



**JUDICIARY  
IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY (CIVIL DIVISION)  
LAND CAUSE NO. 124 OF 2020**

**BETWEEN**

**DR. KINGSLEY BOSS MAGOMERO ..... CLAIMANT**

**AND**

**JAMES CHIMDZAKAZI ..... 1<sup>ST</sup> DEFENDANT**

**MERCY CHINKOMBERO ..... 2<sup>ND</sup> DEFENDANT**

**ALFRED CHINKOMBERO ..... 3<sup>RD</sup> DEFENDANT**

**CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA**

Mr. Mhango, of Counsel, for the Claimant

Mr. Theu, of Counsel, for the Defendants

M. Henry Kachingwe, Court Clerk

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**RULING**

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*Kenyatta Nyirenda, J.*

This is my Ruling on an inter-partes application by the Claimant for an interlocutory injunction restraining the 1<sup>st</sup> Defendant or his agents from encroaching, trespassing or working on the Claimant's land and a further order that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants should be restrained from proceeding with selling the said land to the 1<sup>st</sup> Defendant until determination of the main case by the Court.

The application is supported by two statements sworn by the Claimant and Mr. Lemon Banda (Village Headman Chatambalala). The sworn statement by the Claimant is as follows:

- "3. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents used to own a piece of customary land located in Area 37 in Traditional Authority Kalumba in the District of Lilongwe.

4. *On 5<sup>th</sup> September, 2015, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents sold the said piece of land to me at an agreed consideration of MK 800,000.00. Attached hereto as a sale agreement marked as **KRM***
5. *The said agreement was duly witnesses by Village Headman Chatambalala, and Group Village Headman Chapata.*
6. *That prior to making the payment, the Claimant summoned the 2<sup>nd</sup>, 3<sup>rd</sup> Respondents and several of their family members for confirmation whether they had indeed agreed to sell the land to the Claimant at a consideration of **MK 800,000.00** They all agreed to the transaction*
7. *After finishing payment of the final instalment I immediately took possession of the said land and started cultivating on it with the aim of embarking on developing the land later on.*
8. *I have recently been alerted that the 1<sup>st</sup> Respondent has deployed people and started cultivating on my piece of land.*
9. *I engaged the 1<sup>st</sup> Respondent, informing him that he is encroaching and trespassing on my piece of land. He informed me that he has bought the same from the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.*
10. *It came as a shock therefore, when, 5 years after selling the land to me, the 2<sup>nd</sup> Respondent confirmed to me that she had sold the land to 1<sup>st</sup> Respondent.*
11. *The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have acted unfairly and fraudulently by selling the said piece of land having previously sold the same to me.*
12. *The 1<sup>st</sup> Respondent acted without due diligence because had he inquired into the ownership of the said land he would have known that the same was already sold to me.*
13. *That the actions by the Respondents gravely threaten my right to own property and the accompanying right not to be arbitrary deprived of the same. Further the Respondents' action threatens my right to economic activity.*
14. *There is, therefore, a serious issue to be tried by the court in this matter*
15. *I believe damages will be inadequate to me offer adequate redress this matter.*
16. *The balance of justice and convenience, therefore, heavily tilts in favour of granting of the injunction.*
17. *That if the Respondents are not stopped, my rights will be violated and I will suffer great injustice."*

The sworn statement by Mr. Lemon Banda is brief and it will be quoted in full:

- “3. That on 5 September 2015, I as the then **Village Headman Chatambalala** together with **Group Village Headman Chapata**, we witnessed the sale of land between the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and the Claimant, **Dr Magomero**.
4. That as proof of our witnessing the sale, we stamped our official seals on the agreement.
5. I have been told that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are in the process of selling this land to another person.
6. That Group Village Headman Chapata and I were approached to witness the sale of the said land to the new comer but we refused to be part of the shady transaction as we knew the land was already sold to the Claimant.
7. I can confirm and affirm that the true owner of the land in question is the Claimant, Dr Magomero.”

The Defendants are opposed to the application and they filed two sworn statements and a supplementary sworn statement in opposition. The first sworn statement was jointly made by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. The two Defendants agree that they signed an agreement in respect of sale of land to the Claimant but claim that the signature was done under duress. The following part of the sworn statement is relevant:

- “(1) We, our brother Mwayi Chimkombero, their sister Madalitso Chinkombero and the estate and dependents of their brother and sister late Rodrick Chinkombero and late Tombi Chinkombero respectively were at all material times lawful owners of the land the subject of this cause before they sold the same to the 1<sup>st</sup> Defendant.
- (2) Sometime towards the end of 2015, the Claimant and his servants or agents including one Lemond Banda conspired or connived to unlawfully deprive the us and our said siblings the use of the said land.
- (3) In the furtherance of their scheme aforesaid, the Claimant and his said servants or agents through Lemond Banda called the 3<sup>rd</sup> Defendant on or about 5<sup>th</sup> September, 2020 and misled her into believing that she and her family members were required to attend a meeting at her home at Chatambalala village, Traditional Authority Kalumba to discuss their inheritance.
- (4) To our surprise upon the arrival of the 3<sup>rd</sup> Defendant as called, we noted that our mother had been chased from the village and her property taken by the said Lemond Banda and his accomplice Lemond Banda purporting to use his power and influence as the then reigning village headman Chatambalala.
- (5) In no time, we were directed to the Claimant’s house in the vicinity of Bamboo Entertainment Centre in Lilongwe where, in the presence of the Claimant, Lemond Banda, his relation Stephano Seke, and not less than 7 others, we were forced to execute a document the contents of which were not explained to us.

... ”

The sworn statement of the 1<sup>st</sup> Defendant is worded as follows:

- “(1) *I purchased the land in question from the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants at a consideration of K1,800,000.*
- (2) *I in fact purchased the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants’ and their siblings’ family house at Chatambalala Village, Traditional Authority Kalumba in Lillongwe District.*
- (3) *I was not aware of the Claimant’s adverse claims to the same land until he called me sometime in June, 2020.*
- (4) *During the call the Claimant informed me that he knew that I had bought the land from the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants just as, according to him, he had also bought the same land from them.*
- (5) *The Claimant proceeded to suggest that we meet after 30 days as he was committed in Blantyre then.*
- (6) *Instead of meeting as he proposed, I received Court summons and papers from the Claimant’s counsel and became privy to information from the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants that the Claimant has on several occasions made attempts to persuade the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to receive K1,800,000 to pay back what they received from me and leave the Claimant free to deal with the land as he pleases.*
- (7) *The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants also informed me that their position is that the Claimant’s proposal at cancellation of the agreement I have with them is unacceptable. The Claimant’s proposal is also unacceptable to me.”*

I pause to observe that it is not uninteresting to note that in case involving adverse claims, the 1<sup>st</sup> Defendant has chosen not to state the year when he says he purchased the said land from the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

An interlocutory injunction is a temporary and exceptional remedy which is available before the rights of the parties have been finally determined. Order 10, r. 27, of the CPR provides that a court may grant an injunction by an interlocutory order when it appears to the court that (a) there is a serious question to be tried, (b) damages may not be an adequate remedy and (c) it shall be just to do so.

Having carefully read and considered the sworn statements and the submissions by Counsel, it is very clear to me that there is a dispute regarding the question whether or not the sale of the land by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to the Claimant land in 2015 was procured by force or punctuated by deceit. In light of the said dispute, I am satisfied that there is a serious question to be tried.

It is important to observe that if the land in dispute was indeed sold to the Claimant in 2015, then the argument by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants that they sold the same piece of land to the 1<sup>st</sup> Defendant is not tenable. In the premises, the contention by the Defendants that the Court should not entertain the present application as it has been brought well after the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants had already sold the land to the 1<sup>st</sup> Defendant lacks legal basis. It is trite that a person cannot sell what he or she does not own. That means, of course, that a person cannot purchase property from a non-owner either.

As the subject of the present case relates to real property, there is really little to say on the matter. It is trite that every piece of land is of particular and unique value to the owner and damages are an inadequate remedy and, in any case, damages would be difficult to assess: see **Village Headman Kungwa Kapinya and Others v. Chasato Estates Ltd, MSCA Civil Appeal No. 75 of 2016 (unreported)**.

In view of the foregoing, and having regard to the fact that (a) the land in dispute was sold to the Claimant in 2015 and the alleged sale of the same land to the 1<sup>st</sup> Defendant took place in 2020 and (b) unlike the 1<sup>st</sup> Defendant, the Claimant has documentary evidence in support of his ownership of the land in dispute, I am more than satisfied that the balance of justices lies in maintaining the status quo until the main case herein is determined. Consequently, the order of interlocutory injunction that was granted herein on 10<sup>th</sup> July 2020 will be continued until the main case is determined or until a further order of the Court. Costs in the cause.

On the basis of the foregoing, the balance of justice lies in maintaining the status quo until the main case herein is determined. For avoidance of doubt, maintaining the status quo means that the 1<sup>st</sup> Defendant, either by himself or through his agents or servants or whosoever, is restrained from encroaching, trespassing or working on the land in dispute. Further, all parties are restrained from advertising for sale and from disposing off the land in dispute. Consequently, all parties are restrained from doing any other thing or act that purports to defeat the interests of the parties in the land in dispute. Costs in the cause.

Pronounced in Chambers this 21<sup>st</sup> day of December 2020 at Lilongwe in the Republic of Malawi.

**Kenyatta Nyirenda**  
**JUDGE**