



HIGH COURT
LIBRARY

MALAWI JUDICIARY

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL APPEAL NO 110 OF 2018

Being civil cause number 85 of the ywar 2017 at Chikwawa Second Grade
Magistrate's Court

BETWEEN

MANERA LUCIANO.....APPELLANT

AND

WILSON TASERA.....RESPONDENT

CORAM: THE HON. JUSTICE J. N'RIVA

Appellant present

Respondent present

D Mtegha Official Interpreter

RULING

The plaintiff, the appellant in this court, commenced the case at Chikwawa Magistrates Court. She claimed unlawful occupation of land. The court found in favour of the defendant. The plaintiff 'appealed' to this court against the decision.

An appeal is an exercise where a person aggrieved by a decision of a court approaches a higher court for the latter to reconsider the lower court's decision. The higher court conducts the appeal by the way of rehearing *i.e.* reviewing the evidence and the court's decision with the aim to determine whether the lower court arrived at a correct decision. That is what an appeal is. An appeal is not a second attempt at one's luck in a claim.

An appellant has to point out where a court went wrong. The appealing party has to file grounds of appeal. Grounds of appeal set the appeal in motion. They set the scene as to what the appeal Court will be dealing with.

On appeal, the Courts deal with issues that were in the trial court *Mbvundula v Malilo* [1968 – 1970] ALR Mal 146. See also *Produce Marketing Supplies Limited and Global Electrical and Agricultural Company Ltd v Packaging Industry (Malawi) Ltd* 11 MLR 104

Tambala JA, in *Steve Chingwalu and DHL International Ltd v Redson Chabuka and Hastings Mangirani* [2007] MLR 382 (SCA) at 388, said

The position of the law regarding appeals involving issues of fact is that this court is slow to interfere with findings of fact made by a tribunal properly mandated to make decisions on disputes of facts, unless there exists some misdirection or misreception of evidence or unless the decisions are of such a nature that, having regard to the evidence, no reasonable man could make such decisions: see *Mlamwa v Kamwendo* 2 ALR (M) 565.

The Court went on to say:

Finally, we bear in mind that an appeal to this court is by way of rehearing which basically means that the appellate court considers the whole of the evidence given in the court below and the whole course of the trial; it is as a general rule a rehearing on the documents including the record of the evidence.

Apart from that, there are procedural rules have to comply with. See- Mwaungulu J- *Mwazangati Khoromana v Malifa Jumbe* Civil Appeal Cause No. 06 of 2013.

Looking at the case that is before me, one can argue that the ‘appeal’ lacks grounds on which to start from. One can argue that the appellant is simply trying to relitigate her claim. There are no grounds of appeal. What I have is, if I may, re-representation of the evidence that the plaintiff was relying on.

I wonder whether there is an appeal before me. I will begin by what the plaintiff filed in this case. First the notice of appeal is ‘against the judgment’. Secondly, the plaintiff provides “Reasons for Appeal”. Under that, she states that her family was the first to cultivate the land. Then she gives the background to what happened at the hearing before Traditional Authority (T/A) Kasisi then Village Head Mwalija and other traditional leaders. That is what I meant by re-representation of evidence.

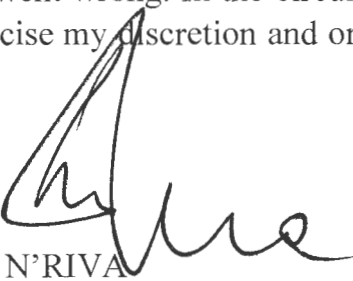
There is nothing to show where the court below went wrong. In any event, the court analysed the evidence that was before it and reached a conclusion in favour of the defendant. The evidence that was before the trial was that T/A Kasisi shared the land in dispute between the two parties. The claimant was not amused with

the decision of the chief and she approached the court below. The court agreed with what T/A Kasisi decided. The plaintiff was, once again, dissatisfied with the decision. She approached this court for what she said was an appeal.

However, as I have stated, the appeal hardly raises grounds. I can even state that there is no appeal before me.

Similarly, when I called the parties to address me, the plaintiff hardly raised issues as to where the court below went wrong. In the circumstances, I dismiss the case, as it were. On costs, I exercise my discretion and order that each party shall meet their costs.

MADE the 7th day of March, 2019.


J N'RIVA
JUDGE