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IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

LAND CIVIL CASE NUMBER 66 OF 2011

BETWEEN:

ELIAM TAMBALA t/a MASWATE ESTATE.....PLAINTIFF

AND

PATRICK TOMATO AND UNKNOWN PERSONS.....1st DEFENDANTS

GEORGE MAHEYA.....2nd DEFENDANT

Coram: M.A. Tembo, Deputy Registrar

Mbeta, Counsel for the Plaintiff

Chipeta, Counsel for the Defendants.

ORDER

This is this court's order on the plaintiff's application for summary possession of land comprising leasehold land at Feremu and Kambalame village in Neno district.

The plaintiff's application is supported by three affidavits two of which are sworn by the plaintiff himself and one sworn by the Traditional Authority Mlauli and

Group Village Headman of the area in which the leasehold land in issue herein is located. The defendants have also filed a joint affidavit in opposition.

It is proved by the affidavit of the plaintiff that he was granted a lease by the Malawi Government, dated 6th June 2011, over land in issue herein where he carries on a farming business. The plaintiff clearly has title to the land comprised in the leased land. The defendants are said to have been entering the plaintiff's leased land and carrying out activities such as cutting of trees and burning charcoal without the consent of the plaintiff.

The defendants have neither proved any contrary title to the plaintiff's land nor that they have the plaintiff's consent to interfere with the said land. All that is alleged by the defendants is that the plaintiff's leased land includes part of their villages which they have occupied since the 1970s. However, the Traditional Authority Mlauli and Group Village Headman having jurisdiction over the customary land within which the plaintiff's leased land is located clearly state that it is not true that the leasehold land includes the villages of the defendants herein. This Court is inclined to believe the Traditional Authority Mlauli and the Group Village Headman's assertion that the leased land herein does not include the villages of the defendants because there is evidence to the effect that the lease was granted by Government only after a thorough consultation with all the chiefs and traditional leaders surrounding the leased land. Had the land in issue herein affected the defendants' villages surely they should have registered objections to the lease application process.

In the above circumstances it is clear that the plaintiff has title to the leased land and that the defendants have been encroaching on the said land without any consent from the plaintiff and also without any claim to title to the said land. There are no triable issues or serious dispute as alleged by the defendants.


As rightly pointed out by both parties herein, Order 113 Rules of Supreme Court allows the plaintiff to bring an application for summary possession of land where the plaintiff claims possession of land which he alleges is occupied by persons who entered into the land and remained in occupation without the plaintiff's licence or consent. See *Msamala v Thawani* [1990] 13 MLR 250.

The defendant rightly noted that where there is a serious dispute concerning occupation of the land in issue summary procedure under Order 113 Rules of Supreme Court is not applicable. *Filemart Ltd v. Avery* [1989] E.G. 92.

This Court has found that there is no serious dispute herein. There is clear proof of title to the land in issue herein by the plaintiff who was granted a lease after consultation by Government with leaders of villages surrounding the leased land. This is therefore a proper case in which this Court can grant an order of summary possession of the plaintiff's land encroached by the defendants.

An order for summary possession sought is accordingly granted with costs to the plaintiff and the defendants shall remove any of their implements used in the encroachment herein within a day after the date of this order.

Made in chambers at Blantyre this 11th October 2011.



M.A. Tembo

Deputy Registrar