

IN THE HIGH COURT OF MALAWI LILONGWE DISTRICT REGISTRY CIVIL APPEAL NUMBER 113 OF 2016

BETWEEN:

LEONARD ALISITALIKO ZULU	1 ST APPELLANT
ALISITALIKO ZULU	2 ND APPELLANT
AND	
MARY SELESO	RESPONDENT
CORAM: HON. JUSTICE M.C.C. MKANDAWIRE	
Alisitaliko Zulu, 2 nd Appellant	
Respondent, Absent (deceased)	
Mrs Mbewe, Court Reporter	
Itai, Court Interpreter	

JUDGMENT

This matter came before me in the form of an appeal against the decision of the Third Grade Magistrate sitting at Kalumbe in Mchinji. The matter before the magistrate related to the issue of encroachment on the land of the respondent. The lower court had found in favour of the respondent hence this appeal. The appellant filed three grounds of appeal. In a nutshell the grounds of appeal are that:-

1. The lower court erred in relying on the offer of lease of Mr Charles Chaona who was not at all a party to the proceedings in the lower court as the plaintiff was Mary Seleso now the respondent. The appellants also questioned the whereabouts of the title deed of Mary Seleso if the land was indeed hers.

- The lower court erred in handling the case because at the material time the
 magistrate was a tenant to the plaintiff. It was alleged that the magistrate
 was renting a house that belonged to the plaintiff Mary Seleso at
 Kamwendo trading centre. This therefore means that the magistrate was
 conflicted.
- 3. That there are no becons to show that someone had leased the land yet the appellants' parents started using the land in 1976.

When the matter came for hearing the appeal, the court was informed by a relative to the respondent known as LonziSeleso who came in to stand in for her that the respondent was now deceased. I would have then and there directed that the appeal be discontinued and deemed closed due to the death of the respondent. There were however few things that had exercised my mind which made me to make some enguiries from the appellant and relative of the respondent so that the record is made clear. In the course of the enguiry, it was made very clear that Charles Chaona was actually a husband to the deceased respondent and the land in issue was bought by the family only that the document was in the names of the husband Charles Chaona. It also became clear that the magistrate and the respondent were indeed both staying at Kamwendo trading centre but the magistrate was not a tenant to the respondent.

When I looked at the two issues that were used as the anchor to this appeal, I was of the view that even if the respondent was still alive and the court proceeded to hear the appeal, there is no way the appellants would have succeeded in this matter. Their grounds for appeal were frivolous and vexatious. The appellants had made a very serious allegation against the magistrate just to change like a chameleon. The appellants have to be very serious whenever they make allegations against public officers or else they may land in serious problems. In conclusion, since the respondent is dead, this appeal cannot proceed. Even if we had proceeded, the appeal had no merit

DELIVERED THIS

DAY OF JANUARY 2018 AT LILONGWE

M.C.C. MKANDAWIRE
JUDGE