



JUDICIARY

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 1210 OF 2008**

BETWEEN:

**THE REGISTERED TRUSTEES OF THE
CHURCH OF GOD OF PROPHECY.....PLAINTIFF**

-AND –

KONDWANI MKISI.....DEFENDANT

CORAM: THE HONOURABLE JUSTICE E. B. TWEA

Mr Tembo, of Counsel for the plaintiff

Absent, of Counsel for the defendant

M. Manda – Official Interpreter

J U D G M E N T

Twea, J

This is an interparte application for an injunction.

The plaintiffs, the registered trustees of the Church of God of Prophecy claim that the defendant, Mr Kondwani Mkisi, is trespassing on their land.

The facts of the case are that the plaintiffs claim that they bought the land in issue from one Mr Duncan Theu. This land is adjudicated and is within the boundaries of Blantyre City Assembly.

On the other hand the defendant claims that he bought the land from Dr Jana. Dr Jana's averred in his affidavit that he bought the land from one Thom Dumba, now deceased, and that the land was customary land.

The defendant called into question whether or not the parties were referring to one and the same piece of land because the particulars are different. One thing is clear though, the land which the plaintiff is claiming is adjudicated while as the land the defendant is claiming is not. Further, that the land the defendant is claiming is customary land. Such land is subject to Sections 25 of the Land Act. It belongs to the people of Malawi and is vested in perpetuity in the President. No single individual has title to it and hence it cannot be alienated by sale. For this reason, one cannot acquire title to customary land. One can only acquire the right to use the land: ***Hon David Faiti Vs Kandiado Civil Cause 1412 of 2005*** (unreported). See also ***Mkoka Vs Banda and Another [1992] 15 MLR 278*** and ***J. Namalamba Vs. Village Headman Mwalabu Civil Cause No. 11 of 2007***

From the facts before me, I find that if the land is adjudicated and within the boundaries of the Blantyre City Assembly, the individuals who purported to pass title to Dr Jana would have done so illegally. I therefore find that there is an arguable case for the plaintiff and I grant the interlocutory injunction on the condition that he makes and undertaking to pay damages.

Pronounced in Chambers this 11th day of July 2008 at Blantyre.

E. B. Twea
JUDGE