



IN THE HIGH COURT OF MALAWI

LILONGWE DISTRICT REGISTRY

CIVIL CAUSE NUMBER 791 OF 2008

BETWEEN:

**THE REGISTERED TRUSTEES OF MCHINJI ROMAN CATHOLIC
CHURCH-----PLAINTIFF**

AND

**FOLOMENSIO MANETO AND OTHERS-----
DEFENDANTS**

CORAM: HON. JUSTICE M.C.C. MKANDAWIRE

Mrs Innoncetia Ottober, for the Plaintiff

Mr Nkhutabasa, for the Defendants

Mrs Nthunzi, Senior Court Reporter

Mr Itai, Court Interpreter

JUDGMENT

Introduction and Background

This is a very old matter indeed which commenced at the Lilongwe District Registry through an originating summons issued on the 23rd of October 2008. Following the issuance of the originating summons, a lot of interlocutory issues have besieged the case. The sequence of events has been as follows:

1. On the 24th of October 2008, the plaintiff obtained an interlocutory injunction.
2. On 29th of August 2009, the defendants appointed their legal counsel.
3. By the 2nd of February 2009, the 1st defendant had filed in his affidavit in opposition to the originating summons.

4. On 16th of April 2009, Justice Chombo delivered her ruling on an application for summary judgment in which she dismissed the application.
5. In November 2009 the court heard an ex-parte application for leave to apply for an order of committal under Order 52 of the Rules of the Supreme Court since the defendants were in disobedience of an injunction order and such leave was granted on the 26th of September 2009.
6. In September 2010, the parties entered a consent judgment whereby it was agreed that the matter should proceed as if began by writ.
7. On the 10th of May 2012 the court issued an order adding nine (9) more defendants thus increasing the number from six (6) to fifteen (15) defendants.
8. Later the plaintiff filed a summons for summary judgment and hearing was set down to the 26th of September 2014. The defendants filed a notice for a preliminary objection to the application but this application has not been heard. It would appear that it died natural death.
9. The matter was set down for substantive hearing of the case before me on the 23rd of February 2015. Unfortunately, both parties were not ready due to late submissions of documents due to late submissions of the documents and the matter was adjourned to the 16th of March 2016.

Pleadings

The plaintiff claims that it is a leaseholder and entitled to possession of a parcel of land registered in the Deeds Registry as Number 81930. That the said lease is still subsisting and that surprisingly the defendants in 2007 entered onto the land and remain in occupation of the land without the plaintiff's licence or consent. The defendants have gone further to illegally develop the land and have since baked bricks on the land. The plaintiffs would therefore like to be granted possession of the parcel of land registered in the deeds registry as Number 81930 which is being occupied by the defendants.

The 1st defendant Folomensio Maneto said that he has at all material times occupied and owned the piece and parcel of land at Mchinji Boma near Robert Fire location since 1962. The said land includes the land referred to by the plaintiff as Deeds registry Number 81930. That in 1996 the plaintiff approached him and offered to purchase part of the land but they could not agree on the price and the sale never took place at that time. In 2007 the defendant demarcated some plots and sold to various people including the defendants herein. In 2007 the plaintiff through Traditional Authority Zulu and in the company of Stephene Kamwani, Mai Medi, and several village headmen such as GVH Nyamawende approached him again with a view to purchasing a portion of the land. He however informed them that he had already sold the land to other people. The plaintiff never came to be shown the boundaries as alleged. That the defendants were legally developing the land as it had been sold to them by him. The rest of the defendants deponed that the land was legally sold to them by the 1st defendant between 2002 to 2004. The defendants

said that they were never stopped to develop the land by either the District Commissioner Mchinji TA Zulu.

Survey of Evidence

The 1st witness for the plaintiff was Mr Stephen Kamwani. He adopted the statement that he had filed with the court. In a nutshell, this witness is the current Chairperson of the Mchinji Ronam Catholic Church Council. It is clear from his evidence that he was not present when the land transactions between the plaintiff and the 1st defendant first took place in 1997. He however told the court that when he assumed his duties as Chairperson of the Council he found that in 1997, with full knowledge of the District Commissioner and Traditional Authority Zulu and other Village headmen, the plaintiff was offered customary land by the 1st defendant. The plaintiff wanted to construct a school and hospital on that land. After Traditional Authority Zulu had allocated that land, the plaintiff in 1998 applied for lease to the Malawi Government. The plaintiff was later offered the lease by the Malawi Government. The land in issue was 12.24 hectares. Later on the lease was approved and issued out. The witness tendered in court evidence of the Consultation with Chief form, the offer of lease, the compensation payment document to the 1st defendant and the lease agreement document. All these documents are marked as PEx no SK1 to SK4 respectively. The witness said that surprisingly, the 1st defendant later on sold some of this land to the defendants herein.