

1.0 Introduction

1.1 The Respondent brought proceedings in the Third Grade Magistrate at Uliwa claiming that the Appellant had encroached on his land. Through its judgment on 18th November, 2015, the court below found in favour of the Respondent. The Appellant was ordered to stop all construction and vacate the piece of land. Being unsatisfied with that decision, he now appeal to this court.

1.2 It is settled law that appears in the High Court are by way of rehearing of all the evidence, the law applied and the procedure followed.

2.0 THE GROUNDS OF APPEAL

2.1 The Appellant filed six grounds of appeal which are reproduce in the following terms.

3.0 THE FACTS

3.1 The Respondent told the trial court that he had bagged the Appellant for building on his piece of land and uprooting the Respondent's crops. The Respondent claims he inherited the land from his fore fathers. He then shared the land to several people. One of the beneficiaries of this allocation was Kasilikani Chapewa. He stated that he was given the piece of land by the Respondent long before the Appellant was born. That when he left the area, he gave the land back to the Respondent. The story was told by this witness PW2 was confirmed by Yowoyani Kayambula, Mwapjera Mng'ombwa and Rachael Mwalughali. They stated that their fathers and grand fathers were given a piece of land by the Respondent.

3.2 In opposition to the claim the Appellant stated that he inherited the piece of land from his fare fathers who had been on the land since 1928. That the Respondent only asked to be using the grave yard in 1946. He

stated that Respondent only moved to the present location after the lake had flooded his land. He was seeking for shelter. After the floods, he never returned.

3.3 Allan Gondwe group Village Headman Mn'gombwa stated that it was the Respondent who had encroached on the Appellant's land and that the land belonged to the Appellant.

3.4 When the matter was referred to Principal Group Village Headman Chimphinga, he also ruled that the land belonged to the Appellant.

4.0. THE ISSUES

The main issues are as follows:-

- (i) Whether the Appellant had a legitimate claim over this piece of customary Land.
- (ii) Whether the Respondent has violated his rights under customary land law.

5.0. THE LAW

The burden and standard of proof.

Land law

5.0 THE FINDING

5.1. The parties have vigorously argued their case. The Appellant claim he inherited this piece of land from his fare fathers. The Respondent was repeated the same statement. Now who is the rightful use and occupier of this land? The only answer can come from the village chiefs who are mandated under the law to administer customary land on behalf of the minister of the Malawi Government responsible for the land matters.

5.2 So what did the chiefs say about this dispute. Group Village Headman Mng'ombwa told the court that it was the Respondent who had encroached on the Appellant's land. According to him the land belonged to the Appellant. The Mare Senior Chief Principal Group Village Headman Chimpinga also told the trial court that the land in dispute belonged to the Appellant. No single chief testified that the land belonged to the Respondent.

5.3 I am at pains to comprehend how the trial court arrived at the present decision and ruled in favour of the Respondent. When the evidence are pointed to the fact that the land belonged to the Appellant. There is nothing in the evidence to back the findings of the court below. The standard of proof in civil matters is on a balance of probabilities. In my considered opinion the scales of justice fill toward the Appellant's case. The lower.... misdirected itself on the weight of the evidence and that decision can not stand. It is reversed. The piece of customary land in question belongs to the Appellant and I grant him a permanent order of injunction for usage and occupation.

This appeal is allowed with costs.

It is ordered.

Pronounced in Open Court at Mzuzu in the Republic on 25th October, 2017.

Dingiswayo Madise

JUDGE