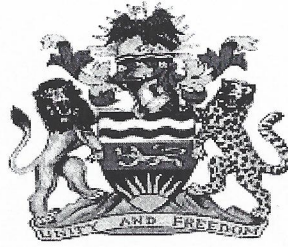


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MALAWI JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL DIVISION

MISCELLANEOUS CASE NO. 37 OF 2019

BEING CIVIL CAUSE NO. 118 OF 2015

BETWEEN

MENARD KATUNGA CLAIMANT/APPLICANT

AND

DANNIE MACHILIKA DEFENDANT/ RESPONDENT

CORAM: THE HON. JUSTICE J. N'RIVA

Mr Wame, of Counsel for the claimant

Defence not present

Ms Mtegha, Court Official

RULING

The claimant was the complainant in a land dispute before Muloza Magistrate's Court. The court found in favour of the defendant. The claimant applied to this court to exercise supervisory jurisdiction over the trial court. The claimant argued that the court based its decision on the finding that the defendant inherited

the land from his uncle. The claimant argued that the trial court was wrong to make that finding without evidence of inheritance or authority to administer the deceased estate under the Deceased Estates (Wills, Inheritance and Protection Act). The argument was that the court lacked jurisdiction because the matter before it was not only of customary law but also of inheritance of deceased estate.

As I see it, the question for determination is whether the court made a decision on an inheritance matter without proof of inheritance. I took my time to look at the record of the trial court though the record on the file is very faint.

The issue before the court was about two lineages of a clan quarreling over the land in question. The parties in the matter were members of the respective lineages who were quarreling as to the actual use of the land. It is on record that the disputes started after the death of one Uncle Sambani, but the use of the land was with some history. Thus, the evidence before the trial court was that the land in question was based on lineage or family use. In cross-examination by the claimant in the court, the defendant told the court that he had been using the land since his birth. Well, this may seem meaningless: how could he cultivate the land at his birth? However, this might just be a question of semantics. However, we have to appreciate that the case before the court was about lineages, as it were. Perhaps, it might be the case that he was talking about his lineage or that his lineage has been using the land beyond his memory.

Therefore, as I see it, the issue of inheritance in the lower court was not about inheritance of deceased estate as envisaged in the Deceased Estates (Wills, Inheritance and Protection Act). As stated by Hon Kenyatta Nyirenda J in *Mwala v Lipaya* Civil Cause Number 20 of 2015, one cannot bequeath communal land and such land cannot form part of intestate estate.

The claimant's application is misconceived. I have found nothing on the record of the court to suggest that the court made the decision based on the scheme

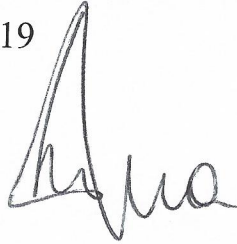
under the statutory law on inheritance of deceased estate. The clear evidence before the court was that the parties were disputing over the land based on communal use.

I dismiss the application.

I make no order of costs. I would have. However, the defendant did not defend the application.

I set aside the order that I granted of preservation of the land in question.

MADE this 30th day of September, 2019

A handwritten signature in black ink, appearing to read 'J N'RIVA', written in a cursive style.

J N'RIVA

JUDGE