

**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL CASE 815 OF 2005**

**BETWEEN**

**PUSHPA PARMER .....PLAINTIFF**

**- VS -**

**JOYCE PARMER AND 4 OTHERS ..... DEFENDANTS**

**CORAM : HON. JUSTICE NYIRENDA**

: Mr. Kumange Counsel for the Plaintiff  
Mr. Chinoko Counsel for the Defendants  
S. Baziliyo Court Interpreter  
Mrs. Kabaghe Court Reporter

**JUDGMENT**

This matter was begun by originating summons by which the plaintiff sought possession of a parcel of land with a house on it Title No. 47/808. The summons were under Order 113 of the Rules of the Supreme Court. It became apparent to the Court right at the beginning of the proceedings that the matter would raise a lot of contentious issues for determination. For that reason the court made an order that the matter was to proceed in open court as if begun by writ.

It was necessary to order that the matter proceeds as if begun by writ because Order 113 application is narrowly confined to claims for possession of land which is occupied solely by a person or persons who enter into or

remain in occupation without the licence or consent of the person in possession. Where the existence of a serious dispute is apparent to the plaintiff we should not use this procedure.

Order 113/8/14 provides that:

***“If a Court should hold that there is some issue or question that requires to be tried, or that for some other reason there ought to be a trial it may give directions as to the further conduct of the proceedings under Order 28r4 or may order the proceedings to continue as if begun by writ under Order 28r8”.***

See also the case of *Eyles v Wells* [1991] CA 376.

In Court the plaintiff herself testified. Her testimony is that she applied for the plot in question in 1995 then she was known as Mrs. Lee. Her husband has since died and she has gone back to her maiden name as Pushpa Parmer. The plot was offered to her by letter of 7<sup>th</sup> February 1995 tendered as Exhibit P1

In September 1995 the plaintiff submitted plans and sought approval to develop from City of Lilongwe Planning Offices. Her application was approved by letter dated 12<sup>th</sup> September 1995 Exhibit P3. She was also required to pay development charges by the Lands Department which she commenced to pay in 1998 as evidenced by Exhibit P2.

As time went by the plaintiff decided to build a house on the plot. In her evidence she consulted her brother late Kumar Parmer who was himself in construction business. Her brother was ready and willing to assist as would be expected. For that purpose it was agreed that the plaintiff moves from Chilinde Location where she was staying and come to stay with her brother in Area 47 near the plot in order to easily supervise the construction of the house on the plot which is also in Area 47. The plaintiff indeed moved to Area 47 and soon the construction of the house started. She put in what she could and with the assistance of her brother the small house was soon completed which she occupied in the year 2000.

During that time the plaintiff used to spend most of her time in Kasungu where she was farming. It was agreed with the late brother that since she was mostly in Kasungu it was advisable to rent the house out. The house was rented out. Again it was her late brother who was helping with attending to the tenants. The plaintiff's brother died in January 2003 after a long illness.

In further testimony the plaintiff said after the death of his brother his widow, Joyce Parmer the first defendant started having financial problems. It was then agreed that she should shift from her house which was a big house to the plaintiff's house in order to rent out her house. That indeed happened and Joyce Parmer moved to the plaintiff's house with her children. Initially she was meant to pay rent but later the plaintiff decided she was not going to ask for rent because she was aware of the problems her sister in law was going through and also recalling the help and support she received from her late brother.

While staying in the house the plaintiff's sister in law started having problems with her children. She left the house and left some of the children in the house. Ramesh Parmer the second defendant in particular was in the house until June 2005. All this time the plaintiff was in Kasungu. While there she learnt that her house had been sold by Ramesh. Indeed when she came to Lilongwe to her astonishment she found someone undertaking renovations to the house.

The plaintiff went to the Lands Department to try and establish what had happened. To her further shock she found that the lease of the premises had been collected by Ramesh Parmer. Despite meeting several officers at the Lands Department she was not able to get any explanation how it was possible for the second defendant to collect the lease when she had not been able to collect the papers herself over the years because she was constantly being told the papers were not ready.

But someone at the Lands Department was kind to her and made her a copy of the lease where she discovered that Ramesh had signed against her name. The copy she obtained has been exhibited as Exhibit P7.

The documents clearly show Ramesh Parmer signing against the plaintiff's name. The document is witnessed by D. Mperiwa, a Civil Servant and Marshall Chilenga a Legal Practitioner. There is no date against any of the signatures. The Certificate As To Verification of Instruments is signed by Mike Chinoko also a Legal Practitioner. This was on the 29<sup>th</sup> June 2005.

Upon further inquiry, the plaintiff established that Ramesh Parmer had sold the house to a Mr. Benot Ngabonziza. She managed to get a copy of the sale agreement which she tendered as Exhibit P10. The agreement is indeed between Ramesh Parmer and Benot Ngabonziza and is dated 24<sup>th</sup> June 2005. What this obviously means is that Ramesh entered into the sale agreement undertaking to subsequently obtain and deliver the lease of the property which he did.

Upon establishing these facts the plaintiff took out a caution which she only managed to register on 27<sup>th</sup> July 2005 obviously after the sale agreement and after Ramesh had collected the lease of the property.

What is striking about the whole matter is that on the 25<sup>th</sup> July 2005 the Regional Commissioner for Lands wrote the plaintiff by Exhibit P9 inviting her to collect the lease of the plot. The intrigue is how Ramesh was able to collect the lease earlier than this official notification. He must obviously have used unofficial and fraudulent means.

The plaintiff wants her property back. She told the court that Mr. Ngabonziza by himself or his agents attempted to talk her into accepting the sale. She refused and has remained unmoved.

The case for the defendants is very narrow on facts which came from the first defendant and the third defendant. The first defendant admits that she was aware that her late husband was building a house for her sister which is the house in question. Her only argument is that the house was fully financed by her late husband and even after the house was completed it

was under his control. She admits the plot belonged to her sister in law but that the house was personally developed by her husband and therefore belonged to him. The first defendant is on record saying she is the one who gave authority to Ramesh to sell the house because it was his father's house.

The third defendant's testimony followed the path of the first defendant. He too agreed that the plot in question belongs to the plaintiff but that the house was built by his father. He confirms that his brother Ramesh Parmer signed the lease document in place of the plaintiff. He saw nothing wrong in Ramesh selling the house because it belonged to their father. He said he is one of the administrators of his late father's estate according to the Letters of Administration Exhibit D1. As administrator he allowed the house in question to be disposed off by sale which has been done.

The issues in this matter are not too many and a lot of the facts need not be disputed. It is not in dispute that the plaintiff applied for and was allocated the parcel of land Title No. Bwaila 47/808. The plaintiff went further and obtained development approval and also applied for lease of the plot. She did not get the lease because it was intercepted and fraudulently collected by the second defendant Ramesh Parmer. Ramesh Parmer has not come to court to explain his action. I have no doubt in my mind that he was aware of these proceedings just as the rest of his brothers were. This observation is *per incurium*. What is a fact though is that the first four defendants agreed and were determined to take the property Bwaila No. 47/808 from the plaintiff and dispose of it. The reason was simply that for the first defendant her husband invested in the property and for the second,

third and fourth defendants, their father invested in the property. There is nothing else they are able to say because all the documents for the property speak for the plaintiff as the owner. What the defendants are prepared to ignore is that just as their late husband and father was assisting them, he would equally have an affection to assist his sister, the plaintiff. Meanwhile it is in evidence from the first defendant that at the time of death her husband left her with a house in Area 47 and possibly another one in Chilinde Township and others that have since been sold. Late Parmer also left vehicles behind. The clear picture I have about late Parmer is that he was an industrious person who provided for his family.

There is nothing before me to suggest that the commitment which late Parmer had towards the welfare of his family could not be extended to his siblings and that the assistance he rendered to his sister was in that same spirit. These observations are to challenge the only thing that the defendants have to say to this court in this matter; that the house on Bwaila No. 47/808 was built with their husband's or father's money.

The real determination of this matter is in what is before court as evidence of title to the property in question. All the documents speak for one story which is that the property is that of the plaintiff.

What has exercised my mind is whether for a moment it could be considered that the 5<sup>th</sup> defendant was a bona fide purchaser for value without notice of the plaintiff's title. Two things could have happened. As I observe earlier what might have happened is that the sale agreement might have been concluded before the fifth defendant had sight of the lease and trusted

Ramesh on his words. If that is what happened then the 5<sup>th</sup> defendant has himself to blame for being so careless about such a serious and important transaction. A purchaser who is oblivious about title documents to a land transaction could never be a bona fide purchaser. Such a purchaser is like a person who chooses to avoid doing that which is necessary for fear of discovering the truth. Surely such a person cannot be a bona fide purchaser.

The other possibility is that the fifth defendant actually saw the lease document before finalizing the transaction. If he did then surely he should have noticed that the person he was dealing with was not the owner of the property in question. The lease should have brought to his attention that the owner of the property was Pushpa Parmer and not Ramesh Parmer, Kilt Parmer, Arthur Parmer, Joyce Parmer or indeed any other Parmer. The fifth defendant was therefore not a bona fide purchaser for value without notice. Perhaps it is for this reason and accepting that not all was well with the transaction that the fifth defendant, by himself or his agents, tried to engage the plaintiff.

Finally, it is about any extensions or renovations that might have been done to the house. This is where the situation becomes even more difficult for the defendants. *Megarry and Wade* in “*Law of Real Property*” *Second Edition* at 688 has defined “land” as follows:

***..... If a building is erected on land and objects are permanently attached to the land, then the soil, the building and the objects affixed to it are all in law “land”. They are real property, not chattels. The word “fixture” means***



***anything which has become so attached to land as to form in law part of the land.***

David J. Hayton in 'Megarry's Manual of the Law of Real Property', Sixth Edition in virtually the same terms says:

***In law, the word "land" extends to a great deal more than "land" in everyday speech. The general rule is "quicquid plantatur solo, solo cedit" (whatever is attached to the soil becomes part of it). Thus if a building is erected on land and objects are attached to the building, the word "land" prima facie includes the soil, the building and the objects affixed to it; and the owner of the land becomes owner of the building, even if it is built with bricks stolen by the builder.***

Later on at page 21 the Learned author says:

***Prima facie, all fixtures attached by the tenant are "landlord's fixtures," ie must be left for the landlord***

Whatever therefore the defendants might have done on the land goes with the land. So I determine.

I should make one critical observation. What Ramesh Parmer, the second defendant, did by signing the lease and eventually sequestrating it from the Department of Lands was clearly commition of a series of serious fraudulent criminal acts. He must count himself lucky that no one, either on

part of the plaintiff or the Department of Lands has taken up the matter in that context.

My final judgment is that plot Title No. Bwaila 47/808 is the property of the plaintiff. It is accordingly ordered that all the defendants and the fifth defendant in particular shall from the date of this judgment vacate the said premises. It is further ordered that the plaintiff shall take possession of the property comprising of the land which includes all the developments and other fixtures that are presently on it.

Costs must follow the event in this case. I make an order for costs against the defendants.

PRONOUNCED in Open Court at Lilongwe this ..... Day of August 2007.

A.K.C. Nyirenda  
**J U D G E**