

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 1573 OF 2002**

BETWEEN:

ADDELLADE WALIYA AND OTHERS.....PLAINTIFFS

- and -

**ERIC ERNEST CHISUSE as.....DEFENDANT
Administrator of the Estate of Ernest Justin Chisuse**

CORAM: TWEA, J

Masiku, of Counsel for the Plaintiffs

Absent, of Counsel for Defendant

J. Ngwale, Recording Officer

RULING

By originating summons filed on 17th July, 2002, the applicants sought the following declaratory orders.

1. ".....that the defendant as an administrator of the estate of Ernest Justin Chisuse is holding titles numbers Nyambandwe 40,41,42,45 and 47 as trustee for the beneficiaries of the estate, namely the plaintiffs.
2. "..... Compelling the defendant to execute documents for transfer of title to the plaintiffs within 14 days from the date of the order of the court and that in the event of his failure to comply the Registrar of the High Court be empowered to execute the said documents on behalf of the personal representative.
3. ".....that the defendant pays cost for this application.

4. “.....Any further relief that the courts may deem necessary to grant in the circumstances”.

The defendant was served by post and also in person but did not cause any appearance.

It is deponed that the plaintiffs are daughters and grandson of one Ernest Justice Chisuse now deceased. The defendant is the son of the said Ernest Justice Chisuse, hereinafter called the deceased.

On 20th November, 1947 the deceased acquired a piece of land by way of purchase from the then British Central Africa Company of London. The said company was seized of this parcel of land in fee simple. The deceased held this land until his demise on 1st June, 1978. He died intestate. It is not clear how many children survived him. It is deponed however, that the defendant being the only living son, the surviving children of the deceased agreed that he should be administrator of the deceased estate. He was granted Letters of Administration by the High Court on 21st February, 1981; Exhibit JT2.

It is on record that in or about 1990 the said parcel of land was subdivided and each of plaintiffs, among others, got a piece of land. The Blantyre City Council was duly advised and requested to charge city rates to each allocatee individually - this is evidenced by Exhibit JT3. It is not clear whether any of the plaintiffs did pay the city rates individually. It is however, on records; Exhibit JT3, that some lots were paid for and others were not. So far so good.

The conflict arose in or about 1992. It is deponed that during the adjudication of title exercise the defendant registered all pieces of land under his own name, without informing or the authority of the plaintiffs. Then from 2001 to 2002 he purported to exclude and disposes the plaintiffs of the land: Exhibit JT4, JT5 and JT6. Consequently the plaintiffs got an inhibition order inhibiting any dealing with the said pieces of land at the Lands Registry. Be this as it may be defendant has not transferred title to the plaintiffs and from the exhibits he is not intending to do so.

As I said earlier, the defendant did not cause an appearance.

It is clear from the affidavits however that the deceased was domiciled in Malawi at the date of his death; and that he died after the Wills and Inheritance Act, 1967 came into operation. It is also clear that the land in issue is not customary land and therefore, the Act applies to it, It is also obvious that the deceased died intestate and therefore the Act applies to him.

I am aware that the affidavits brought before this court pertain to this parcel of land only. I am a bit constrained in that the affidavits do not make any disclosure about issues of marriage of the deceased and so on, which would have been useful in deciding how the estate should have been disposed off.

Be this as it may, I will take refuge in the fact that the land in issue was fee simple from the seller to the purchaser, the deceased. The deceased having taken the estate in the land by way of purchase, the estate, which is fee simple will, pass on to his heirs at the time of his death. According to the law, an heir is someone living at the time of the deceased death. Therefore, as long as a man is living, he has no heirs. A man has one heir only, even when there may be several persons living at the time of his death, they will all compose an heir for purposes of fee simple which is designed to keep land ownership

within the family. It is essential to remember, that “heirs” will comprise more than one generation and so create fee simple even if the intestate dies.

In the present case, the deceased having died, the defendant was nominated and appointed to administer the deceased estate according to the law. He does not have any right to the estate as an individual except that which would pass to him according to the rules of inheritance on intestacy and nothing more. As an Administrator he holds the estate in trust for all the other heirs. He cannot discriminate them on the basis of sex-they are all children of the deceased and have equal right to what their father left undivided.

Let me further refer to the fact that this land was subdivided, apparently, it would appear that this was done with the consent of the others. Be this as it may those pieces of land that were not allocated to the other heirs are not for the defendant individually, he also holds them on trust for the rest of his siblings. If they agree to dispose of them, the proceeds thereof will be shared among them according to the rules of Inheritance. The defendant does not own them absolutely.

Having looked at the case, I grant the declaratory orders as prayed by the plaintiffs. I should mention, however, that the fifth plaintiff Duncan Msonthi being the issue of the deceased through his daughter late Maud Msonthi (late, nee Chisuse) will hold the subdivided piece in trust as for the other issue of late Maud Msonthi (nee Chisuse) now deceased.

The defendant is to pay costs for this summons.

Pronounced in Chambers this 1st day of October, 2002 in Blantyre.

E. B. Twea
JUDGE