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IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NUMBER 85 OF 2017

BETWEEN:

BISHOP ABRAHAM SIMAMA-----1ST PLAINTIFF

SIMSON OIL AND TRANSPORT LTD-----2ND PLAINTIFF

AND

PUMA ENERGY MALAWI LIMITED-----DEFENDANT

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

Kita, Counsel for the Plaintiff

Nkhono, Counsel for the Defendant

Itai, Court Interpreter

RULING

This is an application by the defendant for leave to issue third party notice on Mutunthama Farming Limited (Intended Third Party) and Commissioner for Lands (Intended Fourth Party). The application is brought pursuant to Order 19 Rule 1 of the Rules of the Supreme Court. The application is supported by an affidavit deposed by Patrice Nkhono. In this affidavit, counsel Nkhono has referred to the affidavit of Mr Joseph Chafumuka which gives details of what had transpired in this matter. I am mindful of the fact that this application is being entertained after the court has had the opportunity to listen to the cross –examination of the first Plaintiff Bishop Abraham Simama. The application herein is vehemently opposed by the plaintiffs. In their objections, the plaintiffs say that the claim herein is purely a civil one based on possession of land, hence it having been commenced in the Civil Division of the High Court. A look at the Third Party notice as per the plaintiffs will show that the matters being raised therein are commercial in nature in particular to enforce a purported agreement for the sale of land between the

defendant and the Third Party. It is therefore the plaintiffs' view that under section 6(A)(1) of the Courts Act, only the Commercial Court has got the jurisdiction to entertain the claim being raised by the defendant against the intended Third Party. It is therefore the fear of the plaintiffs that if leave for the Third Party summons is granted, then the court will be bringing in a commercial dispute to a non-commercial civil dispute which risks the proceedings to be declared null and void on appeal. Counsel for the plaintiffs further submitted that the intended Fourth Party Commissioner for Lands is misplaced. The rightful party should have been the Deeds Registrar who has the capacity to sue and to be sued.

Let me first look at the issue whether the intended Third Party is misplaced in this application. I have surveyed both the Land Act and the Deeds Registration Act. Under section 41 of the Land Act, the Minister responsible for Land matters had delegated and authorized the Commissioner for Lands not only to grant leases and other dispositions in accordance with section 5, but also to accept surrender of leases made under section 11 of the Land Act. Pursuant to section 3 of the Deeds Registration Act, the Commissioner for Lands was appointed to be the Deeds Registrar. The function of the Deeds Registrar is purely to administer the Deeds Register. The Deeds Registrar has got no function to adjudicate or make decisions regarding interests in land under the Land Act. The Commissioner for Lands therefore is the rightful party to be sued in this matter.

What has however bothered me is the nature of the dispute that is being introduced in both the affidavit in support of this application and the letter of intended suit against the Commissioner for Lands. My understanding of the issues that have been raised by the defendant in their affidavit is that they are raising commercial and business related issues. Moreover, the application herein which is anchored on the Rules of the Supreme Court has to be looked at taking into account section 6 (A)(1) of the Courts Act. It would therefore be very fragile for this court to allow the defendant leave to issue out Third Party notice. The defendant can pursue their claim against the intended Third Party and fourth party in the commercial court.

This application is therefore dismissed with costs.

MADE THIS DAY OF NOVEMBER 2017 AT LILONGWE

M.C.C. MKANDAWIRE

JUDGE
