



**IN THE HIGH COURT OF MALAWI**  
**MZUZU REGISTRY SITTING AT KARONGA**

**CIVIL CAUSE NO. 7 OF 2017**

Being Civil Cause No. 214 of 2015 in the Second Grade Magistrate's Court at  
Ngerenge

BETWEEN

ROBSON H. MWAKAYOKA..... APPELLANT

AND

VILAGE HEADMAN MWAKAFYUYU ..... RESPONDENT

**CORAM: Honourable Justice T.R. Ligowe**

Appellant (unrepresented)

Respondent (unrepresented)

F. Luwe, Official Interpreter

R. Luhanga, Recording Officer and Court Reporter

**JUDGMENT**

Ligowe J, .

- 1 There is a piece of land either in Mwakalapyia village or Mawakafyuyu Village, T/A Kilupula in Karonga which has been in dispute between Mr Robson Mwakayoka and Watson Mwautwa.

2 Mr Robson Mwakayoka took Watson Mwautwa before Village Headman Mwakalapyia over this land. His witness there was Village Headman Mwakafyuyu. Village Headman Mwakalapyia ordered that the land belongs to Mr Robson Mwakayoka and directed Watson Mwautwa to appeal if he was not satisfied. Instead of appealing to a higher chief in rank, Mwautwa sued Village Headman Mwakalapyia at Ngerenge Magistrate's Court in Civil Cause No. 28 of 2015. Village Headman Mwakafyuyu seems to have given evidence in that court which was not favourable to Mr Robson Mwakayoka. Mr Mwakayoka was not part of those proceedings. The Magistrate found in favour of Watson Mwautwa and ordered Village Headman Mwakalapyia to give the land to him.

3 After that case, Mr Robson Mwakayoka commenced action in the same court against Village Headman Mwakafyuyu, Civil Cause No. 214 of 2015, claiming the same land and accusing of siding with Watson Mwautwa in Civil Cause No. 28 of 2015. The court ruled in against Mr Robson Mwakayoka in view of its judgment in Civil Cause No. 28 of 2015, *Watson Mwautwa v. Village Headman Mwakalapyia*, that the land had already been ordered to belong to Watson Mwautwa.

4 Now Mr Robson Mwakayoka appeals against that decision and his grounds are that it was wrong for the Magistrate to allow Village Headman Mwakafyuyu to testify against him in the case between *Watson Mwautwa and Village Headman Mwakalapyia* as the same Village Headman had testified for him on the same issue before Village Headman Mwakalapyia. That it was wrong for the Magistrate to find for Mwautwa as he did not

consider that Mr Robson Mwakayoka had used the land for 18 years without any disturbance before Watson Mwautwa came.

5 What is clear from this appeal is that Mr Robson Mwakayoka needed to have been a party in Civil Cause No. 28 of 2015, *Watson Mwautwa v. Village Headman Mwakalapyia*, for the final and conclusive determination of the issues. He was an interested party to the proceedings as the land in issue was the one he was disputing with Watson Mwautwa. In view of this, I order stay of the decisions in that case and the present case before the Second Grade Magistrate at Ngerenge. I order retrial of the matter by the First Grade Magistrate at Karonga, where Mr Robson Mwakayoka should be the plaintiff and Watson Mwautwa the defendant. Village Headmen Mwakalapyia and Mwakafyuyu should be called as witnesses among any other witness that may be called. The retrial should be commenced within 30 days from today.

6 Delivered in open court this 19<sup>th</sup> day of 2018 at Karonga.

  
T.R. Ligowe  
**JUDGE**

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