



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NUMBER 478 OF 2013

BETWEEN:

MORRIS LUFANI

PLAINTIFF

AND

CROWN AGRO INDUSTRIES LIMITED

DEFENDANT

CORAM: JUSTICE M.A. TEMBO,

Kapoto, Counsel for the Plaintiff
Mnyanga, Counsel for the Defendant
Mtegha, Official Court Interpreter

JUDGMENT

This is this court's judgment following a trial of this matter. The plaintiff's claim is that the defendant's occupation and use of a 10-acre piece of customary land situate at Tiferakaso village under Traditional Authority Nsamala in Balaka district is unlawful as the defendant did not acquire any legitimate rights in relation to the said land from Ms Nasoko who had sold the said land to the defendant.

The plaintiff further claims possession of the land in question, damages for trespass to his land and mesne profits at K250 000 per month from the date of his claim until delivery up of possession and an injunction against the defendant's occupation of the land. The plaintiff also claims costs of this action.

The defendant, an agriculture business company engaged in chicken farming, denies the plaintiff's claim and asserted that it followed all the procedures relating to the acquisition and use of the customary land in issue herein.

The plaintiff claim is as follows.

He claims that at all material times he was owner of a 10-acre piece of land situated at Tiferakaso village under Traditional Authority Nsamala in Balaka district.

He stated that his father Ali Lufani had an elder brother who bore Elias Lufani who married Ms Nasoko and bore Yosefe and Henderson Lufani. He denied being a brother to Mabvuto Lufani and claimed to be the only child of his father.

He claims that in March 2013, he was residing in Dedza and intended to relocate with his family to the land in dispute herein. He claims further that, in preparation for the relocation, he visited his piece of land in dispute herein and found that the defendant had started constructing a fence around the whole of the land in dispute herein.

He claims that upon inquiring as to who authorized the defendant to start developing the land, he discovered that Ms Nasoko was the one who had allegedly sold that the land to the defendant. He claims that Ms Nasoko is a woman to whom he had lent part of his land and who has been looking after his land whenever he was away.

He claims further that he quizzed Village Headman Tifelakaso and Group Village Headman Nyanyala as to why the two had allowed the said Ms Nasoko to sell his land and he only got unsatisfactory answers.

The plaintiff claims further that Group Village Headman Nyanyala started alleging that the plaintiff had sold his land to a Mr Kamphulusa, now deceased, an allegation the plaintiff strongly denies.

The plaintiff claims that since he inherited the land in dispute from his late father, Mr Ali Lufani, he has been owner of the same and has used it for farming.

The plaintiff claims that Ms Nasoko who fled to Mazambique soon after purportedly selling the land in dispute was not the rightful owner of the said land and could not pass title to the defendant.

The plaintiff therefore claims against the defendant for possession of his 10-acre piece of land, damages for trespass, mesne profits at K250 000 per month from date of claim up to date of delivery and an injunction restraining the defendant from occupation of the land in dispute. He also claims costs of this action.

As earlier stated, the defendant denies the plaintiff's claims and asserted that it followed all the procedures relating to the acquisition and use of the customary land in issue herein.

The issue for determination in this matter is whether the defendant indeed unlawfully took, from the plaintiff, the possession and use of the customary land in dispute herein.

This Court bears in mind that, as correctly submitted by the parties, the standard of proof in these civil matters is on a balance of probabilities. And, that the burden of proof lies on he who asserts the affirmative. The plaintiff must therefore prove his claim to the requisite standard. See *Sivaswamy v Agason Motors Ltd* [1995] 1 MLR 274 and *Nkuluzado v Malawi Housing Corporation* [1999] MLR 302.

At the trial, the plaintiff brought his witnesses to prove his claims. The defendant also brought its own witnesses to contest the plaintiff's claims.

Thereafter the parties filed their submissions on the evidence and the relevant law. It is convenient to state the evidence, which is contested, before considering the parties' submissions.

The plaintiff brought five witnesses. The first witness was the plaintiff himself. He testified that he is the only child in his family. He stated that his father and the entire family were based at Chilomoni and around the 1970s his father went to Balaka to look for a place for farming.

He stated that fortunately, his father met Group Village Headman Nyanyala who gave the land in dispute herein to the plaintiff's father freely for farming.

He then stated that his father's distant relative, Ms Nasoko, was in around 1980 also given a piece of land by the same Group Village Headman Nyanyala. However, that her piece of land and that of his father were far apart.

The plaintiff stated that his father cultivated his piece of land herein every year until in 1988 when he died. He added that pursuant to his father's will, that he should take over possession of that piece of land after his death, the plaintiff took over the land and continued to farm on it.

He then stated that in the early 1990s Ms Nasoko sold her land which she had been given by Group Village Headman Nyanyala and sought permission from the plaintiff to temporarily occupy part of the plaintiff's land pending her identifying a new place to stay. The plaintiff stated that he allowed Ms Nasoko to stay on his land.

The plaintiff stated that Ms Nasoko occupied part of the land while he continued to farm the remaining part and when a health problem arose in his family in 1996, the plaintiff wanted to sell his land but family members discouraged him from so doing. He added that he continued to farm his land.

He stated that in 2013 he decided to relocate with his family from Dedza and settle on the land in dispute herein. He visited the land and realized that the defendant had started constructing a fence around the whole piece of land.

He added that he made thorough enquiries and discovered that his land had been sold by Ms Nasoko who had been on the land with his permission.

He stated that he went to meet Group Village Headman Nyanyala and Village Headman Tifelakaso to inquire about why they allowed sale of his land in his absence or without his involvement and got no answer.

He stated that Group Village Headman Nyanyala wrote a letter on 2nd September 2013 stating that the land belonged to the plaintiff initially but that he later sold it to Mr Kamphulusa, now deceased.

The plaintiff denies selling the land to Mr Kamphulusa and he exhibited a letter from the son of the late Kamphulusa, Gift Kamphulusa, indicating that his late father never bought the land in dispute as alleged by Group Village Headman Nyanyala.

The plaintiff stated that Ms Nasoko, who fled to Mozambique immediately after purportedly selling the land, was not the rightful owner and therefore could not pass title to the defendant.

He stated further that, due to this unlawful sale, he has been deprived of possession of his land and his right to use the same and has incurred costs and lost profits in relation to the said land.

He then repeated his claims against the defendant herein.

During cross-examination, he stated that his father used to grow maize and ground nuts on the disputed land. He added that he continued to grow the same crops after his father died.

He stated that he used to visit the village where the land is, in the past, three or four times a year. He added that he would meet Ms Nasoko during his visits. And further that one time she had left for Mozambique.

He then stated that he knew that Ms Nasoko had sold her land to Mr Leonard Sitima.

He then stated that his late father had built a house on the disputed land and he used to stay in that house when he visited there.

He reiterated that after his father passed on he used to farm on the land before he got married in Blantyre. He added that after he got married he went to stay at Dedza but still farmed on the land herein.

He then stated that the land was sold in 2012 to the buyer but does not know the month.

He stated that around February or March 2012, he visited the land before he heard about the sale. He added that he went to the land several times in 2012.

He then stated that in March, 2013 he found the land had been sold.

He stated that he did not visit the land in 2012 and then that he visited in February 2012 and that by then the defendant had not started construction.

He then stated that in 2012 his son was ill and he did not visit the land herein. He added that he had no workers on the land. He stated that he used to work the land during the planting season then he would leave.

He then stated that in 1996 when his son was ill, he tried to sell his land to Mr Kamphulusa.

He stated that he never heard of any complaint by Ms Nasoko then to the Village Headman. He added that he never appeared with Ms Nasoko before the Village headman about that issue.

He stated that he sued the defendant for buying land from someone who does not own the land.

He added that the defendant should have investigated. And that the people whom the defendant investigated gave the wrong information so he wants his land back.

During re-examination, he stated that he would stay on the land for two to three months during each visit. And that he has worked this land since his father died in 1988 up to 2011.

The second witness for the plaintiff was Jennifer Amini. She stated that she was 45 years old and is a daughter of Ms Nyasa, the one whose land formed a boundary to the plaintiff's land herein.

She stated that when she was young, around 1972, that is when her mother received land from Traditional Authority Nyanyala. She added that this was the same time the plaintiff's father had been given his land.

She stated that her mother built a house on her piece of land which forms a boundary with the plaintiff's land. She added that by then the plaintiff's father was staying at Chilomoni in Blantyre and was cultivating the land.

She stated that she knew Ms Nasoko who was an in-law to the plaintiff's father as she was wife to the plaintiff's father's nephew.

She then stated that the plaintiff's father helped Ms Nasoko to get her own land from Chief Nyanyala.

She stated that when the plaintiff's father died, the plaintiff, his only son, took over the land and was cultivating on the same.

She then stated that being a neighbour on the land, she was informed by the plaintiff that Ms Nasoko had sold her own land and had nowhere to stay and that she requested the plaintiff for a place to stay on temporarily until she found a new place and the plaintiff allowed her to stay on his land.

She stated that Ms Nasoko occupied part of the plaintiff's land and the plaintiff cultivated the remaining part of the land.

She stated that at one time, the plaintiff wanted to sell his land due to health problems but was persuaded by his family not to and the transaction was cancelled and he continued to farm on his land.

She then stated that due to work, the plaintiff told her that he was relocating to Dedza but he continued to farm on his land and also left Ms Nasoko to look after the land.

She stated that Ms Nasoko told her family that she was going to Mozambique and she was living her sons Mabvuto and Henderson on the land and she left.

She stated that a year after Ms Nasoko had left for Mozambique, it is when she heard that the land herein was up for sale and that at that time Mabvuto and Henderson were still occupying the land as they were left by their mother on the land.

She stated that by the time the sale of the land was made, she used to see Mabvuto and Henderson active in the sale transactions. She stated that she never saw Ms Nasoko around the land, and that if anything, she may have been appearing on the land in disguise.

She then stated that all along what she knew was that the land was being occupied by Ms Nasoko and her sons in waiting for the plaintiff and not as owners of the said land.

She stated that later on Mabvuto and his relatives were removed by the defendant from the land and he was employed by the defendant. She added that she knew Mabvuto had been occupying the land until it was sold.

She stated that later on, the plaintiff came to Balaka to relocate to his land and found that the land had been sold and that Ms Nasoko was in Mozambique and when he made inquiries at Chief Nyanyala he discovered that the Chief Authorized the sale without the plaintiff's consent or approval.

She stated that if Ms Nasoko or her sons had sold the land then the sale was unlawful and they have deprived the plaintiff of possession of his land and his right to use as they were just occupying and not as owners that that is as far as she is concerned as a neighbour since 1972.

She stated that she knows that Ms Nasoko or her sons were not the rightful owners of the land and therefore could not pass title to the defendant.

During cross-examination, she reiterated that she knew the plaintiff's father. She reiterated that his land which he got from the Chief was next to her land.

She reiterated that it is in 1981 when the plaintiff's father helped Ms Nasoko to get her own land from Chief Nyanyala.

She stated that the plaintiff's father used to come every year to farm on the land herein. She added that he had one worker who was married near her place.

She stated that she does not recall when Ms Nasoko sold her land and asked to live on the plaintiff's land. She stated that Ms Nasoko sold her land to Mr Leonard Sitima.

She stated that the plaintiff would stay at the village to farm and would later go back to Chilomoni. She added that when the plaintiff's father died he would come to the village to farm on the land. However, that when the plaintiff was in school he was not really on the land.

She added that when the plaintiff's father was alive, the plaintiff would come to the land herein.

She stated that people normally talk about land that is for sale. But that she does not know who told her that the plaintiff's land was up for sale.

She stated that the plaintiff came in 2012 to stay on his land that is when he discovered that the land had been sold. She added that there used to be a house on the land but it was demolished. And that this used to be the plaintiff's father's house.

She reiterated that Ms Nasoko and her children were staying on the land in dispute.

During re-examination, she stated that after Ms Nasoko got her own land she farmed it and the plaintiff's father also farmed his own.

She stated that initially Ms Nasoko stayed on Mr Makata's land and later asked the plaintiff to temporarily stay on his land. She added that Ms Nasoko and the plaintiff cultivated on the same land because it is huge.

The next witness for the plaintiff was Mr Numeri Nsani. He stated that he knows the plaintiff since his parents were his family friends. They stayed together at Chilomoni.

He stated that his father Mr Makata and the plaintiff's father Mr Lufani went to Group Village Headman Nyanyala in Balaka to ask for land and they were given.

He stated that he recalls that the two families used to go to Balaka to farm on their land.

He then stated that when the plaintiff's father died, the plaintiff told him that he inherited the land herein and that he approached Group Village Headman Nyanyala and told him of his inheritance and sought permission to continue cultivating on the land which he was granted. He added that the plaintiff and his family continued to farm on the land.

He then stated that he does not have an idea what kind of relationship existed between Ms Nasoko and the plaintiff but what he knows is that Ms Nasoko was stranded and asked for a place to stay and the plaintiff gave her permission to temporarily occupy part of the plaintiff's land while she was looking for another place to buy.

He stated that when the plaintiff wanted to sell the land herein it was Ms Nasoko and other relations including his father who discouraged the plaintiff from doing so.

He added that when the plaintiff left Balaka for Dedza due to work, he left Ms Nasoko on the part of the land whilst she was also looking after his part of the land which he was still cultivating.

He then stated that after sometime he was told by the plaintiff that his land herein had been sold to the defendant.

He then stated that after an inquiry as to who had sold the land Ms Nasoko was mentioned as the one who was left occupying the land and she left the land for Mozambique without informing the plaintiff. He stated that the plaintiff denied receiving any cash from the sale.

He then stated that he advised the plaintiff to see Chief Nyanyala and inquire about the sale and the plaintiff discovered that the land sale had been authorized by Chief Nyanyala himself.

He stated that he knows that the plaintiff's father had one child who is the plaintiff and that everything he left had reverted to the plaintiff including the land herein. He added that Ms Nasoko who fled to Mozambique soon after the purported sale of the land was not the rightful owner and therefore could not pass title to the defendant.

He believes that the sale of the land herein was unlawful and deprived the plaintiff of possession and use of his land.

During cross-examination, he stated that the plaintiff was not living on the land after his father died. But that the plaintiff would visit the land every month. Rather, that the plaintiff would visit the land five or six times a year. He added that the plaintiff had a house on the land herein.

He stated that he did not know whether the plaintiff had workers on the land herein. He added that he is a close friend of the plaintiff.

He added that he was present when the plaintiff wanted to sell his land in 1996 but he could not recall the month.

He stated that he does not know if Ms Nasoko built a house on the land herein. He added that Ms Nasoko's house was on Mr Makata's land. He stated that when he was leaving the village herein in 1996 Ms Nasoko's house was on Mr Makata's land.

He then stated that after he left the village he visited there twice but never met Ms Nasoko. He said that, however, he met the plaintiff who was staying on his own land herein.

He stated that he does not know when the plaintiff left Balaka for Dedza. He stated that the plaintiff would stay in Dedza and come to Balaka but he could not say when the plaintiff did so.

He then stated that he does not know how and when Ms Nasoko went to live on the plaintiff's land. However, he stated that he heard from the plaintiff that Ms Nasoko asked for land from the plaintiff.

The fourth witness for the plaintiff was Samson Makata Phiri. He stated that he knows the plaintiff who is his good old friend and that their fathers were also great friends.

He stated that in the 1970s when he was 12 years old his father and the plaintiff's father went to Balaka to look for farm land and they met Group Village Headman Nyanyala who gave them the land.

He stated that since he was close to the plaintiff's family, he knew that the plaintiff's father offered to help his in-law Ms Nasoko and around 1980s she was given land by the same Group Village Headman Nyanyala. But that the pieces of land for the plaintiff's father and Ms Nasoko were far apart.

He stated that later, when the plaintiff's father died, Ms Nasoko sold her land and sought permission from the plaintiff to temporarily occupy part of the plaintiff's land which the plaintiff allowed.

He added that Ms Nasoko built a house on the plaintiff's land and was looking after the land when the plaintiff was away in Dedza.

He stated that at one point the plaintiff wanted to sell the land but was advised by relatives, including himself, and he cancelled the sale.

He then stated that after a year or two, he heard that the land had been sold by Ms Nasoko and he informed the plaintiff. He added that when the plaintiff came to Balaka he inquired and found out that the successor to Chief Nyanyala who had given the land is the one who authorized the sale of the land.

He stated that he knows that the plaintiff herein was the rightful owner of the land, being the only child of the late Mr Lufani the senior. And that the plaintiff inherited the land from his father and he had been cultivating on the land for years.

During cross-examination, he stated that he never permanently lived in Balaka but that his parents had land there.

He would visit this land during school holidays and this would be in every December.

He stated that the plaintiff's father would go there every month to pay workers and he would go on holidays.

He stated that the plaintiff's father had three workers on the land herein.

He stated that Ms Nasoko was given land belonging to Mr Lufani. He added that Ms Nasoko overstayed on Mr Makata's land before she went to Mr Lufani's land.

He stated that Ms Nasoko stayed on Mr Makata's land then she would go to farm on her own land. He added that he does not know when Ms Nasoko sold her own land since he only visited during holidays.

He stated that he heard from Ms Kanyasa that Ms Nasoko had sold the plaintiff's land. He added that Ms Kanyasa is a neighbor to the plaintiff's land.

He then stated that Ms Nasoko found an existing house on the plaintiff's land. And that this was the house of the plaintiff's father that he used on his visits.

He stated that when the plaintiff visited the land he would stay with Mr Makata since his land was taken away.

He then stated that his father would visit the land monthly to pay workers but would stay longer during harvest period.

He then stated that Mr Ngalanda told him that Ms Nasoko had sold the plaintiff's land and this was in 2013. And that he is the one who told the plaintiff that his land had been sold.

The last witness for the plaintiff was Eunice Willard. She recalled that in mid-2012, she and her husband were looking for land to settle on.

She stated that they found Mr Soko who told her that Mavuto Lufani was selling his piece of land. And that they met Mavuto Lufani who confirmed that he had a piece of land for sale.

She stated that they found Mavuto Lufani at his house and proposed to buy part of the land close to his house as it was close to the main road hence suitable for business.

She stated that Mavuto Lufanu refused to sell them that proposed piece of land and told them that that piece of land belongs to his father. She added that Mavuto Lufani told them that the piece of land that was on sale belongs to his mother and was a few kilometres away, where Mr Sitima had also bought from him.

She stated that they went to see the land and they agreed that they would buy the land. She added that Mr Sitima is their neighbor and he also bought his piece of land from Mavuto Lufani before they bought theirs.

She stated that the sale transaction was endorsed by Village Headman Tiferakaso and witnessed by Mr Soko of their side and Mr Sitima on Mavuto's side.

She stated that after some time she heard that Mavuto had sold to the defendant the piece of land he had refused to sell them for not being his.

During cross-examination, she reiterated that she wanted to buy land herein with her husband from Mavuto Lufani. She added that Mavuto Lufani told her that the land belonged to his mother. And that she realized this is the same piece of land that Mavuto Lufani sold to the defendant.

During re-examination, she stated that the land that Mavuto Lufani sold to her and her husband was not the one that he sold to the defendant. And that Mavuto Lufani sold them another piece of land that he said belonged to his mother.

That marked the end of the evidence of the plaintiff.

The defendant called seven witnesses in its own defence.

The first witness for the defendant was Davie Malamia and he stated as follows.

That he is the public relations officer for the defendant.

Further, that in 2013, he was approached by Mavuto Lufani who indicated to him that he and his other family members were intending to relocate to their original village in Dedza. And that Mavuto Lufani further indicated that they were willing to transfer to the defendant their family's right to occupy and use a certain piece of customary land located at Tiferakaso village within the area of Group Village Headman Nyanyala and Traditional Authority Chanthunya.

He then stated that, as the defendant's aim was to have a layers' chicken farm located at a distance of not less than 3 km from the nearest farm owned by the defendant, the defendant expressed its interest in acquiring the right to use the said land. He stated that the defendant then asked him to conduct further inquiries about ownership.

He stated that pursuant to the stated task, he approached Village Headman Tiferakaso whom he later learnt is under Group Village Headman Nyanyala and Traditional Authority Chanthunya.

He stated that he personally briefed Village Headman Tiferakaso about the offer from Mavuto Lufani and also about the defendant's intended farming project.

He stated that Village Headman Tiferakaso then introduced him to Group Village Headman Nyanyala who in turn introduced him to Traditional Authority Chanthunya.

He stated that the inquiries he conducted revealed that Mavuto Lufani is the last-born son of Ester Lufani. And that Mavuto Lufani's elder brothers are Manuel and Joseph.

He added that he then met and interviewed the household members except their elderly mother Ester Lufani and he was briefed on how Ester Lufani who was a daughter-in-law to Ali Lufani, deceased ended up having the land in dispute herein.

He added that he confirmed what he was briefed about with the Chiefs and people who were in occupation of neighbouring land to the one in dispute. He added that they confirmed that Ester Lufani occupied the land in dispute exclusively.

He stated that upon being satisfied that there were no other persons who could lay a competing claim against Ester Lufani and upon being assured by the chiefs that the land herein was assigned to Ester Lufani it was agreed that the defendant do compensate her with K3 200 000 in exchange for her willingness to assign and transfer her rights to occupy and use the land herein to the defendant.

He stated that the chiefs then formally assigned the defendant the right to occupy and use the customary land which is adjacent to the land in issue. He added that the

adjacent land belonged to the Malopa family. He added further that the defendant has since made an application for lease.

He stated that in the same year the defendant constructed a brick wall and chicken houses on the piece of land herein.

During cross-examination, he stated that neighbouring the land in dispute there is the Malopa family, then there is the defendant's land and on the other side there is the road.

He stated that he does not know Jennifer Amini. And that in his inquiries he never met Jennifer Amini.

He stated that after Mavuto Lufani sold the land to the defendant he stayed on the land for six months and worked as a guard. And that later he moved out. He added that Mavuto Lufani did not go to Dedza but his family did.

He then stated that most of the land in dispute was idle and only a small portion of it was being cultivated. He added that most of it was virgin land and very rocky. Further, that the defendant is using a bull dozer to level the land.

He then stated that he never spoke to Mavuto Lufani's mother when he was being briefed on the history of the land and that he only heard about the said history of the land.

During re-examination, he stated that after the six months Mavuto Lufani stated that he was going to his mother in Mozambique.

The second witness for the defendant was Elena Simoni Lufani also known as Ms Nasoko. She stated that she was born in Tsangano district in Mozambique but moved to Malawi after he was married to Elias Lufani a nephew to Ali Lufani. She added that she used to live at Chilomoni in Blantyre. She does not recollect the dates.

She however said that after her marriage ended, her father-in-law, Ali Lufani, sought land for her at Nyanyala Village in Chanthunya's area in Balaka. And that this was in the early 80s when she was expecting Mavuto Lufani.

She stated that she went together with Ali Lufani to see Village Headman Nyanyala and that Ali Lufani told Village Headman Nyanyala that the land he had previously sought was for her and the Village Headman accepted and allocated her the land.

She stated that she went on the land and built a house on the land and started cultivating on the land. She added that Ali Lufani went back to Chilomoni and continued staying there and never came back to the land.

She stated that when she arrived at Nyanyala village she stayed with chief Nyanyala.

She stated that she does not know Leonard Sitima.

She then stated that she knows the plaintiff as son to Ali Lufani. She added that she knew him as he was staying with his father in Chilomoni whilst she stayed at a different place in Chilomoni.

She stated that after some time Ali Lufani passed on and Morris Lufani covertly sold the land she was staying on to a certain Kamphulusa in Chilomoni. She added that Morris Lufani then came to the land to tell her that he had sold the land to Kamphulusa who intended to start a poultry farm.

She stated that she then reported the matter to the councilor of Tiferakaso and the matter was referred to Group Village Headman Chanthunya and that Village Headman Nyanyala attended the hearing.

She stated that Village Headman Nyanyala stated that he did not know the plaintiff but only knew his father and that in any case his father had not bought the land but was only given the same. She added that Group Village Headman Chanthunya held that having stayed in the village on the land for a considerable number of years, she owned the land and he also ordered the plaintiff to return the money he had received from Kamphulusa and that the plaintiff agreed to do so.

She stated that after the dispute and the decision of Group Village Headman Chanthunya she continued to stay on the land and the plaintiff never came back to the land.

She stated that in 2012 they decided as a family to cede possession of the land to the defendant in consideration of a compensation whose sum she cannot remember as it is her sons who were in the forefront dealing with that matter.

She added that the Village Headman Tiferakaso, Group Village Headman Nyanyala and Traditional Authority Chanthunya all consented to the ceding of possession and thereafter she left for Tsangano Mozambique.

She reiterated that the plaintiff never at any time possessed the land either as an occupier or user through cultivation.

During cross-examination, she stated as follows. She confirmed that she knew Ali Lufani. But she did not know when he was given land at Nyanyala village.

She stated that by the time she went to Nyanyala village he had not been given land already in that village. She added that it would be a lie to say that Ali Lufani was already farming at Nyanyala village before she arrived there. She added further that Ali Lufani did not have land at Nyanyala village before her arrival there.

She stated that she knows how Ali Lufani knew Village Headman Nyanyala. But she did not know when Village Headman Nyanyala gave land to Ali Lufani.

She then stated that she does not know when Ali Lufani died as she is not familiar with the space of time in years.

She then stated that the land she was given was big. She added that she was the first one to cultivate on that land. She added further that she was cultivating on that land by herself. She then stated that she has two children and so there were three of them.

She then stated that when she arrived at Nyanyala village she was not staying with Ali Lufani but that he just left her there. She added that he left and never came back until he died.

She stated that none of Ali Lufani's relations knew about the location of the land herein. She added that she believes the plaintiff was told by people about this land.

She stated that she does not know that the plaintiff sold this land. She added that she never complained to Chief Tiferakaso that the plaintiff sold her land.

She then stated that at the time she got the land herein there was no building on the land.

She then stated that she has never met the plaintiff.

She then stated that she never sold the land to the defendant but just gave them. And that the defendant thanked her for the land.

She stated that she left for Mozambique two years ago due to illness.

She then stated that she does not know Jennifer Amin. She also stated that the land herein has no neighbouring land.

During re-examination, she stated that the defendant thanked her by giving her money.

She then stated that she never built a house on the land but stayed with Mr Makata, Mr Ali Lufani's friend. She added that she started cultivating the land and later built a makeshift house. She stated that no relation of Ali Lufani cultivated on this land. And further that they never came to this land.

She stated that she knew the plaintiff sold her land to Kamphulusa because Kamphulusa came to make bricks on the land. And she went to complain to the chief.

She then stated that when she left for Mozambique she left her son Mavuto on the land.

The third witness for the defendant was Emanuel Lufani. He stated that he was born in 1964 at Linthipe to Elias Lufani and Elena Lufani (nee Simoni) also known as Ms Nasoko before his parents moved to Chilomoni. His father worked as a courier driver at Blantyre Print.

He stated that after sometime his parents' marriage collapsed and he went briefly to Tsangano in Mozambique with his mother.

He added that when the marriage was collapsing his mother was expecting so his grand uncle called his mother from Tsangano saying that he had found a place for her to stay at Nyanyala village in Balaka.

He stated that he and his mother then went to Nyanyala village where, with the consent of the village headman, they were allocated a piece of land. He added that Ali Lufani, his grand uncle, told the village headman that the land he had earlier requested was for him and his mother Ms Nasoko.

He then stated that he knows the plaintiff as the son of Ali Lufani. He added that he knew Ali Lufani when he was staying at Chilomoni.

He stated that after some time Ali Lufani passed on and the plaintiff covertly sold the land herein to Kamphulusa who wanted to start a poultry farm.

He stated that his mother then reported the matter to the councilor of Tiferakaso and the matter was referred to Group Village Headman Chanthunya and that Village Headman Nyanyala attended the hearing.

He stated that Village Headman Nyanyala stated that he did not know the plaintiff but only knew his father and that in any case his father had not bought the land but was only given the same. He added that Group Village Headman Chanthunya held that having stayed in the village on the land for a considerable number of years, Ms Nasoko owned the land and he also ordered the plaintiff to return the money he had received from Kamphulusa and that the plaintiff agreed to do so.

He stated that after the dispute and decision of Group Village Headman Chanthunya they continued to stay and cultivate on the land. He added that he briefly went to Mulanje but returned to the village. He added further that the plaintiff never came back to the land. He then stated that he later moved to Tsangano Mozambique due to business engagements.

He stated that in 2012 they decided as a family to cede possession of the land to the defendant in consideration of a compensation of K3 200 000.

He added that the Village Headman Tiferakaso, Group Village Headman Nyanyala and Traditional Authority Chanthunya all consented to the ceding of possession and thereafter his mother left for Tsangano, Mozambique.

He stated that the plaintiff never at any time possessed the land either as an occupier or user through cultivation.

During cross-examination, he stated that he does not recall when his mother's marriage collapsed. But by then he was 16 years old.

He stated that Mavuto Lufani was born in 1980. He stated that by then he was 16 years old and he went to the village.

He stated that Mr Ali Lufani sent Joseph Lufani to tell his mother to go. He said he is older than Joseph Lufani. He added that Joseph Lufani was born in 1966 and was 14 years.

He stated that he does not recall when he left Chilomoni for Tsangano.

He stated that the plaintiff never visited them at the land at Nyanyala village.

He could not recall when the plaintiff sold the land to Kamphulusa.

He stated that he was a witness to the occasion when Ali Lufani told the Village Headman that the land was for his mother, Ms Nasoko.

He stated that when they first arrived at the land they stayed at Mr Makata's place. And that Mr Makata was Mr Ali Lufani's friend. He added that Mr Makata was farming his own land he got from Village Headman Nyanyala. And that Mr Makata stayed in the village.

He stated that the land herein was one big piece of land but he did not measure its size.

He stated that he does not know Eunice Willard. He also said he does not know that Eunice Willard bought land from Mavuto Lufani.

The fourth witness for the defendant was Joseph Lufani. He stated that he was born in 1966 in Chilomoni to Elias Lufani and Elena Lufani also known as Ms Nasoko.

He stated that after a while his parent's marriage collapsed and he stayed with his father at Chileka and by then his mother had gone to Tsangano in Mozambique.

He stated that by then his grand uncle Mr Ali Lufani was staying at Chilomoni and he would sometimes stay with him. He added that Mr Ali Lufani had a son who is the plaintiff. He regarded the plaintiff, who was studying at Central High School in Limbe, as his father

He stated that when his mother's marriage was collapsing she was pregnant and so Mr Ali Lufani sent him to Tsangano to tell her that Mr Ali Lufani had found a place for her to be staying at Nyanyala village in Balaka. And that he then brought his mother to Chilomoni and together with Mr Ali Lufani went to Nyanyala village where with the consent of the village headman they were allocated a piece of land.

He stated that Mr Ali Lufani told the village headman that the place he had earlier sought was for Ms Nasoko and her children.

He stated that he stayed at Chilomoni until his father passed on. He then went and stayed at Nyanyala village between 1996 and 2000 after which he went to Linthipe 1 in Dedza.

He stated that the plaintiff has never at any time owned or possessed the land herein as an occupier or user of the land.

During cross-examination, he stated that Mr Ali Lufani gave the land herein to Ms Nasoko his mother.

He added that before giving this land to Ms Nasoko Mr Ali Lufani was farming this land.

He reiterated that the land is big but he cannot estimate its size. He added that it was impossible to cultivate the whole of the land because it is big. And that they only cultivated parts of the land.

He stated that the marriage of his mother was not ended at court and they just left each other. He stated that his mother might not have understood well if she said they got a divorce. He stated that by then he was eight years old.

He stated that his father worked at Blantyre Print. He added that his father would stop by on his way to Lilongwe. He stated that his parents had a disagreement but their marriage did not end.

He stated that Ali Lufani sent for his mother and gave her land at Nyanyala. He added that Ali Lufani was living here in Blantyre.

He stated that Ali Lufani would go and hire people to cultivate the land herein but he did not cultivate the whole land.

He stated that he knows the boundaries of the land herein. He added that on the right there is Malopa family land and that on the left there is Ms Kanyaza's land. And further that on the north there is the road. He added further that on the other side there is another woman's land but he forgot her name.

He stated that he does not know Jennifer Lameck. And that he may know her by another name.

He reiterated that his mother had been given one piece of land. Further, that the village headman did not give his mother any other land than the one that Mr Ali Lufani gave her.

During re-examination, he reiterated that Mr Ali Lufani cultivated on the land herein before Ms Nasoko came to the land herein.

The fifth witness for the defendant is Lemson Chibala. He stated that he is Group Village Headman Nyanyala. He was born in 1955 at Nyanyala village and has stayed there all his life.

He stated that he knows the land in dispute by virtue of it being under his area of jurisdiction. And that the land is situated at about four kilometres from where he stays.

He stated the plaintiff came to his office in 2012 to complain about a sale of the land in dispute herein. He added that at that time he told the plaintiff that the land herein did not belong to him and that in any case, he had sold the land in early 80s culminating in a dispute which was resolved by Group Village Headman Chanthunya.

He stated that, at the plaintiff's request, he then wrote a note to the plaintiff detailing this position.

During cross-examination, he stated that the land herein was sold to the defendant in 2011 if he was not mistaken. He added that he was approached and told that the land was being sold. He admitted that it was possible the land was bought by the defendant in 2013.

He stated that when the plaintiff came to complain herein he did not record the date and that is why he seems to confuse the dates.

He then stated that the plaintiff did not sell the land herein in the 1980s. He then stated that what he told the plaintiff was true. He added that he did not tell the plaintiff that the plaintiff sold the land in the 1980s.

He then stated that he knows Mr Kamphulusa who wanted to buy land from the plaintiff. He added that Mr Kamphulusa never got land in his village. He stated that this Kamphulusa was from a neighbouring village at Phalula.

During re-examination, he stated that land sold to the defendant herein belonged to Ms Nasoko also known as Mrs Lufani.

He confirmed telling the defendant that this land belonged to Ms Nasoko.

He then stated that the plaintiff sold the land herein to Kamphulusa and Ms Nasoko wanted her land back which the plaintiff had sold. He added that the dispute went to Group Village Headman Chanthunya after it had been dealt with by Village Headman Nyanyala.

The sixth witness for the defendant was Kanada Elia. He stated that he is Village Headman Lindadi. He added that he was born in 1942 at Nyanyala village and he grew up in the same village.

He stated that he knew the plaintiff when he came to his village to discuss an issue concerning a purported sale of land in the village. He added that at that time he was a councilor to Village Headman Nyanyala.

He then stated that Mr Ali Lufani came to the village looking for a piece of land for farming. He added that later Mr Ali Lufani came to the village with Ms Nasoko who with the consent of the chief was allocated the piece of land together with her children.

He stated that after Ali Lufani passed on, the plaintiff covertly sold Ms Nasoko's land to Kamphulusa.

He stated that Ms Nasoko complained and Group Village Headman Chanthunya and Village Headman Nyanyala heard the complaint. He added that he attended the hearing as a councillor. He stated that Village Headman Nyanyala stated that he did not know the plaintiff but he only knew his father and that in any case his father had not bought the land but was only given the same.

He then stated that Group Village Headman Chanthunya held that, having stayed in the village on the land for a considerable number of years, Ms Nasoko owned the

land and he also ordered the plaintiff to return the money he had received from Kamphulusa.

He stated that according to their custom, Ms Nasoko was the true owner of the land because she had been given the land by someone who brought her to the village, namely Mr Ali Lufani.

He added that Mr Ali Lufani brought Ms Nasoko to the village, informed the councilors and the Village Headman and allocated the piece of land with their consent to Ms Nasoko and that constituted a valid transfer at custom.

He added further that in respect of the decision made by Group Village Headman Chanthunya the land belonged to Ms Nasoko and her children.

During cross-examination, he stated that he knows Mr Ali Lufani but never knew about his death.

He stated that Mr Ali Lufani had come to ask for land at his village at Nyanyala. And that Mr Ali Lufani was given the land in 1980.

He added that Mr Ali Lufani farmed on the land for a bit of time and gave the land to Ms Nasoko also known as Mrs Lufani.

He then stated that Mr Ali Lufani farmed on the land for a bit of time and Ms Nasoko came to ask for the land.

He then stated that he was Village Headman Nyanyala's councillor and was present when Mr Ali Lufani gave the land to Ms Nasoko. He added that also present was Village Headman Nyanyala, Mr Ali Lufani and Ms Nasoko.

He stated that he knew the plaintiff when Ms Nasoko complained about the land and he was involved in dealing with the complaint. And that is when the plaintiff sold the land to Kamphulusa. He added that since that issue he never met the plaintiff.

He stated that the land herein is in Tiferakaso village since Group Village headman Nyanyala split the old village.

He then stated that he knew Mr Kamphulusa when he was sold the land by the plaintiff. And that he stays at Phalula. He added that Kamphulusa came from Chilomoni and his father was staying in Phalula area.