



IN THE HIGH COURT OF MALAWI

LILONGWE HIGH COURT

CIVIL CAUSE NUMBER 777 OF 2017

BETWEEN:

MRS LINELY MAGWIRA-----PLAINTIFF

AND

MR MATHIAS SATAYA-----DEFENDANT

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

Sitima, Counsel for the Plaintiff

Gulumba, Counsel for the Respondent

Itai, Court Interpreter

### RULING

1. This matter came before me through an inter-parte summons for continuation of order of injunction. There are several affidavits in support of this application namely, the initial affidavit, an affidavit sworn by Patrick Johnstone and a further affidavit in reply sworn by the plaintiff Mrs. Lineley Magwira. There are also skeleton affidavits in support of the application.

2. The defendant filed an affidavit opposing the application. There is also filed skeleton arguments in support of the defendant's position in this matter.

523. The facts as disclosed from the affidavits herein clearly show that the defendant as far back as 1998 was allocated land by the village headman of the area whereby he proceeded to file the relevant application forms with the Malawi Government. The said application is dated 28<sup>th</sup> September 1998.

4. The defendant went further to process a customary land consultation Form whereby Traditional Authority Nankumba and the district Commissioner Mangochi signed and endorsed the stamp thereon. Later the Commissioner Lands offered the defendant a lease of 0.2529 of a hectare of customary land. The offer is dated 15<sup>th</sup> of July 1999. All these documents are referred to as exhibits LMS1 to LMS3.

5. It is also clear from the affidavit evidence that the plaintiff submitted her customary land consultation Forms in 2008 and her application for lease in October 2009. This is almost 10 years after the defendant had already been offered a lease by the Malawi Government.

6. This therefore shows that the title in land by the defendant ranks in priority to any title which the plaintiff may claim to have.

7. In 2015, that is when the defendant wrote the Commissioner Lands and the District Commissioner Mangochi requesting for an extension and the plan shows that the neighbours are Messrs Mndala and Sembereka. The evidence that is before this court does not show that Elizabeth Johnson the plaintiff's alleged predecessor in title or the plaintiff herself own any land along the stretch of land occupied by the defendant.

8. As the affidavit of the plaintiff shows, it is clear that she is relying upon the rights of a third party one Mrs Elizabeth Johnson for her alleged right to possess the land. It is however clear from the affidavit evidence that the lands people neither the District Commissioner Mangochi have no record of ownership of the said land by Mrs Elizabeth Johnson.

9. Having given the case the best of its scrutiny, taking into account what I have stated above, I find that there is no serious dispute in this matter meriting the injunction herein to subsist.

10. I therefore discharge the order of injunction that was granted in 2016 with costs against the plaintiff.

MADE THIS

DAY OF JULY 2018 AT LILONGWE

M.C.C. MKANDAWIRE

JUDGE