



IN THE HIGH COURT OF MALAWI

LILONGWE HIGH COURT

CIVIL CAUSE NUMBER 864 OF 2016

BETWEEN:

SAMUEL MWALUGHALI-----PLAINTIFF

AND

CICILY CATHY ZIMBIRI-----DEFENDANT

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

Chijere, Counsel for Plaintiff

Mchizi, Counsel for the Defendant

Itai, Court Interpreter

RULING

This matter first came before me on 13th September 2016 whereby the plaintiff had first filed an ex-parte application for an injunction. I accordingly granted the injunction. On 26th July 2017, the matter came back to me to hear an inter-parte application. The matter was adjourned to a date to be fixed. On 29th of August 2017 the plaintiff filed a summons for summary judgment pursuant to Order 14 of the Rules of the Supreme Court. The summons was set down for hearing on the 22nd of January 2018. The plaintiff has filed an affidavit and skeleton arguments in support of this application. The defendant has also filed an affidavit opposing the application.

The plaintiff in this matter is based in the Republic of South Africa. His affairs at home here in Malawi are transacted through his father Tyson Mwalughali. In 2011, the plaintiff was offered land for sale situated and known as Title Number Chitipi 24/1/72 and he paid consideration of Mk990,000.00. The sale agreement is produced as exhibit TM2. A sketch plan of the land prepared by a quantity surveyor from Ministry of Lands is produced as TM1. The defendant owns the

neighbourhood plot. The defendant says that her plot goes up to half the plaintiff's plot. The defendant has commenced developments at her plot which threatens the plaintiff's land hence the filing of the case herein and obtaining of an injunction.

In arguing this application for summary judgment, the plaintiff says that the defence that has been filed in this case is a general one without pleading any specific facts. The plaintiff therefore believes that the defendant has got no defence to the claim as such, the court should enter a summary judgment.

In the affidavit opposing the application, counsel for the defendant has said that the defendant and her husband are the registered owners of a piece of land known as Chitipi 24/1/31 in Minimbi Village, T/A Malili in Lilongwe. A certificate of lease and copy of the transferred land is exhibited as CKS 1(a) & (b). The defendant is said to have acquired the land in 2009. It is only in 2016 that the plaintiff complained that the defendant is encroaching on the land. The plaintiff claims that he bought the land in 2011 from the same people yet the defendant bought it in 2009. The defendant therefore claims that she has title to this land whilst the plaintiff does not.

I have looked at the facts of this case. I am aware that for a court to enter summary judgment, it should be shown by the plaintiff that the defendant has got no defence to the claim. A look at the defence filed by the defendant would on the face of it show that there are just general denials to the claim herein. One would indeed be tempted to enter a summary judgment. But upon going through the affidavit opposing this application, and going through the exhibits attached to the affidavit, I came to a conclusion that this is not a proper matter where the court should enter summary judgment. This is such a contentious land dispute which should be put to full trial.

I therefore dismiss the application with costs.

MADE THIS DAY OF MARCH 2018 AT LILONGWE

M.C.C. MKANDAWIRE

JUDGE