

MALAWI JUDICIARY



**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL APPEAL NO. 43 OF 2013**

**BETWEEN:**

**ANNES FADSON.....APPELLANT**

**AND**

**NJATI JAFONE.....RESPONDENT**

**CORAM: THE HON JUSTICE H.S.B. POTANI**

**Appellant, Present in person**

**Respondent, Present in person**

**Mr. Kanchiputu and Mathanda, Court clerks**

**JUDGEMENT**

This is an appeal emanating from proceedings that were before the Third Grade Magistrate's [TGM] Court sitting at Chikhwawa. The case is about a dispute over some piece of land. In that Court, Njati Jafone made a claim of unlawful use of land against Annes Fadson which she disputed and contested. To prove his claim, Jafone gave his own evidence and also called 4 other witnesses namely Lucius Ngatalangwe, Eleveor Katiwelo, White Khumbanyiwa and Themas Dode. In



disputing the claim, the Fadson also gave her own evidence and called Village Headman Iso as her witnesses.

In his judgement, the TGM ruled that the land in issue which is occupied and used by Kasinthula Cane Growers Association belongs to Jafone. Being dissatisfied with that decision, Annes Fadson appealed to this court.

The appeal is based on 4 grounds which are in the vernacular Chichewa language whose English translation by this court would be as follows:

*. The land taken away ay from me has shares given to me by my late mother.*

*. Njati Japhone is not entitled to the land as he is from the patrilineal side.*

*. I have been using the land for 23 years since 1989.*

*. By taking away the land from me it amounts to oppressive as I will be rendered destitute.*

When dealing of an appeal like the present one, the approach and the duty of this court is to consider and re-examine all the evidence that was presented to the trial court and then decide whether or not to uphold the decision complained of. Therefore, usually this court does not receive or call for fresh or additional evidence except if one of the parties asks for that and the court is satisfied that there is good reasons why that evidence was not presented to the trial court.

The evidence on record shows that the parties are cousins. Annes Fadson is a daughter to a sister to the Njati Jafone's father. Both the mother to Fasdson and the father to Jafone died. Each of the parties is claiming to be entitled to the land through inheritance from the departed parent. The case record of the TGM does not have a written reasoned judgement for the court's finding in favour of Jafone. It only has some orders made by the court.



The main contention put forward by Annes Fadson presenting her appeal is that according to the Mang'anja customs and traditions, being from the matrilineal side, she and not Jafone from the patrilineal is entitled to the land which belonged to her late mother. According to her when the case was heard before the Traditional Authority [TA] she did not get justice as her witnesses were insulted as such she decided to take the matter to the court. When the matter was in court she insisted that the court should go to the site but the court refused and this left her wondering if she would get justice as in most cases of a similar nature the court readily visit the site of the disputed land. When the court decided against her, she complained to a body known as CCJP where she was told that it was not normal for a person from the patrilineal side to inherit land upon which she decided to lodge the present appeal. She had difficulties to be assisted by the court staff to process the appeal and had to seek the assistance of the CCJP to say her appeal processed.

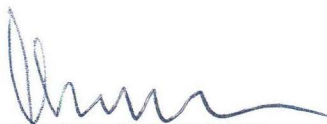
There is an aspect of the case which is important to note and this is that the evidence and the order of the TGM shows that land in issue is currently occupied and used by Kasinthula Cane Growers Association under an arrangement where the owner of the land is registered with the Association and gets some monetary benefit commonly called shares among the local community. In this case it is Annes Fadson who was so registered according to Village Headman Iso who she called as her witness. Is the contention of Fadson that the fact that she was registered with the Association goes to show that she is the one entitled to the land. She further asserts that Jafone left the area where the land is way back and went to his mother's home after the death of his father and only came back to claim the land when he learn that she was getting financial benefit from the land.

In dealing with the appeal, the court to begin with wishes to note that the evidence of Fadson that under the Mang'anja tradition and custom, inheritance over land

follows the matrilineal and patrilineal line is not disputed. It is also not in dispute that Fadson is from the matrilineal line while Jafone is from the patrilineal line. One therefore would not be in the wrong to say most probably that is why Village Headman Iso registered Fadson with the Association as the owner of the land and also why Jafone left the area after the death of his father as per his own evidence. It is therefore the position of this court that from the evidence in totality, it is more probable than not, that it is Annes Fadson who has a better claim to the land than Jafone. The court therefore would entertain the appeal and order that the judgement and orders of the TGM be set aside. For the avoidance of doubt, it is hereby ordered that it is Annes Fason who is the rightful beneficiary of the land the subject of these proceedings.

On costs, although the appeal has succeeded, I would order that each party should bear its own costs arising from the appeal.

*FEBRUARY 20, 2017*  
Made this day of ~~December~~ 15, 2016, at Blantyre in the Republic of Malawi.

  
**H.S.B.POTANI**  
**JUDGE**