



JUDICIARY

**IN THE HIGH COURT OF MALAWI
ZOMBA REGISTRY
SITTING AT PHALOMBE
CIVIL APPEAL NUMBER 9 OF 2003**

BETWEEN:

ALICK CHAKWINJAAPPELLANT

- AND -

VILLAGE HEADMAN MWANGODEFENDANT

CORAM: THE HONOURABLE MR JUSTICE J. S. MANYUNGWA
Mr Alick Chakwiya, Present, unrepresented
Village Headman Mwango, Present, unrepresented
Mrs Ndanga – Official Interpreter

J U D G E M E N T

Mwanyungwa, J

This matter initially came into this court as an appeal against the decision of the First Grade Magistrate Court, however the according to Section 39 of the Courts Act ordered the matter to be retried as the lower court did not have jurisdiction. Before I go any further, let me also put it on record that my brother judge, the late Justice Chiudza Banda heard the evidence in this matter and that there only remained the evidence of Sub Traditional authority Jenala who the defendant wished to call as his witness. On both

10th October, 2007 and 28th November, 2007 the said Sub Traditional Authority Jenala failed to show up and so the court ordered that the matter be adjourned for judgement.

The plaintiff's claim against the defendant is for a piece of land, which was given to him by his parents and that the defendant took it away and gave it to another person. The witness stated that his parents were given that land by Village Headman Njobvu. The witness explained that they have been at that place from 1930 up to this date. The witness said when his parents padded away he saw village headman Mwango came and took away his land and gave it to somebody else. The witness told the court that his parents padded away in 1984, and that at the time of hearing it was the 4th time that the defendant had come to take away his land. The land has gardens, and that two of those gardens have been snatched by village headman Mwango, and one piece of land he gave it to somebody who built a house on at and that the defendant planted some trees on the other garden. The plaintiff explained that he is the owner of the garden that has been snatched away by the defendant. The witness said that at first he went to complain to Group Village headman Njobvu the one who assigned the land to the plaintiff. Then the said Group Village Headman came to see the land, and he summoned the defendant but the defendant did not turn up. After that the plaintiff was given a letter to go to Chitekesa Court. The witness told the court that in 2001, they discussed the issue with the defendant at village headman Njobvu's house where the defendant denied having snatched the land from the plaintiff but that when the chief proposed that they go to see the land, the defendant never turned up. That is when the plaintiff went to court so that the defendant could be summoned. The witness told the court

that he was cultivating on this land before his parents died, and even after their death. The gardens in question do not boarder the defendant's land, they are in the plaintiff's village very far from the defendant's land. The plaintiff said that the villages Mwango and Njobvu are neighbouring villages, but that the gardens in question are in the plaintiff's village namely Njobvu village. The witness explained that from the time judgement was given in favour of the defendant called in more to come and cut maize in the plaintiff's grandson's garden.

In cross – examination, the witness said he was given the land in question by Village Headman Njobvu at the time the defendant was already a Village Headman, and that the plaintiff's land is quite apart from the defendant's land. The witness denied that he did not know anything on the case between the defendant and Group village Headman Njobvu. The witness told the court that when the lower court visited the said gardens the ruling was that the land belonged to him but that the magistrate himself did not go but Mr Sompho, the marshal, and that while the court officials said the land was the plaintiff's the judgement of the court was that the land belonged to Village Headman Mwango.

PW2 was Foster Njobvu of Njobvu Village, Traditional Authority Mkhumba, Phalombe. The witness said he was Group Village Headman Njobvu since 1958. The witness said he knows both the plaintiff and the defendant. In 1930 Mr Chakwiya, the plaintiff asked for a piece of land, and the witness gave him. The witness said the first Village Headman Njobvu whom he succeeded was also a Group Village Headman and that it was his predecessor who gave the land to Chakwiya, and they were cultivating on

the said land. After the witness had given the land to the plaintiff that is when the defendant came in to plant trees on the same land, and that is how a quarrel arose. When the witness summoned the defendant he did not come, and so the witness said when the defendant finally came he told him that what he was doing was not good and he referred the quarrelling parties to sub Traditional Authority Jenala, who later referred them to Phalombe Boma to the DC. The DC gave his ruling in favour of the plaintiff that he should continue cultivating the land and when they came they found that the plaintiff's maize had been cut down.

In cross – examination, the witness said he gave the land to the plaintiff and that when the deceased gave the land to the plaintiff the witness was already a Village Headman. The witness said they came to the court because the defendant cut down his maize from his garden. The witness said that the lower court ruled that the land belonged to the plaintiff.

PW3 was Rice Mbuluka, from Njobvu Village, Traditional Authority Mkhumba, Phalombe District. He told the court that he was born in 1933 in the same village and that he is married with 4 children. Throughout his life he has stayed in village Njobvu so he knows the plaintiff very well. He also said he knew village headman Mwangi. The witness told the court that he knew that Group Village Headman Njobvu gave this land to the plaintiff in 1930. At that time the plaintiff was young when he gave his land to the plaintiff and that the witness was at the time a cowboy, and that he was told by his parents that the land belonged to the plaintiff. The witness said he used to graze his parent's cows on that land of the plaintiff. At the time of the hearing five years had passed since the dispute arose because Village

Headman Mwango planted trees on the plaintiff's land. The witness said he became aware that the land belonged to the plaintiff in 1950, and that the plaintiff's parents were the ones who were given the land. The witness stated that Village Headman Mwango has no right over the land in dispute, because he left his land and came to encroach upon the plaintiff's land.

In cross – examination the witness said he knew the case very well and that he did not know anything between the defendant and Group Village Headman Njobvu. The witness repeated his assertion that the land in question belongs to the plaintiff with emphasis.

The defendant in his defence stated that he is village headman Mwango and that the piece of land in dispute is his from the time he became Chief Village Headman. The witness said he was crowned as village headman Mwango in 1989, and that he is a 3rd Chief Mwango in line and that all the previous Mwangos were cultivating on the said piece of land. The witness tendered Exhibit D1 which was a judgement from the 3rd Grade Magistrate Court at Phalombe in which the court found judgement for the defendant. The witness further said that there was a time when he grabbed some hoes and went to Senior Chief Mkhumba to try to resolve the matter, and that during trial the said Chief went to see the land and he ruled that the said piece of land belonged to the defendant.

In cross – examination, the witness said Senior Chief Mkhumba is the one who gave a letter to the plaintiff to sue the defendant at the Phalombe Magistrate Court. The said chief saw the land, hence his conclusion that the land belonged to the defendant. The witness explained that he grabbed hoes

from Village Headman Njobvu and that instead of the said Village Headman Njobvu it was the plaintiff suing him. The witness stated that it should have been Njobvu suing him as he had no quarrel with the plaintiff. Senior chief Mkhumba gave a letter to the plaintiff to appeals against his ruling.

The second defence witness was Senior Traditional Authority Mkhumba, who gave his original name as John Mawula. He told the court that he was born in 1932, and that it must have been 1989 when was installed Chief Mkhumba. The witness explained that he fully knew village headman Mwango, and that it was his second time to see the plaintiff. The witness told the court that there was a dispute involving the land in question between the defendant and the younger brother of Village Headman Njobvu, and that both of them came to the witness. The witness said that he ruled in favour of the defendant, because he was crowned village headman Mwango on that same piece of land and this piece of land is near the port at lake. At that time, the witness told the court that he was in charge of the whole area as Traditional Authority Mkhumba, and that it was about 1982 or 1988 when he dealt with the land dispute herein. Later on, the witness said, he crowned his nephew to be sub Traditional Authority Jenala who is now in charge of the area. The witness said when he later asked sub traditional Authority Jenala on the dispute, he was told that Village Headman Mwango planted some trees on that piece of land because the land was his and he further told the witness that it was the same piece of land. The witness told the court that this was the 2nd time that he was seeing the plaintiff, the first time was when they were discussing the land dispute between village headman Mwango and the plaintiff's brother village headman Njobvu. The witness said that at that time the plaintiff was there, and that when now the dispute

between the appellant and the respondent herein came to the witness, he refused to preside over it because according to him, he had already dealt with the matter between the defendant and the brother of Village Headman Njobvu. The matter came to the witness from sub Traditional Authority Jenala and the witness refused to handle it and advised the parties that if they were not satisfied they had to appeal because according to the witness it involved the very same parties. The issue only resurfaced because it now involved the plaintiff and Village Headman Mwango. The witness repeated that after he heard the evidence he ruled that the piece of land belonged to the village headman Mwango the defendant herein, and that during the first hearing when the plaintiff's brother wanted the plaintiff to be a witness, the plaintiff refused saying he did not want to die.

In cross – examination, the witness said he knew the piece of land because it was the same one in which village headman Njobvu and village headman Mwango were involved. The witness further told the court that during the time that he settled the dispute there were no houses on the land, that was sometime in 1988 or 1987. The witness refuted the allegation that he demanded money from the witness.

This is all the evidence that the court heard from the witnesses from both the plaintiff and the defendant. The main issue for determination is the question as to who really was assigned the land for their use between the plaintiff and the defendant.

The plaintiff in his testimony told the court that he is claiming the land in question because, it was given to his parents by village headman Njobvu in

1930, and that since that time, the plaintiff's people have been on that land. The witness told the court that after his parents passed away in 1984 it's when he saw the defendant coming and taking away this piece of land. The witness stated that the defendant grabbed two gardens one of which he gave away to somebody else who built a house, on it, and that the defendant planted some trees on the other garden. This testimony is supported by PW 2's evidence, who told the court that he was Group village headman NJobvu and that the plaintiff's parents were given the said piece of land in 1930, and that it was only after the plaintiff had settled on the land that the defendant came and planted some trees and then a dispute arose.

This testimony however is heavily contradicted by the defendant, Village Headman Mwango, who was crowned village headman Mwango in 1989. The witness however explained that all the previous Mwango's (about three) were cultivating on the said piece of land. The witness further stated that there was a time when he grabbed hoes from the said land and took them Senior Chief Mkhumba and that the said chief ruled that the said piece of land belonged to the defendant. The witness told the court that he grabbed the hoes from village headman Njobvu.

This testimony is corroborated, in my view, by that of Senior Traditional Authority Mkhumba who told the court that in 1986 he was installed chief MKhumba. The witness said he fully knew village headman Mwango, and that it was the second time to see the plaintiff. The first time being when there was a dispute between the younger brother to village headman Njobvu and the defendant involving same piece of land. The matter was resolved in favour of the defendant, because he was crowned chief on that same piece of

land. What is important is that at the time the witness was in charge of the whole area as Traditional Authority Mkhumba before he demarcated the area and gave it to sub Traditional Jenala. This, in my view, means that it is this witness, and not Traditional Authority Jenala who is more knowledgeable on the land dispute. This is the reason why the court ruled that the matter should come up for judgement even without hearing the testimony of sub Traditional Authority Dinala.

Further I must also state that the court did not believe the testimony of DW3 Mr Hiyalala because it was very clear to the court that the same was couched and that DW3 was a staged witness as he did not appear to know anything relating to the land.

In these circumstances and by reason of the foregoing, I am satisfied that the plaintiff has failed to prove his claim on a balance of probabilities and consequently I dismiss the plaintiff's claim against the defendant with costs.

Pronounced in Open Court at Phalombe this 25th day of January, 2008.

Joseph S Manyungwa

JUDGE