



Republic of Malawi
IN THE HIGH COURT OF MALAWI
MZUZU DISTRICT REGISTRY

Civil Cause No. 82 of 2013

Between:-

GOLSON MHONE PLAINTIFF

-AND-

MR. SOMANJE 1ST DEFENDANT

V.H. MFUFU 2ND DEFENDANT

CORAM

Brian Sambo, Assistant Registrar (Ag)

Newton Ndazizila, of counsel for the Plaintiff

Ashim Siadi, of counsel for the Defendants

Henry Kachingwe ; Official Interpreter

RULING ON SUMMARY PROCEEDINGS FOR POSSESSION OF LAND

(Order 113, RSC 1999)

Sambo, B,

BACKGROUND

The Plaintiff was granted lease of the land in question by the Malawi Government for a period of 99 years, with effect from the 1st of February, 2013. The Defendant encroached upon the plaintiff's land to the extent that he built a house which is 3 metres inside the Plaintiff's registered land. The matter was tabled by the Lands Department, in the presence of both parties, and the Defendants were ordered to vacate from the land, but they continued to encroach by erecting a fence across the Plaintiff's registered land. The Defendants do not have Title Deeds.

THE LAW AND DETERMINATION

To begin with, I wish to say that although the Defendants seem to have been the first to occupy part of the land in contest, the Plaintiff has better property in the land by the mere fact that he is a paper owner. He has a Title Deed whilst the Defendants have not. They may have traces of property in the land but the grant of lease to the Plaintiff is sufficient evidence that the lawful property in the land stands in his favour. See section 24 of the Registered Land Act.

The Act above-stated specifically provides for the respective rights and remedies of the borrower and lender, and of the lessor and lessee. Under Section 24, the registration of a person as a proprietor confers on him the rights of ownership of that land as private land, and this for freehold abolishes the concept of tenure and estate so that the proprietor holds exclusively and not in fee simple. See

Christodoulou, D. 1966. Basic Agrarian Structural Issues: Customary Tenures and the Needs of Agricultural Development. Food and Agricultural Organization of the United Nations, Rome.

The ownership is not an estate in land but is absolute ownership, resulting in the abolition of legal and equitable owners and the creation of registered proprietor of land. Out of this "absolute ownership" can be created certain registrable rights in land. These are leases, charges, profits, and restrictive agreements. The vesting provisions contained in Section 24 and the rights of the proprietor set out in Section 25 are the key provisions which make the register the final and only proof of title and introduce the indefeasibility of title. With the exception of overriding interests, all material particulars affecting the title to land are fully revealed to any person merely by a perusal of the register, which is maintained and warranted by the State. The register is at all times the final authority and the State accepts responsibility for the validity of transactions, which are effected by making an entry in the register, and only by this means. See *Elias, T. O. 1956. The Nature of African Customary Law. Manchester University Press, Manchester.*

As regards the application herein, the general principle is that where a person claims possession of land which he alleges is occupied solely by a person or persons who entered into or remained in occupation without his licence or consent the proceedings may be brought by originating summons in accordance with the provisions of this order. See *Order 113, rule 1 RSC 1999*. Those that enter into the land without consent or licence and those that remain in occupation of the land without consent or licence. See *Order 113, rule 1 RSC 1999* and *Order 113, rule 1 RSC 1999*.

According to *Order 113, rule 1 RSC 1999*, the proceedings will not be commenced against a person who has held over after his licence to occupy has expired. See also *Msamala v Thawani 13 MLR 250 and Great London Council v Jenkins [1975]1 All ER 354*. The evidence before me shows that the Plaintiff's Title Deed is not expired; it is valid for 99 years.

I took time to read the Plaintiff's Affidavit in support of the application; the plaintiff showed his interest in the land and the circumstances in which the land has been occupied without licence or consent and in which his claim to possession arises. According to *Order 113 rule 3 RSC 1999*, these are sufficient facts to lure the court into granting the application for summary possession of land.

Considering all the facts and circumstances before me, and the law so provided, a final order for possession the said land is hereby made, in the light of *Order 113, rule 6 RSC 1999*, these being residential premises, that the Defendants vacate from the said registered land within 21 days from the date of service of this order.

The plaintiff is therefore authorized to take possession of his land, within the confines of his Title Deed, after the expiry of the stipulated time, above-given.

This order for possession shall be enforced by a writ of possession which shall be in Form No. 66A, but no writ of possession to enforce the passion order shall be issued after the expiry of three months from the date of the order without leave of this court. See *Order 113, rule 7 RSC 1999*.

The sheriff acting under a writ of possession shall be entitled to evict any one they find on the premises even though that person was not a party to the proceedings for possession herein. See *R v Wandsworth County Court* [1975] 3 All ER 390.

Costs are awarded to the Plaintiff.

Made in chambers today the 7th of May, 2018.



Brian Sambo

Assistant Registrar (Ag)