



IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL APPEAL NUMBER 1147 OF 2014

BETWEEN:

FELIAM KAWELAMA BANDA.....1<sup>ST</sup> APPELLANT  
MARTIN MWANJAWANTHU.....2<sup>ND</sup> APPELLANT  
-AND-  
FABIANO MSOFI.....RESPONDENT

**Coram:**Hon Justice Dr. C.J.Kachale, Judge

*Makono*, of Counsel for the Appellants

*Respondent*, Absent

*Jere (Mrs.)*, Court Reporter

*Choso*, Court Clerk and Interpreter

JUDGMENT

By a judgment rendered on 10<sup>th</sup> October 2014 the Kasungu First Grade Magistrate Court ruled in favour of *Fabiano Msofi* who was suing *Feliam Kawelama Banda* and *Martin Mwanjawanthu* for encroachment on land. Feliam and Martin have since appealed against that decision; the main reason for appeal is that the magistrate court lacked jurisdiction to handle the dispute.

There are documents from Kasungu District Assembly as well as Department of Lands and Valuation which show that the land in dispute was leased in 1991 to the first appellant as Farm Number 35437; this farm was later sold to Martin Manjawanthu and the change of ownership was duly authenticated by the District Commissioner through a letter dated 9<sup>th</sup> June 2005.

Section 39 (2) (a) of the Courts Act clearly excludes jurisdiction for such type of land from subordinate courts like the Kasungu First Grade Magistrate. In that vein, any proceedings taken before the magistrate court were a nullity from the beginning.

**Final order**

Thus the judgment pronounced on 10<sup>th</sup> October 2014 is hereby set aside for lack of jurisdiction.

In effect, unless and until *Fabiano Msofi* takes proceedings and obtains judgment in the High Court of Malawi, the land described as Farm Number 35437 at Suwira village in T/A Kaomba, Kasungu vests in *Martin Mwanjawanthu* for his continued use and enjoyment without interruption from anybody.

Costs are for the appellants.

**Made at Lilongwe this 2<sup>nd</sup> day of July 2015.**

***C.J.Kachale, PhD***  
**JUDGE**