

JUDICIARY
IN THE HIGH COURT OF MALAWI
CIVIL DIVISION
PRINCIPAL REGISTRY
LAND CASE No. 83 OF 2016

BETWEEN:

AGNES JUSTINE NGOZO..... CLAIMANT

-AND-

MARY NGOZO..... FIRST DEFENDANT

-AND-

ALLEN JUSTINE SECOND DEFENDANT

CORAM: THE HONOURABLE JUSTICE JACK N'RIVA
Claimant Present
Defendant Present
Counsel for the Claimant, Mr. Goba Chipeta
Counsel for the Defendants, Mr. Tulumba
Mrs. D Mtegha, Court Clerk and Official Interpreter

JUDGMENT

The first defendant is mother to the claimant and the second defendant. The claimant alleged that she and her mother, the first defendant, held jointly a leasehold property in Chirimba. The claimant alleged that her mother became so violent and abusive to the claimant so as to remove her from the premises. Later,

the first defendant evicted the claimant from the premises and rented out the house in which the claimant was staying.

The claimant claimed that the defendant deprived her of the land and the rentals. Further, she said that she incurred expenses when she had to seek alternative accommodation. The claimant argued that the defendants refused to sell the land and share the proceeds. Therefore, the claimant is asking the defendants to account for the payments of rentals and proceeds that they have received from the land. She further asked the court to sever the joint proprietorship of the property and that the land should be sold and the proceeds be shared equally. Alternatively, the land should be valued and that the claimant should be given half of the value.

In defence the defendants stated that the purpose of jointly registering the land was to secure the land and not to give the claimant exclusive ownership. They said the houses were constructed by the second defendant. They also denied ousting the claimant from the land. They said it became difficult for the first defendant to stay with the claimant due to her behaviour. As a result, the second defendant offered the claimant a house in Ndirande but she continued misbehaving.

In her evidence, the claimant said that she owned the property with her mother. She said that she worked for her sister in an estate agent business. She said the property was bought by her sister in 2006 in consideration for the work she was doing for her. She said she told her that she should hold the land jointly with the mother. She said they registered the land. She moved from her late husband's house in Manase, sold it and occupied one of the houses in Chilimba. In her further evidence, she said, in 2012, her mother started quarrels with her and chased her from the land. She further that the mother became so violent. As a result, she went to live in one of her sister's houses in Ndirande. The mother moved into her (claimant's) house and put a tenant in the her (the mother's) house. In 2016, her sister, the second defendant, moved her from the Ndirande house. She said that her mother blocked her from going into her house at Michiru. She, therefore, had to seek alternative accommodation. She said that her relationship with the defendants had deteriorated.

In the defence, the first defendant stated that the second defendant bought her a piece of land in Chilimba comprising two houses. The second defendant moved her into one of the houses. The second defendant decided to obtain lease documents for the land and she registered it in her and the claimant's names. This

was done for the claimant to be the custodian of the land and because the first claimant was growing old and was not enjoying good health.

The claimant's husband died and she told the claimant to come and live with her. The claimant came with another man. Later, the two started accusing her of being a witch. As a result, they had had quarrels which could at times become nasty. The claimant started demanding that they should sell the land. The second defendant decided to buy a piece of land for the claimant at Ntoso. The claimant sold the land and again started demanding the sale of the land in dispute.

The second defendant's evidence was more or less like that of the first. She said that not only the claimant and the first defendant were living on the land. Other family members were also living on the land. She said she registered the land in the name of her mother and sister merely to secure the land for the clan. When the claimant started making demands to sell the land, she bought her a new piece of land and told her that she would construct a house for her on the land. The claimant continued making the claims to sell the land. She, however, said she spent money on the new house to ensure that the clan land was not sold.

I remind myself that this is a civil matter. In these cases, the burden is on the party making a claim or an assertion to prove the claim or the assertion on a balance of probabilities.

The claimant claims that she was a joint owner of the property in dispute. The defendants argue that the claimant was not a joint owner. The defendants argue that the claimant held the land on trust.

The claimant argued that her claim was based on the fact that she was a joint owner of the property. She argued that the defendants had taken steps to deprive her of her interest and ownership in the land. She depended on section 24 of the Registered Land Act:

She thus argued that by virtue of the lease certificate she had rights in the land together with the second defendant. The defendants depended on decisions on the law of trust including *Norberg v Wynrib* 3 SCR 377. They asserted that the claimant's ownership to the land was but nominal. They further argued that where a person buys property and instructs another person to convey the property to another person, the other person must rebut the presumption that the purchaser did not want to make him/her to take the property as a beneficiary himself-*Dyer v Dyer* [1788] 2 Cox; *Vendervell v IRC* [1967] 2 AC 291. The defendants,

therefore, argued that the claimant had to rebut the presumption that she held the land as a trustee

The primary question for determination is whether on the evidence before me, the claimant was a trustee. I believe, this is an important question. Otherwise, it seems to me that it is not disputable that the claimant was registered as a joint-owner with the first defendant. We have in evidence that the land is in the names of the claimant and the first defendant. I believe, therefore, that the claimant's reliance on section 24 of the Registered Land Act is well-founded. The provision reads as follows:

Subject to this Act—

(a) the registration of a person as the proprietor of private land shall confer on that person the rights of owner of that land as private land;

(b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, subject to all implied and expressed agreements, liabilities and incidents of the lease:

Provided that if the title of the lessor is provisional the enforcement of any estate, right or interest affecting or in derogation of the right of the lessor to grant the lease shall not be prejudiced.

Having said so, on the evidence before me, the evidence of trust is hardly coming out. The defendants argue that the land was for the clan and the clan knew it. However, the defendants did not bring evidence to support that assertion. I, therefore, fail to appreciate the issue of trust is not coming out clearly. The defendants queoted .

I believe that also applies to the other cases the defendants cited: *Bray*

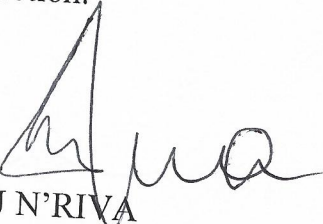
In all this, my finding is that the claimant was a joint owner of the property in dispute. I am not convinced that her ownership was on trust. On the evidence before me, in the circumstances, the first defendant deprived the claimant of her enjoyment to the property. Therefore, the claimant's claim succeeds. By the first defendant putting in a tenant in the house, the proceeds from the rentals had to benefit both the owners of the property. Likewise, by looking for alternative accommodation, the claimant suffered expenses.

I notice that the relationship between the parties has deteriorated.

I, therefore, order that the defendants should make an account of rentals collected from the property. From that the claimant should get her shares. The parties should value the property in question. From that, the claimant should get half of the value.

I award the claimants costs of this action.

MADE this 18th day of April, 2019

A handwritten signature in black ink, appearing to read 'J N'RIVA', written over the printed name.

J N'RIVA

JUDGE