



**IN THE HIGH COURT OF MALAWI**

**LILONGWE HIGH COURT**

**CIVIL CAUSE NUMBER 487 OF 2015**

**BETWEEN:**

**ERNEST LUNDU-----APPLICANT**

**AND**

**MRS RUTH MZANGA-----RESPONDENT**

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

**Katundu, Counsel for the Applicant**

**Chijere/Chagwanjira, Counsel for the Respondent**

**Itai, Court Interpreter**

**JUDGMENT**

1. This matter commenced through an originating summons that was issue by the court on 22<sup>nd</sup> April 2016 in which the plaintiff herein seeks determination of the court on the following matters:

- a) A declaration that the plot being occupied by the plaintiff belongs to the plaintiff and that he is the legal owner who purchased it legally.
- b) An order that the plaintiff is the owner of the plot.
- c) An order that the defendant's behaviour amounts to trespassing and an infringement to his right to peaceful enjoyment of the property.

2. The plaintiff prays for the following reliefs:

a) An order restraining the defendant by himself, his subjects, servants and agents or whatsoever from interfering with the rights of the plaintiff over possession or use of the said land.

b) An order that the defendant should compensate the plaintiff damages for trespass to land.

c) An order for the defendant to pay costs of the action.

3. This application is supported by an affidavit sworn by the plaintiff. The respondent did not file in any response to the plaintiff's originating summons. All that is on the court record from the respondent relates to a response for setting aside an injunction that was obtained by the plaintiff.

4. From the sworn statement of the plaintiff, it is noted that the plaintiff purchased this land from Moleen Banda and a sale agreement is exhibited as EL2. The plaintiff registered the land and the Land Certificate is EL1 dated 20<sup>th</sup> June 2011 signed by the Land Registrar.

5. The plaintiff constructed a house thereon which is now their matrimonial home. In 2014, the respondent came on the scene claiming that she was the owner of the land. This claim did not make any sense to the applicant as the respondent could not even mention the one who had sold her the land.

6. As I have already mentioned, the respondent did not put up any response. The only information on record is what she said in her application to have the injunction discharged. It is however amazing that the respondent who was legally represented did not find it necessary to formally oppose the originating summons. This was very casual indeed. I will therefore reluctantly refer to paragraph 4.1 of the affidavit in support of the respondent's application to discharge the injunction. In this paragraph, the respondent stated that she purchased the land in issue from a group of people and she attached the sale agreement which is MM1. She also said that the plaintiff brought this same matter before Group Village Headman Kasiya of Area 51A where the entire matter was heard and a decision was made by the GVH Kasiya which decision was in her favour. She attached the decision as exhibit MM2. The respondent therefore says that she is the bona fide purchaser of the land and therefore the rightful owner of the same.



7. The respondent also relied on the affidavit of GVH Kasiya. In his affidavit, GVH Kasiya denied having witnessed the sale of the land to the plaintiff in 2014. The GVH admitted that the official stamp on the sale agreement EL2 was indeed from his office and that he signed on the sale agreement through mistaken advice that Moleen Banda was the owner of the land yet it later transpired that she was just a fictitious and bogus person. The GVH was invited by the court to be cross examined by counsel for the applicant. It was very clear in cross-examination that he was disowning the the sale agreement between the plaintiff and Moleen Banda. He also referred to the written decision that he made after hearing the parties in this dispute. His determination is exhibit AKB1. According to GVH Kasiya, there was a syndicate in this matter which even involved his Deputy Mr Yusuf. It is Yusuf who he said had misled him to sign on the sale agreement. He also attacked the plaintiff's Land Certificate which he said was dated 2011 even before the plaintiff acquired the land.

8. The plaintiff replied to the affidavit of GVH Kasiya. The thrust of his reply was that he insisted that he dealt with GVH Kasiya and not Yusuf. He also said that GVH Kasiya was aware of whatever was going on. He also wondered as to why GVH Kasiya was alleging that the Land Certificate was forged yet the Land Registrar was just complying with the law by backdating the certificate.

9. This case is particularly based on documentary evidence. In order to show that the land belongs to the applicant or respondent, both parties have produced sale agreements. I will first look at the sale agreement for the plaintiff dated 2014 which is EL2. On this day as per EL2, GVH Kasiya personally witnessed the transaction and he endorsed it with his signature and official stamp. I really failed to believe GVH Kasiya when later on in his affidavit he said that he was not part and parcel of the sale transaction or that he was misled by Yusuf. He did not explain properly as to how this Yusuf had misled him. GVH Kasiya gave an impression that he was a very intelligent personality. He had been in that area for long and after the land was sold, he saw the plaintiff developing the land. I took note of the fact that the land certificate was dated 2011. If this certificate is said to be forged, it was incumbent upon the respondent to bring contrary evidence from Lands Office to challenge this certificate as bogus. The respondent had not done any search at the Deeds Registry at Lands in order to counter this certificate. It is therefore not proper for this court

to believe the respondent that just because the Land Certificate is dated 2011 then it is forged.

10. I have looked at the agreement forms tendered by the respondent as the evidence that she bought the land in 2009. It is however contrary to what the respondent pphad said in her affidavit that she bought the land from a group of people. The sale agreement does refer to an individual. Which is which? I have also looked at the decision that GVH Kasiya had made before this matter was referred to the court. The respondent in arguing her case invited the court to place weight on this decision since it was in her favour. With due respect to GVH Kasiya, I do not think that it was proper for the GVH to hear a case in which his own name was in issue having witnessed the sale transaction between the plaintiff and Moleen Banda. This was a proper case in which GVH Kasiya should have recused himself to avoid bias and embarrassment. From what GVH said about Yusuf and himself, it was wrong for GVH Kasiya to hear the matter.

11. Having looked at all the evidence in this matter, I was of the view that the plaintiff had satisfied me on a balance of probabilities that he is the rightful and legal owner of this land. I therefore grant him all the orders that he was seeking together with the reliefs sought. Assessment of damages for trespass to be done by the Assistant Registrar. Costs to the applicant.

**DELIVERED THIS      DAY OF AUGUST 2018 AT LILONGWE**

**M.C.C MKANDAWIRE**

**JUDGE**