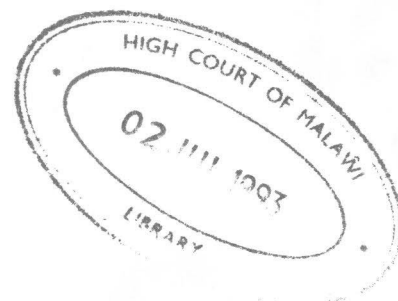


IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 230 OF 1987



BETWEEN:

T.J. MAWERE 1ST PLAINTIFF

and

A.J. MAWERE 2ND PLAINTIFF

and

DR. M.A.R. MUKADAM 1ST DEFENDANT

and

A.Q. MUKADAM 2ND DEFENDANT

Coram: Mbalame, J.

Nakanga, Counsel for the Plaintiffs
Nyirenda, Counsel for the Defendants
Manda, Court Reporter
Mkumbira, Official Interpreter

JUDGMENT

The plaintiffs' claim against the two defendants is for a sum of K35,000 being balance on the purchase price on plots BC. 155 and BC. 171 in the City of Blantyre. They also claim for damages for breach of contract, specific performance for the said contract and interest on the amount of such damages and costs of this action. It is the case for the plaintiffs that by a contract between the parties, the defendants agreed to purchase from the 1st plaintiff plot No. BC. 171 for a sum of K30,000 and from the 2nd plaintiff plot No. BC. 155 for an amount of K70,000. The sale was to be completed and the said purchase money to be fully paid to the plaintiffs on receiving Government consent. The plaintiffs contend that they have at all material times been and are now ready and willing to fulfil and perform their obligations under the said contract which obligations the defendants are failing to fulfil.

The defendants admit entering into a contract for the purchase of the two plots with one J.A. Mawere who represented to them and Messrs Savjani and Company that he was the owner of the two plots and that he was also known as T.J. Mawere and A.J. Mawere. It is their further contention that it was made known to the said J.A. Mawere at the time of the

agreement for the sale of the said plots that the said plots were required for development and that it was therefore agreed between the parties that J.A. Mawere would give vacant possession of the said plots after receipt of Government Consent which he has not done in respect of plot BC. 171.

It is in my judgment pertinent to examine the question of title at this stage as it may not be necessary to consider the rest of the points raised. Exhibit D5 is a conveyance in respect of plot No. BC. 155 and is dated 22nd August, 1977. It is an indenture between Osman Adam Limited and Acute Jephias Mawere. There is no evidence that the property was thereafter ever transferred to J.A. Mawere, the person who entered into agreement of sale of the same with the defendants. It is in evidence, and Mr. J.A. Mawere conceded that both Acute Jephias Mawere and Tapson Jephias Mawere are two different persons from him and that they are currently residing in the United Kingdom. It is further in evidence that Mr. J.A. Mawere has had no power of attorney to enter into an agreement for sale or sell the two properties on behalf of the two sons. In fact what J.A. Mawere did was to mislead the solicitors who were preparing the conveyances by making them believe that he was also A.J. Mawere and T.J. Mawere. In my judgment, I find as a fact that J.A. Mawere never had and still does not have title to either plot No. BC. 155 or plot No. BC. 171. I also find as a fact that he never had nor does he now have any power of attorney from any of his two sons, T.J. and A.J. Mawere to dispose of any of the properties. It follows therefore that he had and still has no title in the two properties to pass on to the defendants as the titles lie with the two sons. In my judgment the purported sale of both plot No. BC. 155 and plot No. BC. 171 can not stand as it was null and void ab initio for want of title. The claim against the defendants is therefore dismissed in its entirety with costs to the defendants.

PRONOUNCED in open Court this 13th day of October, 1988 at Blantyre.


Mbalame
JUDGE

