

HIGH COURT  
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IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL DIVISION

CIVIL APPEAL CAUSE NO. 46 OF 2017

*(Being Civil Cause No. 03 of 2016 in the Third Grade Magistrate Court at  
Blantyre)*

**BETWEEN**

AARON FRIDAY.....

**APPELLANT**

-and-

MWADA SIFA.....

**RESPONDENT**

**CORAM: THE HON. JUSTICE D.T.K. MADISE**  
Appellant Present/Unrepresented  
Usiwa on brief for the Respondent  
Mr. M. Manda Official Interpreter

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Madise, J

JUDGMENT

## **1.0 Introduction**

1.1 In this matter the Respondent commenced these proceedings in the Third Grade Magistrate's Court sitting at Blantyre under Civil Cause No 03 of 2016 seeking an order that the Appellant should vacate her piece of customary land which she inherited from her mother.

1.2 The court below ruled in favour of the Respondent and ordered the Appellant to vacate the piece of land. Being unhappy with that decision he now appeals to this court against the whole judgment. I am mindful that appeals in this Court are by way of rehearing of all the evidence, the law applied and all that which took place in the court below.

## **2.0 Grounds of Appeal.**

2.1 The Appellant has filed six grounds of appeal which can be summarized as follows: that the weight of the evidence presented did not warrant a finding in favour of the Respondent.

## **3.0 The Facts.**

3.1 The parties are cousins as their mothers were sisters. The Respondent told the court below that her mother gave her the garden in question. At first she was cultivating on one side of the garden. In 2016 she decided to cultivate the whole garden. When she finished preparing the garden the Appellant arrived and planted maize in the garden.

3.2 The Respondent was not happy and she went to complain to the local chief. The matter was never resolved by the chief and she decided to seek the aid of the court.

**3.2** The Respondent summoned her mother Eneles Kuweruza. She told the court that the garden in question belonged to her. But when the Appellant's mother (her sister) asked for land to garden she allowed her to use one portion which she had used for a few years. When her sister died, the Appellant started cultivating on the land which his mother was cultivating. When she confronted the Appellant to stop cultivating the latter refused and the matter was referred to the local chief.

**3.3** In response the Appellant told the court that the garden belonged to his mother and when she died he continued to work on the land. He was shocked to find out that the Respondent and her mother were also working on the garden. The court below in its judgment found in favour of the Respondent and ordered the Appellant to leave the land.

#### **4.0 The Finding**

**4.1** The court below visited the garden and found that on a balance of probabilities the Respondent had made out her claim. The court below further found that in matrilineal systems land belong belongs to women of the clan as men go out to marry elsewhere (*chikamwini*).

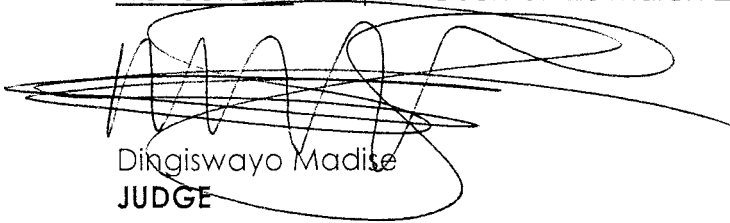
**4.2** The court below wondered why the Appellant had to wait for the Respondent to prepare the garden without stopping her. When the garden was ready he decided to plant maize as if he had prepared it himself.

**4.3** I'm in agreement with the reasoning by the court below. I'm satisfied that the Respondent had made out her case on a balance probabilities. Her claim over this piece of customary land must carry the day in this Court. I therefore find nothing wrong with the decision of the court below. This appeal was a

waste of our scarce resources and a waste of the court's precious time. It is therefore dismissed with costs.

Appeal denied.

**Pronounced** in Open Court on 26 March 2018 at Blantyre in the Republic.



Dingiswayo Madise  
**JUDGE**