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IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO.610 OF 1989

BETWEEN:

C.A. NJOLOMA (FEMALE).....PLAINTIFF

: - and -

F. KALONDA (FEMALE).....DEFENDANT

Coram: Unyolo, J.

Maulidi, Counsel for the Plaintiff
Kaliwo, Counsel for the Defendant
Chigaru, Official Interpreter
Longwe, Court Reporter

J U D G M E N T

The plaintiff's claim in this action is for possession of land known as Plot No.1 Chinguluwe Estate, hereinafter referred to as the Estate, situate at Bvumbwe, on the outskirts of the City of Blantyre and for mesne profits. The defendant denies the claim in its entirety.

The background facts are these:

Some 21 years ago one Charles Alexander Gerald Kalonda, hereinafter referred to as Mr. Kalonda, bought the Estate from an expatriate couple for K600. He got it dirty-cheap. The Estate comprises 10 acres of freehold land quite close, as I have pointed out, to the City of Blantyre which is a beehive of industry and commerce. At that time Mr. Kalonda was a civil servant working in the Ministry of Agriculture in Zomba. He got the Estate in order to make it his home. So upon his retirement in 1971 he and his children, seven in number, moved to the Estate. He was single at that time, his marriage to the mother of the children having ended in a divorce several years previously and the woman had by then long gone back to her village in Mulanje. Perhaps I should mention that Mr. Kalonda subsequently married two other women but the marriages did not last. He has children from those two women as well. These live with their mothers. It appears that Mr. Kalonda abhorred single life. In 1984 he decided to remarry the Mulanje woman, the mother of the seven children and after complying with the relevant customary proce-
dures the two remarried. The lady then went to join him and the children on the Estate. Things did not however work out quite well. In 1986 Mr. Kalonda left the Estate and went to stay at Chigumula, some 2½ miles away, on another piece of land of his. Todate he has not gone back to live on the Estate. He still stays at Chigumula where he is being cared for by his relatives.

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This appears to be a convenient juncture to introduce the parties in this case. I will take the defendant first. She is Mr. Kalonda's daughter; being one of the seven children from his first marriage with the Mulanje lady. She is not the first born; it appears she is the 3rd or 4th born child. The plaintiff, on the other hand, is a businesswoman. She has a poultry farm at Bvumbwe in the neighbourhood of the Estate. There is unshaken evidence that sometime in 1988 Mr. Kalonda went to see her and told her he was selling the Estate and asked her if she would be interested to buy it. As she had not seen the Estate the plaintiff naturally asked that they visit the place. Indeed, seeing is believing, to borrow an age-old expression. So they went to the Estate. The plaintiff went round, inspected the land and there was also a house. She was quite happy and in the end she and Mr. Kalonda agreed on a purchase price of K30,000. Eventually, the parties went to see a lawyer, Mr. Nakanga, and instructed him to do the needful. Promptly Mr. Nakanga proceeded to process the transaction. He obtained Government consent required under the Land Act and having obtained this he drew up a conveyance, Exh.P4, which was executed by the parties on 14th June, 1989 and he got it registered by the appropriate authority as Deed No.61210. The plaintiff then paid K5,000 down as a deposit. Mr. Kalonda thereupon handed over to the plaintiff the keys of the house at the Estate signifying, I gather, that the deal was concluded and that she could therefore take possession of the Estate. The plaintiff said that she went to the Estate on the same day accompanied by Mr. Kalonda's nephew, PW4, to try the keys. She was able to open the house quite alright. Thereafter she locked it up and left. The plaintiff went on to say that she went to the Estate again on her own several days later. She said that when she tried to open the house she found to her surprise that the door was already opened. She told the Court that when she entered the house the defendant suddenly came in and attacked her saying she had no right to come to the Estate. The plaintiff said that she reported the matter to the Police and to Chief Bvumbwe. Finally she went to see her lawyer and instructed him to issue a notice to the defendant to quit the Estate as she had bought it. The lawyer issued the notice, Exh.P8, but the defendant refused to leave. Consequently the plaintiff brought up this action, as I have already indicated, for possession of the Estate and for mesne profits. Todate the defendant is still staying on the Estate.

There can be no doubt on the facts I have just recounted that the legal ownership of the Estate was at all material times vested in Mr. Kalonda. He bought the Estate with his own money and neither his wife nor his children contributed anything towards the purchase price. And the Estate was conveyed in his name. Exh.P7 refers.

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Several points have been raised by the defendant. First she contends that Mr. Kalonda expressly stated on a number of occasions that he had bought the Estate for himself, his wife and children. The defendant went on to say that to prove the point, all the children have indeed lived at the Estate with Mr. Kalonda since he bought it. She contends that on these facts Mr. Kalonda held the Estate upon trust for himself and members of the family including herself. The defendant contends that Mr. Kalonda could not sell the Estate without the knowledge and/or consent of the children and that he could not therefore pass a valid title to the plaintiff without such consent.

Mr. Kalonda conceded having made the statement that he had bought the Estate for himself and his children. But speaking for myself, I do not think that in making such a statement he consciously intended to create a trust. It must be appreciated that he is only a layman and I doubt very much he knows anything about trusts. It is to be noted however that in England especially in the context of parties' rights in a family home or of the rights of a licensee to occupy land, there has, in recent years, been much emphasis on finding a constructive trust where in justice and good conscience such a trust should exist; or to borrow the words of Lord Denning M.R. in Hussey v. Palmer (1972) 3 All E.R. 744, "Whenever it would be inequitable for the Estate owner to keep the property for himself alone". And it is immaterial that there was an intention to create a trust. See Hardwick v. Johnson (1978) 2 All E.R. 935.

No problem arises really in those cases where the party complaining has contributed financially to the purchase of the property or where the property was acquired by joint efforts for joint use. See Hazell v. Hazell (1972) 1 All E.R. 923 and Cooke v. Head (1972) 2 All E.R. 38. In these cases it was held inequitable for the legal owner to take the property for himself and exclude the other from it. So the court imposed a trust.

In Eves v. Eves (1975) 3 All E.R. 768 the party complaining did not make a financial contribution. The facts reproduced from the report are these -

> "The plaintiff, a married woman then aged 19, began to live with the defendant, a married man. The couple intended to marry when they were free to do so. At first they resided in a house belonging to the defendant in which the plaintiff had no beneficial intent. The following year a daughter was born to the couple. Then they began looking for another house. They found one and decided to buy it. At the time of the purchase the defendant told the plaintiff that the house was to be a home for themselves and their children. He explained to her that if she had been 21 years of age

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he would have put the house into their joint names, as it was to be their joint home, and that as she was under 21 it would have to be put into his name alone. She accepted his explanation and the house was conveyed into the sole name of the defendant. Later on he admitted that his explanation was simply an excuse to avoid putting the house into their joint names; all along it had been his intention that it should be put in his name alone. The purchase price of the house was £5600 and was provided entirely by the defendant from the proceeds of the former house and by a mortgage. The parties went into the house and made it their home. It was very dirty and dilapidated and the plaintiff did a great deal of work to it; for example, she stripped the wall paper in the hall; painted the woodwork in the lounge and kitchen and generally cleaned the whole house, painted the brickwork in the front of the house using a 14 lb sledgehammer. She did several other things as well and prepared the gardens and helped the defendant to demolish a shed there and put up a new one. A second child was born and the plaintiff looked after the defendant and cared for the children. Two years later the defendant left the house and went to marry another woman. The plaintiff sought a declaration that the defendant held the house on trust for himself and the plaintiff in shares according to their contributions to the house. The house was estimated at £13,000".

It was held that the law would impute a constructive trust because (per Lord Denning MR) having regard to the defendant's conduct at the time of the purchase in telling the plaintiff that the house was their joint home and that it would have been conveyed into their joint names but for her age, it would be inequitable to allow him to deny her a beneficial share in the house. (Per Brown LJ) that from the circumstances it could be inferred that there had been an arrangement between the parties whereby the plaintiff was to acquire a beneficial interest in the house in return for her labour in contributing to its repair and improvement and that the work done by the plaintiff had been in pursuance of that agreement. It was held that the house should be held by the defendant in trust as to ¾ for himself and as to ¼ for the plaintiff.

Another pertinent case is Gissing v. Gissing (1970) 2 All ER 780. The parties there were married in 1935. In 1951 the matrimonial home was purchased for £2695 and conveyed into the sole name of the appellant. The purchase price was raised by the husband under a mortgage through a loan and partly by his own money. The wife made no direct contribution to the purchase price of the house. She only provided furniture and equipment for the house and for improving the lawn. In all she spent £220

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on this. She also paid for her and her son's clothes and some extras. It was not suggested that either her efforts or earnings made it possible for the husband to raise the loan or mortgage. Nor was it suggested that the purchase of the wife's clothes or her son's was undertaken to assist the husband in meeting the repayment of the loan or the payment of the mortgage instalments. In 1961 the marriage broke down. On the question whether the wife had any beneficial interest in the matrimonial home it was held **per curiam** that there was no distinction to be drawn in law between the position where a contributing spouse making direct contributions towards the purchase of the matrimonial home and where the contributing spouse makes indirect contributions, although in the latter instance the relevant share in the beneficial interest is likely to be less easy to evaluate.

On the question of trust Lord Diplock at p.790 observed -

> "A resulting, implied or constructive trust - and it is unnecessary for the present purposes to distinguish between these three classes of trust - is created by a transaction between the trustee and the **cestui que trust** in connection with the acquisition by the trustee of a legal estate in land, whenever the trustee has so conducted himself that it would be inequitable to allow him to deny to the **cestui que trust** a beneficial interest in the land acquired. And he will have conducted himself if by his words or conduct he has induced the **cestui que trust** to act to his own detriment in the reasonable belief that by so acting he was acquiring a beneficial interest in the land".

At the end of the day the House of Lords held **inter alia** that the wife had not made, either directly or indirectly, any substantial contribution to the purchase of the house, and therefore there was no resulting trust in her favour.

In the Cooke v. Head case Lord Denning MR ventured to say at page 520 that these three classes of trust, i.e. resulting, implied and constructive trusts apply to husband and wife, to engaged couples, to man and mistress and may be to other relationships too. Following this view I suppose that such trusts apply to parents and children situations as well.

Referring to the present case I have already pointed out that the defendant did not make any financial contribution to the acquisition of the Estate by Mr. Kalonda, nor did any of the other children or their mother. This case can therefore be distinguished on facts from the Hazell case where a wife contributed financially towards the purchase price of a matrinial home. The present case can also be distinguished from the Cooke case where property was acquired by joint efforts and for joint use. As I have already shown, Mr. Kalonda acquired the

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Estate single-handedly, so to say. The present case again can be distinguished from the Eves case. As I have pointed out the parties in that case went about together looking for a house, they found one and the defendant expressly said he was buying the house as their joint home. Indeed he went on to say (which however was a lie) that he had wanted to put the house in their joint names but for the age of the plaintiff. She was 21 years old at the time. I have deliberately recounted the facts in the Eves case in extenso to show the tremendous work the lady did to repair and improve the property. It is clear there that she contributed substantially in terms of labour in repairing and renovating the house, changing what had been a dilapidated structure beyond recognition. She also looked after the defendant and cared for the children born during the time the two stayed together as man and wife or man and mistress, if you will. In contrast, there is no evidence in the present case showing that the defendant or any of the other children did anything to improve the Estate. The Court visited the Estate in the course of the trial. The place was overgrown with bush. There were spiders and cobwebs about the house and I could hardly believe the defendant and her mother were staying. The place was simply not cared for. The defendant told the Court that while Mr. Kalonda lived on the Estate she looked after him and cared for him as a guardian. Mr. Kalonda disputed this. According to him the defendant used to beat him for no apparent reason and he said that this was why he decamped and went to live with his relations in Chigumula. Be that as it may, it is to be observed that the defendant must have been quite young when she came to the Estate. She said that she went to school up to Form IV. This means that she spent a number of years at school, away from home. And then she worked for a number of years. It is to be observed further as I have already pointed out that Mr. Kalonda did marry two other wives before remarrying the defendant's mother. On these facts, I would doubt very much what she did for him, in terms of care, was substantial.

The defendant complained that she has built a house on the Estate. I saw the house, a small, semi permanent building, and significantly, it was not suggested that Mr. Kalonda induced her to build it. Rather she just decided for her own convenience to have that house; otherwise the main house built by Mr. Kalonda has several rooms. All in all, I am unable to impute or impose a trust in favour of the defendant and/or the other members of her family.

In my research I came across the case of Inwards & Others v. Baker (1965) 2 QB 29. I feel disposed to refer to it although it does not touch on the question of trust. The facts of the case were that a son wanted to acquire a piece of land on which to build a bungalow as his home. He saw the owner of the land but the price was beyond his means. His father who had some 6 acres of land in the district said to him: "Why don't you build the bungalow on my land and make it bigger." Having been so

encouraged the son gave up his plan to buy the other land and built the bungalow on his father's land. Then he went into occupation and lived in the bungalow continuously thereafter in the belief that he would be allowed to remain there for as long as he wished. The father visited him from time to time. He died some 20 years later without ever having made any binding contractual arrangement as to the son's occupation or its duration. Under the father's will, made several years before the son built the bungalow, the land rested in trustees for the benefit of persons other than the son. The trustees brought an action for possession of the bungalow. The County Court made an order for permission. On appeal it was held that where a person expended money on the land of another in the expectation, induced or encouraged by the owner of the land, that he would be allowed to remain in occupation, an equity was created such that the court would protect his occupation of the land. It was found that such equity was created in that case entitling the son to remain in occupation of the bungalow for as long as he desired. Per Lord Denning: the son had a licence coupled with an equity such that any purchaser who took the land from the owner with notice of the son's interest would also be bound by the equity. In my view this case was decided correctly, on the facts obtaining there. However, the facts of the present case are materially difficult, considering in particular the substantial expenses the son incurred in building the bungalow and the fact that he was actually induced to come on the land. With respect I am unable to find such equity in the present case.

Next the defendant contended that she acquired a valid title to the Estate, as against the plaintiff, since she was in occupation of the land for over 12 years. Initially I was under the impression that what the defendant had in mind was the Statute of Limitations and/or the doctrine of prescription. This was not so. The first point taken was that if the Court should find that the defendant was not a **cestui que trust** then it should find that she was a tenant. Learned Counsel recounted, in support of his contention on this aspect, the facts relating to how the defendant came to the Estate and to the long period she stayed there.

In Buck v. Howarth (1947) 1 All E.R. 342 the respondent and his wife occupied a freehold dwelling house, the property of the wife. By her will the wife demised the house to her son, who told the respondent that he could live in the house until he died. The respondent paid no rent to the son, and the son paid the rates. By a deed of gift the son later gave the house to the appellant who similarly received no rent from the respondent and also paid the rates. In proceedings for possession it was held that the respondent was given an uncertain interest in the premises and the law would presume a tenancy at will and therefore proceedings for possession could be taken. In other words, the law propounded in the case, and indeed there is a line of other cases to the same effect, may be stated that where a person, for no consideration, gave another permission to stay on his

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premises until he died such an arrangement does not create a lease but a tenancy at will. According to Lord Denning M.R. this kind of arrangement would today be considered a bare licence with no contractual right to stay there at all. See Binions & Another v. Evans (1972) 2 All ER 70. With respect, I think that this is correct. Therefore the tenancy the defendant could claim in the present case is a tenancy at will; determinable at any time by Mr. Kalonda, the owner of the Estate.

Next it was contended that the defendant was entitled to possession by the mere fact of her being in occupation of the Estate and that she had a superior right to possess it having been on the Estate earlier in time than the plaintiff. In support of the contention learned Counsel cited the case of Perry v. Chissord & Others (1907) AC 73. The facts were these:

> "The plaintiff had entered land whose rightful owner was unknown. He took possesion thereof as vacant land, enclosed it by fencing and held exclusive possesion for 10 years without notice of any adverse claim; he received rents and paid taxes and rates in respect of the land. Then the Government appropriated the land for public purposes. The plaintiff contended it was his land and claimed compensation. It was held that he was not a trespasser but had possessory title against everyone but the rightful owner; therefore he was entitled to compensation. Lord Macnaghten at p.79 observed -
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> > 'It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by process of law within the period prescribed by the provisions of the Statute of Limitation applicable to the case, his right is forever extinguished and the possessory owner acquires an absolute title.'"

With due deference the present case is different in several respects from the Perry case. In the present case the owner of the Estate is known. Further, it cannot be said, as I have shown that the defendant was in exclusive possession of the Estate nor was there any suggestion that she received any rents or paid any taxes or rates in respect thereof. In my view the case is of no assistance to the defendant in the present case. I am unable to find any basis for conferring upon the defendant a title to the Estate merely on her occupation of the same. I therefore reject her contention on this aspect.

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Finally the defendant contended that the contract of sale in this matter was null and void **ab initio** for lack of capacity on the part of Mr. Kalonda as he was allegedly insane at the material time. The law on this subject is correctly stated in The Imperial Loan Co. Ltd v. Stone (1822) 1 Q.B. 599. Where a defendant in an action of contract sets up the defence that he was insane when the contract was made he must, in order to succeed in this defence, show that at the time of the contract his insanity was known to the plaintiff. Lord Esher put it thus at p.601:

> "I shall not try to go through the case bearing on the subject; but what I am about to state apears to me to be the result of all the cases. When a person confers into a contract and afterwards alleges that he was so insane at the time that he did not know what he was doing, and proves the allegation, the contract is as binding on him in every respect, whether it is executory or executed, as if he had been sane when he made it, unless he can prove further that the person with whom he contracted knew him to be so insane as not to be capable of understanding what he was about."

Lopes L.J. stated, at p.603:

> "A defendant who seeks to avoid a contract on the ground of his insanity, must plead and prove, not merely his incapacity, but also the plaintiff's knowledge of that fact, and unless he proves these two things he cannot succeed."

Reverting to the present case the defendant told the Court that Mr. Kalonda was quite well until sometime in 1983 when he started behaving strangely. He was forgetful; would even forget that he had had lunch. She said that his condition worsened in 1984 when he showed signs of actual insanity. He at times went out naked and slept in the bush. The defendant called several witnesses to confirm her story. These included her mother, the postmaster at Bvumbwe Post Office and Mr. Chizumila, a lawyer. The postmaster told the Court that he knew Mr. Kalonda because he used to come to the Post Office monthly to receive his pension money. The witness said that it was in May 1989 when he suspected that something was amiss with Mr. Kalonda. On the material day Mr. Kalonda had gone to the Post Office for his pension money for the month of April. Strangely Mr. Kalonda alleged that he had also not received the money for the month of February. This was however not true; he had received the money and there was ample proof for that. Mr. Kalonda however insisted he hadn't received the money and made so much fuss about this. The witness said that there was another incident subsequently when Mr. Kalonda chased after him on account of the same allegation. Finally the witness stated that prior to May Mr. Kalonda behaved normally.

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Mr. Chizumila, the lawyer, told the Court that Mr. Kalonda saw him in his office and gave him instructions relating to some 2 acres of the Estate which Mr. Kalonda wanted to sell to one A.A. Upindi. The witness said that he started processing the matter when Mr. Kalonda came again and denied having ever given him any such instructions. He said that he tried to remind Mr. Kalonda but without avail. Observably Mr. Chizumila was not able to remember the dates. Anyway, it was his evidence that he opined it was dangerous in these circumstances to proceed with the transaction. Finally Mr. Chizumila said that he thinks Mr. Kalonda is mentally abnormal.

The plaintiff narrated the whole story relating to how Mr. Kalonda and his nephew approached her and offered to sell the Estate to her; how the three went to see Mr. Nakanga, the lawyer, and gave him instructions to process the transaction; and as to how subsequently they were called by Mr. Nakanga to sign the conveyance. It was the plaintiff's evidence that throughout Mr. Kalonda did not appear to her to be a mentally deranged person. She said that to her knowledge Mr. Kalonda understood what was happening and why he was signing the conveyance.

Mr. Kalonda's nephew was called as a witness. He testified he was present when Mr. Kalonda offered the Estate to the plaintiff and when the parties went to see Mr. Nakanga. He said he was also present at the time the conveyance was executed by the parties. The witness denied Mr. Kalonda was mentally abnormal then or at any other time. One other relation, a grand niece of Mr. Kalonda, also testified. She lives at Chigumula with him. She denied Mr. Kalonda is insane. Chief Bvumbwe who is the traditional authority in the area where the Estate is also gave evidence. He said that he has known Mr. Kalonda for a long time and had no reason to doubt his sanity. Mr. Nakanga also testified. He said that he saw Mr. Kalonda on several occasions and that he looked normal in every respect. He said he was able to communicate with him without any difficulty. Mr. Kalonda was sent to the Mental Hospital to be examined by the psychiatrist. He was there observed for 5 days. In her Report, Exh.P2, the psychiatrist gives her findings as follows:

1) Mr. Kalonda is not insane; there are no signs suggestive of mental illness.

2) Although there is some impairment of recent memory this is consistent with his age, does not indicate mental illness, and does not hinder his mental capacity to deal with his business affairs.

3) he is mentally competent to make decisions concerning his property and implement them in a rational manner. He is also competent to instruct his solicitors in the issue of the land and any subsequent lawsuit."

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It is clear from the foregoing that there is a conflict of evidence as to Mr. Kalonda's sanity or otherwise. Perhaps I should mention that Mr. Kalonda gave evidence in this case. He was in the box for two days. While he forgot some of the facts he was nevertheless able to tell when he acquired the Estate and and how he sold it. I watched him intently as he testified during those 2 days, and I can say I didn't think he was insane. Indeed I would not have allowed him to testify or continue to testify if I had that impression. And if I got Mr. Chizumila right, it was only when Mr. Kalonda came to see him the second time that he became apprehensive of his behaviour; otherwise it appears he behaved as a mentally normal person on the first occasion he came to give instructions. And as I have also pointed out that it was the evidence of the postmaster, Bvumbwe, that it was only from May 1989 that Mr. Kalonda made him apprehensive - there was something wrong about his mental condition; otherwise prior to that he had no reason to think he was insane or mentally ill. If I accept that Mr. Kalonda was insane at all then what it means is that he was insane off and on with lucid moments in between. I would believe Mr. Nakanga who was supported by PW4 that Mr. Kalonda was mentally well and balanced the time Mr. Kalonda gave him the instructions to process the sale of the Estate as well as the time the conveyance was executed. I doubt very much Mr. Nakanga would have gone ahead to process the transaction had Mr. Kalonda shown signs of mental derangement. I have already pointed out that the burden lay on the defendant to prove that the plaintiff knew at all material times that Mr. Kalonda was insane. With respect the defendant has not succeeded in doing so in this case upon the proferred evidence. In short the defence of insanity must fail.

It is also to be observed in passing that it was not something out of the blue when in 1988 Mr. Kalonda said he wanted to sell the Estate. According to Mr. Kalonda's wife, DW4, he also wanted to sell the Estate in 1984, a couple of years or so before he left for Chigumula. There was also evidence that at one time he actually brought an action in Thyolo Magistrate's Court to evict the wife and the children from the Estate. In other words it had been on Mr. Kalonda's mind for sometime that he should sell the Estate.

I can on the other hand understand why the defendant would like to continue living on the Estate. She has been there for a long time and she is used to the place. But for the reasons I have given above Mr. Kalonda had unfettered right to dispose of the Estate if and when he wanted to do so. He exercised that right when he sold the Estate to the plaintiff thereby conveying a good and valid title to her. Perhaps the defendant, her mother and the other children would do well to follow Mr. Kalonda and join him at Chigumula which, as I have already pointed out, is another piece of land of his or they might wish to take some other appropriate legal action against him.

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All in all I am satisfied that there was a proper sale of the Estate and that a valid title passed to the plaintiff. In my view she is entitled to possession thereof. I find that she has proved her case on this aspect and enter judgment for her accordingly.

I now turn to the claim for mesne profits. I have pointed out in this context that the plaintiff made only one payment in the sum of K5,000 leaving a balance of K25,000. I appreciate that she was ready and willing to pay the balance but for the defendant's conduct in resisting to quit the Estate. All the same the plaintiff had had the K25,000 available to her for investment or other profitable use. On these facts I take the view that the claim for mesne profits is untenable. Indeed it would mean the plaintiff would get a double benefit, getting the best from both worlds, as it were. I dismiss the claim herein.

Reverting to the issue of possession, I have borne in mind that the defendant has grown crops on the Estate. It is only fair in my view that she be given time to harvest the same. A period of 3 months appears to me reasonable. Accordingly I give the defendant up to 1st June, 1992 to give up possession of the Estate. I leave it to the plaintiff and Mr. Kalonda to agree the date on which the balance outstanding is to be paid.

Finally, on the question of costs it is to be noted that the plaintiff has succeeded only on one head of claim and failed on the other. My order in the circumstances is that each party pay its own costs.

Pronounced in open Court this 14th day of February, 1990 at Blantyre.

L.E. Unyolo
JUDGE