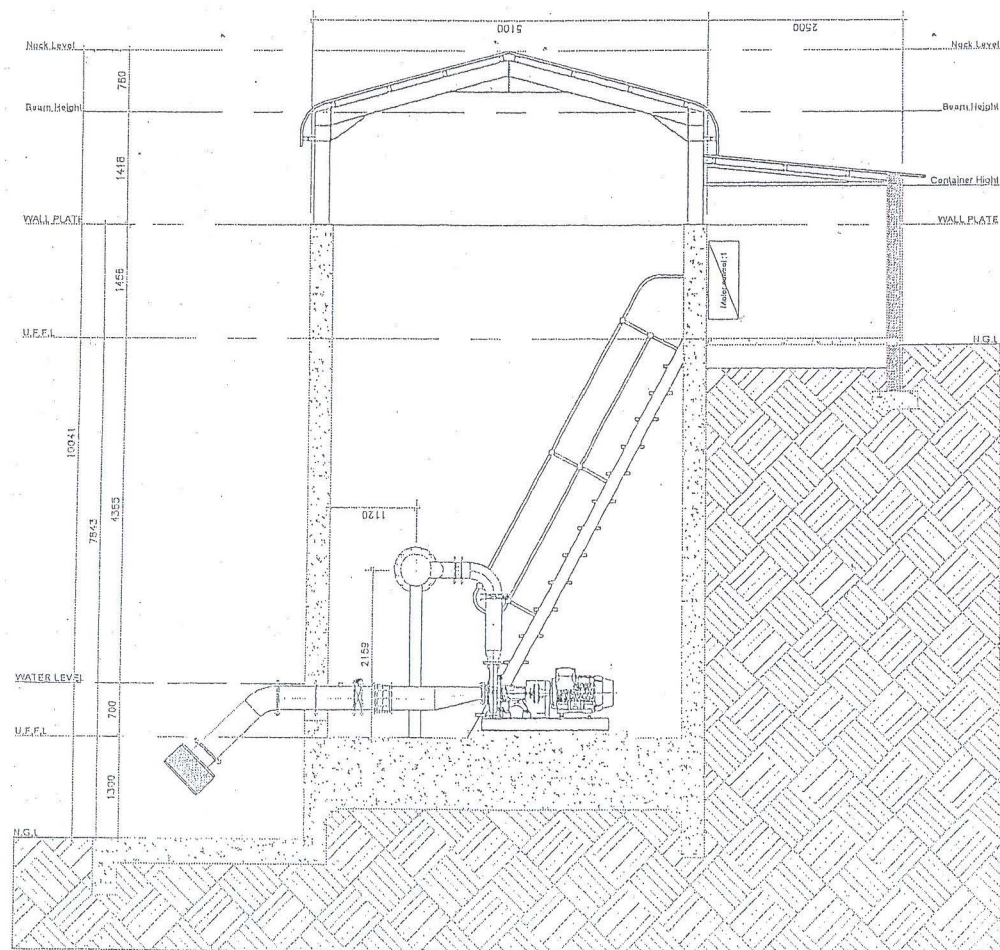
Details of Client:
 Client: TROPHA EST. - THULWE FARM
 Person in Charge: PROJECT MANAGER
 Project: PIVOT DEVELOPMENT
 Contract No.: 1715TH
Description of Drawing:
 Description: GENERAL LAYOUTS
 Design: J. BOSHOFF
 Drawn: D VAN DER MERWE
 Date: 7/04/2017
 Scale: NTS

| | | | |
|---------------|-------|------|-----------|
| Dwg no. | Disc. | Rev. | Layout |
| 1715TH-105-00 | | | GEN 9 (2) |



Inyoni Africa
Irrigation Specialists

| | | | |
|------------------------|-------|------|--------|
| Dwg no. | Disc. | Rev. | Layout |
| 1715TH -200-00 - GEN 7 | | | |



 River Pump Station SECTION A-A
Scale: Nts

| Revision History | | | | |
|------------------|--------|--------------|------|-------|
| Rev | Layout | Description | Date | Appr. |
| 00 | - | CLIENT ISSUE | | |
| 01 | - | | | |
| 02 | - | | | |
| 03 | - | | | |
| 04 | - | | | |
| 05 | - | | | |
| 06 | - | | | |
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| 08 | - | | | |
| 09 | - | | | |


Inyoni Africa
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|----------------|-------|------|--------|
| Dwg no. | Disc. | Rev. | Layout |
| 1715TH -200-00 | | | GEN 9 |