



**IN THE HIGH COURT OF MALAWI
LILONGWE HIGH COURT
CIVIL CAUSE NUMBER 465 OF 2016**

BETWEEN:

PETER BHAGWANJI T/A NYASA TRAILERS-----PLAINTIFF

AND

ALICK SAKALA-----DEFENDANT

CORAM: HON. JUSTICE M.C.C MKANDAWIRE

Theu, Counsel for the Plaintiff

Defendant, Absent

Itai, Court Interpreter

JUDGMENT

1. This is a summons for summary judgment pursuant to order 14 of the Rules of the Supreme Court. The summons is supported by an affidavit together with skeleton arguments.

2. The defendant did not turn up for hearing although. As there was evidence that the defendant was served with the notice of hearing, I proceeded to hear the matter in his absence.

3. This matter commenced through an originating summons filed on the 10th of May 2016. In that summons, the plaintiff claimed against the defendant declarations and orders as follows:

i) A declaration that the plaintiff's Title Number Alimaunde 28/312 in the city of Lilongwe cover or includes the area currently subject or part of the defendant's construction works extending for about 3 metres from 12.8 metres from beacon L3A in width and some 25.5 metres in length thus 3 metres away from the straight line created by beacons L5A and L3A.

ii) An order of permanent injunction restraining the defendant, his servants, agents and whosoever from continuing with any act or trespass and disturbing the plaintiff's works and in any manner whatsoever encroaching on premises known as Title No Alimaunde 28/312 in the city of Lilongwe and costs be in the cause until determination of this matter by the court or further order of the court.

iii) Damages for trespass.

iv) Costs of this action.

4. On 27th of October 2016, the defendant filed an affidavit opposing the originating summons. In a nutshell, the defendant said that in the development of new plots in that area, the Ministry of Lands did not take heed of the interests of other property owners as the overall site plan for the area had drastically changed.

5. On 31st October 2016, the matter was scheduled for hearing the originating summons. It however transpired on this day that the parties were talking to each other with a view to have an amicable settlement of this matter. The court was informed that the parties had resolved to appoint an independent surveyor to determine the boundaries whose decision shall be final. In the event that the parties did not agree, the

matter was to proceed hearing the summons. The court directed the parties to execute a formal agreement on this. So far nothing has happened.

6. On the 9th of June 2017, the plaintiff filed a summons for summary judgment. On 30th April 2018 the matter was brought before the Assistant Registrar and the parties agreed that within 7 days they would file a consent order. No consent order was filed and the matter was set down for hearing the summons for summary judgment on the 19th of June 2018.

6. I have looked at the affidavit of Peter Bhagwanji dated 9th June 2017. The plaintiff attached a lease in his favour for Title Number Alimaunde 28/312 which is PBNT1. The plaintiff discovered that the defendant had commenced construction works on premises sharing a boundary with him and he tendered the photos which are PBNT3. The plaintiff said that the said construction works have extended into the plaintiff's property. Later, the plaintiff complained to the Ministry on Lands, Housing and Physical Planning and Surveys who later confirmed about the said encroachment. The plaintiff tendered PBNT5 to confirm what the Ministry of Lands had advised about the said encroachment by the defendant.

7. As I have already stated, the defendant has not responded to the summons for summary judgment. Although the defendant had filed an affidavit opposing the originating summons, the defendant did not provide any documentary evidence to show ownership of the said land as the plaintiff has done.

8. I have addressed my mind towards the objective of Order 14 of the Rules of the Supreme Court which is to enable the plaintiff to obtain judgment without having to wait and undergo a full trial if he can prove

his/her claim clearly and if the defendant can not set up a bona fide defence or raise an issue sought to be tried.

9. Having looked at the facts of this case where the defendant has miserably even failed to oppose the summons for summary judgment, I am left satisfied that the defendant has got no bona fide defence. It is undisputed that the plaintiff is the current owner of Title Number Alimaunde 28/312 situated at Kanengo in the city of Lilongwe. I also find that the defendant has no triable issues. The defence that the defendant gave in opposing the originating summons is a mere sham. The defendant could not even refer to any Title documents from Lands empowering him to have the land in issue.

10. I find that this is a proper case where summary judgment should be granted and so I grant it with costs to the plaintiff.

DELIVERED THIS

DAY OF AUGUST 2018 AT LILONGWE

M.C.C. MKANDAWIRE

JUDGE