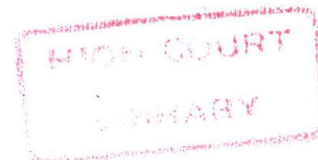


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**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**CIVIL DIVISION**

**CIVIL APPEAL CAUSE NO. 114 OF 2017**

**BETWEEN**

**JAMES NJANJI.....APPELLANT**

**GRACIAN YONASI.....APPELLANT**

**-AND-**

**JUSTIN KADZUWA.....RESPONDENT**

**CORAM: THE HON. MR. JUSTICE D. MADISE**

Appellants present/unrepresented

Respondent absent/unrepresented

M. Manda, Official Interpreter

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**Madise, J**

**JUDGEMENT**

## **1.0 Introduction**

**1.1** The parties in this matter first appeared before the 3<sup>rd</sup> Grade Magistrate court sitting at Midima in Blantyre under civil cause No 80 of 2014. This was a land dispute in which the respondent herein had dragged the two appellants to court. After a full trial the court below ruled in favour of the respondent and ordered Mr. Yonasi to pay back the money to Mr. Njanji. In its final order the court below ruled that the plot belonged to Mr. Kadzuwa. Being unsatisfied with that decision they now appeal to this court against that finding.

**1.2** It is trite law in this Republic that appeals in this court are by way of rehearing of all the evidence, the law applied and all that which took place in the court below. The purpose of an appeal is to ensure that the court below was within the ambit of the law and procedure when it arrived at its decision.

## **2.0 Grounds of Appeal**

**2.1** The appellants have filed four grounds of appeal which we now reproduce in the following fashion.

1. The lower court erred in law and facts by not sufficiently directing its mind on the type of land, the court was dealing with in order for the Honourable court to determine if it had jurisdiction as per section 39(2) (a) Courts Act and Section 156 Registered Land Act.
2. The lower court erred in fact and law by allowing the 1<sup>st</sup> defendant to be part of the matter when he was not the registered owner of the title plot No BG 6/46.
3. The lower court erred in fact by not directing its mind to the fact that Mr. Lucius Nyambalo was a mentally ill person.
4. In all circumstances of this case, the decision of the learned magistrate caused injustice to the appellants herein.

### **3.0 The Facts**

- 3.1** The evidence before the trial court was that Mr. Kadzuwa allegedly bought a piece of land from Mr. Nyambalo at a consideration of K120, 000 in 2007. Messrs Mbawala and Lupiya witnessed the transaction, became the one who had sold him the land was sick at that time. After buying the plot he went to City Assembly to verify.
- 3.2** Thereafter he left for his home village for a year and he alerted the local chief. On his returned he found that the 1<sup>st</sup> appellant was building a house on the land. When confronted the 1<sup>st</sup> appellant mentioned that it was the 2<sup>nd</sup> appellant who had sold him the land. The 2<sup>nd</sup> appellant had also erected a house on the same plot. The respondent then went to the local chief to complain and he was advised to go to court.
- 3.3** Mr. John Kakhowe told the trial court that he stays in Bangwe Township and that he knew Nyambalo for a long time. That when Nyambalo fell sick between 2006 and 2007, he decided to sell his plot to raise money for his illness. Nyambalo then approached Kadzuwa who offered to buy the plot. He was presented when Nyambalo received the money. Unfortunately Nyambalo died in 2009. Thereafter Kadzuwa built a house on the land but he was surprised to see other people also building on the same land.
- 3.4** According to Kakhowe it was Mr. Yonasi who sold the plot to Mr. Njanji. The matter was then referred to City Assembly for adjudication as there was confusion as to which plot was being referred to between BQ6/46 and BQ 6/45.
- 3.5** Mr. Andrew Lumpiya agreed with the respondent (plaintiff then) and stated that it was on 10<sup>th</sup> June, 2007 when Kadzuwa informed him he had found a plot to buy and he was present when Kadzuwa paid K120, 000 for the plot. Lumpiya denied that Nyambalo was mentally unstable and that he only sold the plot as he wanted money during his illness.



- 3.6** In defence James Njanji stated that he met Yonani on 5<sup>th</sup> September, 2010 who told him he had a piece of land for sale at K150,000. He then paid K100, 000.00. When Njanji demanded papers for the land, he was told that the plot belonged to his relative who was mentally unstable.
- 3.7** When Yohasi went to Bangwe Housing office he discovered that the plot belonged to Mr. Morgan. They were advised to pay some money to effect change of ownership but this never materialised. Later he found out that the respondent was working on the land and when he went to the housing office in Bangwe nothing changed. He confronted Yonani and the matter was referred to Bangwe police. When Kadzuwa has asked he stated that he bought the plot from city officers. He blamed all this mess on officials from City Assembly who were selling these plots in a crooked way.
- 3.8** Yonasi Gracian the 2<sup>nd</sup> Appellant told the court that the plot belonged to him and he decided to sell it to Mr. Nyanji after the plaintiff had refused to buy it. Njanji paid a consideration of K150, 000.00. He then instructed Mbalawala to be staying on the plot with Njanji. In 2007 he discovered that Kadzuwa was working on the land.
- 3.9** Overton Dickman Denis Sangala told the trial court that in September 2010 Yonasi told him that he had sold his plot to Njanji. At that time he was the area chairman for the location.
- 3.10** In its judgment the court below came to the conclusion John Khoswe was indeed living with Nyambalo who was sick at that time. The court also found that Yonasi failed to point at the exact place where the alleged plot was situated. The court found that that Nyambalo sold the plot to Kadzuwa before he died and therefore Yonasi had no land or title to pass on to Njanji. The court then found in favour of Kadzuwa and ordered Yonasi to refund the money to Njanji.

**4.0 The finding**

- 4.1** I have gone through the evidence as it was presented before the court below. I find that the magistrate had jurisdiction to try this matter as this was not registered or private land. This was land situated within the traditional housing area and does not form part of registered or private land.
- 4.2** In civil matters the burden and standard of proof is this. He who alleges must prove. The standard required is on a balance of probabilities. Whichever story is more probable than the other must carry the day. The court must be able to say this is more probable than not?"
- 4.3** The evidence clearly indicates that Mr. Nyambalo sold the plot to Kadzuwa just before he died. A sale agreement dated 10 June 2007 evidencing this sale has been exhibited. Thereafter Kadzuwa built a house on the plot. It is for this reason that the court below found in favour of Kadzuwa.
- 4.4** I have gone through the evidence, the reasoning behind the judgment of the trial court I see nothing wrong with the decision of the trial court. I see no error of law or fact in this matter. Therefore, on a balance of probabilities I totally agree with the trial magistrate and I confirm the judgment of the court below.
- 4.5** This appeal was ill conceived and was a waste of the court's time. The appeal was simply aimed at denying the successful party the fruits of litigation. This appeal is dismissed with costs.

I so order.

Pronounced in open court on 23<sup>rd</sup> October, 2018 at Blantyre in the Republic.



Dingiswayo Madise  
**Judge**