



IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL CAUSE NUMBER 476 OF 2013

BETWEEN:

ERNEST MTHUNZI (Suing on his own behalf

and on behalf of Meekness Mthunzi-----PLAINTIFF

AND

RUTH KHRISMISI-----1<sup>ST</sup> DEFENDANT

MAI DALANI-----2<sup>ND</sup> DEFENDANT

P. SANKHULANI-----3<sup>RD</sup> DEFENDANT

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

Mwale, Counsel for the Plaintiff

Kaphantengo, Counsel for the Defendants

Itai, Court Interpreter

**JUDGMENT**

This is a summons for possession of land pursuant to Order 113 of the Rules of the Supreme Court. The summons is supported by an affidavit together with skeleton arguments. The summons is opposed by the defendants and there is an affidavit in opposition. The plaintiff's case is that in 2012, he went to the United Kingdom for further studies. The 1<sup>st</sup> respondent who is his wife and his child Meekness Mthunzi remained behind at his mother's house in Kasungu. The plaintiff and the respondent as per the plaintiff are now divorced and that they have one child Meekness Muthunzi born on 10<sup>th</sup> January 2001. Before they divorced, the plaintiff bought land situated on plot number Kabvunguti 1/34 in Kasungu in 2006. The plaintiff said he made it clear when buying the land that he was buying it for their daughter Meekness. The plaintiff started constructing a

house on the plot. Later he was informed that the 1<sup>st</sup> respondent had left the house of his mother and started cohabiting with another man. Later on he discovered that some people had entered on the plot and continued constructing the house which he had been constructing. The alleged encroachers are the 2<sup>nd</sup> and 3<sup>rd</sup> defendants who claimed that they had bought the land from the 1<sup>st</sup> defendant. The plaintiff said that since the 1<sup>st</sup> defendant had no title to the land, the purported sale of the land to the defendants was bad at law. The sale also infringed on the minor's interest. The plaintiff therefore prays for summary possession of the land.

The 1<sup>st</sup> defendant has given detailed account of the matter and what she knows about the entire events. She first said that the two are not divorced and that their child was born in 2002 and not 2001. She confirmed that when the plaintiff went to the United Kingdom, she went to leave with his mother but due to breakdown in relationship with the mother, she left the house. After that breakdown in relationship with the mother, the plaintiff started to send very inadequate money to her and at very irregular intervals. In 2007 with that very little money that she was saving plus her own money, she decided to buy a plot at Kasungu which is KS/1/37. She later on decided to sell the plot to the 2<sup>nd</sup> defendant. From the same savings that she was making from the money sent by the plaintiff, she decided to buy another plot KS/1/87 where there is a house. She tendered the document for this property. Due to the poor relationship with the mother-in-law, she decided to go and leave in Lilongwe at her mother's house. The situation became very bad as the plaintiff completely abandoned her with her child. She therefore decided to sell plot no KS/1/37 where she had started constructing a house in 2007.

I have looked at the facts of this case. I have also taken into account the spirit of Order 113 of the Rules of the Supreme Court and what it is intended to achieve. I find that the plaintiff has not produced evidence that he bought land on Plot KS/1/37 in Kasungu and from who. His affidavit says that he left for the United Kingdom in 2012 and that he bought the said land before he left but has not explained in which year. The 1<sup>st</sup> respondent on the other side has shown that the land was bought in 2007 and she has tendered evidence to that effect. It is very difficult from the evidence of the plaintiff to conclude that the land was bought by him alone and that he should have it through a summary pursuant to Order 113. There are also other disputes between the two. For example, there is a dispute as

to whether the two are still married. If it is true that they have divorced, then one wonders as to what was the status of the properties that are mentioned here during the issue of distribution of matrimonial property. I therefore find it unsafe to order for possession of the land under Order 113 of the Rules of the Supreme Court. This application is therefore dismissed with costs.

**DELIVERED THIS**

**DAY OF JANUARY 2018 AT LILONGWE**

**M.C.C. MKANDAWIRE**

**JUDGE**