



IN THE HIGH COURT OF MALAWI
LILONGWE HIGH COURT
CIVIL CAUSE NUMBER 375 OF 2017

BETWEEN:

OWEN MPHIKA-----PLAINTIFF

AND

EDWARD THOM PHIRI-----1ST DEFENDANT

DERLIN PHIRI-----2ND DEFENDANT

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

Mussa, Counsel for the Plaintiff

Kaonga, Counsel for the 1st Defendant

Itai, Court Interpreter

JUDGMENT

1. The plaintiff Owen Mphika commenced this matter through an originating summons filed with the court in July 2017. The defendants are Edward John Phiri and Derlin Phiri who are husband and wife respectively. The plaintiff filed an affidavit and skeleton arguments in support of the application.

2. The plaintiff a Malawian citizen relocated to South Africa in 1984. He still wishes to return to Malawi and retire and stay in Malawi. Whilst in South Africa, the plaintiff thought of investing in real estate here in Malawi. He thus entrusted his uncle Mr. Palinji Sanje elder brother to the 1st defendant to be running his businesses in Malawi.

3. The plaintiff used to travel to Malawi to purchase the real property and his frequent travels to Malawi can be seen through the stamps in his passport which documents are tendered as OM2.

4. The plaintiff requested the 1st defendant to be managing his investments and let out the finished buildings and to use the money for completing other projects. He later on discovered that the 1st defendant was abusing his position. The plaintiff cautioned the 1st defendant on this but still retained him hoping for better results.

5. In 2017 the plaintiff terminated his relationship with the 1st defendant after observing that there was no improvement.

6. In 2017, the 2nd defendant petitioned the court seeking dissolution of their marriage with the 1st defendant. The plaintiff was apprehensive that the 2nd defendant would later seek for distribution of property which belonged to him since most of the property was bought in the name of the 1st defendant. The plaintiff therefore filed this case so that the court should order declaring that the properties in paragraph 18 of the plaintiff's affidavit belong to him and that the defendants have no beneficial interest in the same. The plaintiff also claims for costs of these proceedings.

7. The 1st defendant filed an affidavit opposing this claim. The 1st defendant said that the plaintiff is his uncle who has educated him and taken care of him. The plaintiff further stated that after his graduation from the Polytechnic, he joined the Accountant General's Department

on a salary on MK49, 968 per annum which translated to Mk4,164.00 per month.

8. The 1st defendant married the 2nd defendant in 2005 and they separated in 2010. The 1st defendant confirmed that at first the plaintiff was dealing with his elder brother Palinji who mismanaged things and eventually committed suicide. Thereafter the plaintiff engaged him to take over the late Palinji and he referred to the power of attorney document.

9. The 1st defendant confirmed receiving huge sums of money to purchase properties as shown in paragraph 18 of the plaintiff's affidavit. In 2012, the two disagreed on how the money was being used.

10. In 2016 their relationship was strained to the limit and they parted company. The 1st defendant said that he tried to request for a token of appreciation from the plaintiff for all the work that he had done for the plaintiff despite the disagreement they had.

10. Having looked at the evidence herein, it is clear that the 1st defendant does accept that all the properties in paragraph 18 belong to the plaintiff. I should put it on record that the 1st defendant has shown that he is a very honest person. He believes in giving to Ceasar what belongs to Ceasar. If it were other nephews, we could have seen a battle of long knives in this case where the 1st defendant would have been justifying that some of the properties are his since he was also working. I really give him credit for his honesty.

11. I therefore find that the plaintiff has satisfied the court that all the properties in paragraph 18 of his affidavit are his. I order declaring that the said properties are for the plaintiff and that the defendants have got no beneficial interest in the same.

12. I attentively listened to what counsel Kaonga had said with passion on the need for the plaintiff to appreciate the role that the 1st defendant had played in managing the real estate for the plaintiff. I am mindful of the fact that the two are uncle and nephew so this was a family arrangement which has got no legal parameters for enforcement. I would however urge the plaintiff to approach the matter with a human face. Whilst I do appreciate that it's the plaintiff who had educated the 1st defendant and taken care of him, the issue of managing the estate for the plaintiff should have been very rigorous. I really feel that the plaintiff should find a modest way of appreciating the contribution of his nephew to his business empire. I do not however find any legal basis for compelling the plaintiff to compensate the 1st defendant.

13. On the issue of costs, having looked at the circumstances of the case, I order that each party should meet his/her own costs.

DELIVERED THIS

DAY OF JULY 2018 AT LILONGWE

M.C.C. MKANDAWIRE

JUDGE