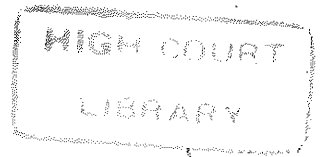




Republic of Malawi



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NUMBER 162 OF 2018

PLATINUM INVESTMENT LIMITED

CLAIMANT

AND

ATTORNEY GENERAL (MUSEUMS OF MALAWI)

DEFENDANT

CORAM: JUSTICE M.A. TEMBO

M. Goba Chipeta, Counsel for the Claimant

N. Chisiza, Counsel for the Defendant

Mankhambera, Official Court Interpreter

JUDGMENT

1. This is the decision of this Court following a trial of this matter on the claimant's claim for a declaration that the conduct by the Museums of Malawi in preventing the claimant from developing its land and/or exercising rights of ownership on the said land was wrongful and for damages suffered as a result of the defendant's conduct. The claimant also sought legal collection costs in the sum of K11 971 363.30 and costs of this action.
2. The defendants denied the claim.

3. The case of the claimant is that it is and was at the material times the leasehold owner of property known as Title number Blantyre East 65/1 situated in Blantyre City.
4. The claimant indicated that from November 2014, its development plans for the land in dispute herein having been approved in September, 2014, the Museums of Malawi wrongfully and persistently prevented it from carrying out development of its leasehold property herein and/or exercising rights of ownership over the said property.
5. The claimant indicated the particulars of the actions of the defendant, namely, wrongfully and persistently claiming ownership of the claimant's land, wrongfully and persistently requesting the claimant to remove construction materials and wrongfully and persistently threatening criminal charges against the claimant in the event of failure to remove the said construction materials from the land.
6. The claimant asserted that the wrongful conduct persisted up to 1st March, 2016 when the claimant was finally allowed possession and use of the land. It asserted that, by reason of the conduct of the defendant, it suffered loss and damage. The claimant stated the particulars of the loss, namely, excessive inconvenience due to delayed development of the land and K394 712 110 special loss and damage, the same being extra costs for developing the land calculated as the minimum difference between the cost of developing the land in 2014, when the Museums of Malawi prevented the claimant from doing so, and the cost of developing the land in 2016, when the claimant was finally allowed possession and use of the land.
7. And the claimant claims against the defendant, a declaration that the conduct by the Museums of Malawi in preventing the claimant from developing the land and/or exercising rights of ownership on the said land was wrongful, an order for payment of the sum of K394 712 110 special loss and damage incurred by the claimant as a direct result of the claimant's wrongful conduct. K11 971 363.30 legal collection costs and costs of this action.
8. The defendant's defence is that at all material times it had been owner of the land in question and that it never made any wrongful claims to the said land. It therefore denied the claimant's claims herein.
9. This Court has to determine whether the Museums of Malawi wrongfully prevented the claimant from carrying out development of the land and/or

exercising rights of ownership of the land in issue. And whether the claimant suffered loss and damage as a result.

10. As correctly submitted by both parties, in a civil matter like the instant one, the claimant will succeed if it proves its case on a balance of probabilities. See *Nkuluzado v Malawi Housing Corporation* [1999] MLR 302 and *Miller v Minister of Pensions* [1947] All ER 372.
11. To prove its case, the claimant brought a single witness. The defendant had two witnesses in its defence.
12. The witness for the claimant was Azery Mnyalira, its Finance and Administration Manager. He stated that the claimant is and was at all material times the leasehold owner of property known as Title Number Blantyre East 65/1 situated in the City of Blantyre. He attached a copy of the Lease Certificate to that effect as exhibit "AM 1." That copy of lease is duly signed by the Land Registrar Mr Killian Remmie Palika and is dated 10th October, 2013. The lease runs for 99 years from 1st July, 2013.
13. He then indicated that from November 2014, the claimant's development plans for the land having been approved in September 2014 as per a copy of such approved plans exhibited, the Museums of Malawi wrongfully and persistently prevented the claimant from carrying out development of the land and/or exercising rights of ownership of the land. He exhibited copies of correspondence between the Museums of Malawi and the claimant dated 25th November 2014, 11th December 2014 and 22nd December 2014 as exhibit "AM 2."
14. The letter from Dr. Lovemore Mazibuko, Acting Director of Museums of Malawi dated 25th November, 2014 is addressed to the Managing Director of the claimant. The letter was copied to the Secretary for Land, Housing and Urban Development and to the Commissioner for Lands. It reads as follows:

REMOVAL OF BRICKS AND SAND FROM MUSEUM PREMISES

Some two months ago, your workers ferried bricks and sand at our premises at Top Mandala Museum in Blantyre. When we asked them why they were bringing construction materials on the land belonging to our institution, they responded that the land in question had been 'sold' to Platinum Investment Limited and that the company was mobilizing resources to start construction work.

I wish to inform you that the land in question belongs to the Museums of Malawi and is NOT for sale. This land was bought by the Museums Board of Trustees from the African Lakes Corporation in 1961 before we even became a Government Department.

The purpose of writing you is to request if you could kindly remove all the bricks and the sand from our premises within two weeks from the date of this letter. If you do not do so within the specified period, this office will have no choice but to lay criminal charges against you for trespassing into our premises.

I shall be grateful for your cooperation on this matter.

15. The letter dated 11th December, 2014 from the claimant, signed by a certain Bwanali, and addressed to the Museums OF Malawi and copied to the Secretary for Land, Housing and Urban Development reads as follows:

YOUR DEMAND AGAINST OURSELVES FOR THE REMOVAL OF BRICKS
AND SAND FROM ALLEGED MUSEUM OF MALAWI PREMISES

We refer to the above matter and to your letter dated 25th November, 2014 Ref. No. xxxx

We would like to advise you that the bricks and sand in question are on plot No. BE 60, being title No. Blantyre East 65/1 purchased by ourselves and held under a leasehold. We enclose herewith copies of certificate of lease and a deed plan for the land.

Please take note that your land is on plot no. 497 and our property has never belonged to the Museums of Malawi at any given point in time.

We therefore, in the strongest terms, urge you to have due regard to the deed plans for the property and to note and respect the boundaries for your land to avoid unnecessary conflicts in future.

We intend to commence development works on our land as soon as possible, and we trust that we shall not encounter any unwarranted and misplaced interference from yourselves henceforth.

16. The letter of 22nd December, 2014 from Dr. Lovemore Mazibuko to the claimant and copies to the Secretary for Land, the Regional Commissioner for

Lands (South) and the Chief Executive Officer of Blantyre City reads as follows:

REMOVAL OF BRICKS AND SAND FROM MUSEUM OF MALAWI PREMISES BY PLATINUM INVESTMENT LTD

I refer to your letter dated 11th December, 2014 which was a response to our earlier communication to you advising you to remove bricks and sand that your agents heaped at our Plot BE 60, formerly Plot number 497 (Blantyre). I would like to, once again, draw your attention to the fact that this is a serious matter and the plot in question is NOT for sale. I think by now you should have known that Plot Number 497 (Blantyre) and Plot number BE 60 are one and the same. The only difference is that the former is from the old numbering system while the latter is from the current numbering system. The introduction of the new numbering system did not affect property ownership, whatsoever. Therefore, it is complete fallacy to argue that our land is on Plot number 497 while your so-called land is on Plot number 60.

We have gone through the so-called supporting documents that you are using to make claim that the land in question belongs to you. But our stand as Museums of Malawi is that the land is ours and we will not allow even an inch to be taken away by anybody. Our expectation was that as soon as we made our position known to you, you would immediately respect that and discuss with whoever you were dealing with to chart the way forward. But your insistence and continued claims that the land belongs to you makes us become suspicious of the whole saga. Instead of exonerating you from this saga, we now have legitimate fear to start treating you as an accomplice who may have connived with certain elements within the Department of Lands to illegally acquire property belonging to another institution.

Whether the documents you got from the Department of Lands bear necessary stamps is neither here nor there. That fact is that the purported sale is illegal and a serious abuse of office. We would like to reiterate that we will not sit back and smile while funny transactions are being made involving museum property. As a country, we have had enough of these illegal transactions, the consequences of which are hurting everybody including the innocent people. However, we are pleased that the current government ...is firm on this and would like to get rid of 'business as usual' kind of [attitude] among some public servant and instil a sense of patriotism and professionalism so that this country can move forward. As servants of the people, we will do all we can to help the leadership of this country to get rid of these malpractices which are tarnishing the country's image.

If I was to advise you on what you could have done, I would say that the best you can do is ask for a refund of your money wherever it was paid or you discuss to have another land allocated to you by the same people. We would like to emphasize that you will just be wasting your time and resources if you decide to develop the land in question because it is our property and we already have plans for it.

Otherwise, this is the last communication we are sending to you and we don't intend to write you again. Should you go ahead with your plans to commence construction works on our land, we will move the relevant state agencies to deal with the matter decisively.

17. Mr Mnyalira reiterated that the defendant wrongfully and persistently claimed ownership of the claimant's land; wrongfully and persistently requested the claimant to remove construction materials from the land; and wrongfully and persistently threatened criminal charges against the claimant in the event of failure to remove said construction materials from the land.
18. He then stated that the aforesaid wrongful conduct persisted up to 1st March 2016 when the claimant was finally allowed possession and use of the land.
19. He indicated that by Notice of Intended Suit dated 21st December 2017, the claimant demanded from the defendant the sum of K394, 712, 110 special loss and damage incurred by the claimant as a direct result of the aforesaid wrongful conduct and K11, 971, 363.30 legal collection of monies costs. No response having been given by the defendant to the said Notice, the claimant commenced the herein action on 11th June 2018. The copy of the notice was exhibited.
20. He reiterated that the claimed K394, 712, 110 special loss and damage is the extra costs for developing the land to which the claimant has been subjected to, and is now liable to incur, calculated as the minimum difference between the cost of developing the land in 2014, when the Museums of Malawi prevented the claimant from doing so, and the cost of developing the land in 2016, when the claimant was finally allowed possession and use of the land.
21. Mr Mnyalira referred to 2014 quotations from three different construction companies, which are exhibited in the claimant's Sworn Statement Verifying Claim and List of Documents, and show the following construction costs for the claimant's plans (1) KVN Construction Limited – K507, 448, 043.13; (2) Blamanco Construction – K489, 303, 928.13; and Nile Constructions – K494, 291, 449.75. He asserted that the minimum construction cost for 2014, as such, was Blamanco Construction – K489, 303, 928.13.
22. He then referred to 2016 quotations from three different construction companies, which are exhibited in the claimant's Sworn Statement Verifying Claim and List of Document, and show the following construction costs for the Claimant's plans (1) Sun Built Construction – K884, 016, 038.13; (2) Nile Constructions – K889, 453, 409.38; and KVN Construction Limited – K894, 996, 471.88. He asserted that the minimum construction cost for 2016, as such, was Sun Built Construction – K884, 016, 038.13.

23. He then asserted that, as a result of the defendant's wrongful conduct, the claimant has suffered loss and damage by way of excessive inconvenience due to delayed development of the land; and K394, 712, 110.00 special loss and damage, the same being extra costs for developing the land calculated as the minimum difference between the cost of developing the land in 2014, when the Museums of Malawi prevented the claimant from doing so, and the cost of developing the land in 2016, when the claimant was finally allowed possession and use of the land.
24. During cross-examination, he stated that the quotations produced in evidence herein were obtained from construction companies who used quantity surveyors. He however conceded that there is no evidence of involvement of quantity surveyors adduced by the claimant.
25. He then stated that the claimant's land in question was previously public land. He added that he had no idea that the said land was previously under the Museums of Malawi though it is near the Museums of Malawi premises.
26. He agreed that the claimant would have sought an effective remedy of injunction in the circumstances against the defendant but opted for an amicable resolution of the matter. He conceded that in another matter involving the claimant's sister company it obtained an injunction to ensure its right as owner of land.
27. He then asserted that the restraint of the claimant herein by the Museums of Malawi was not physical but rather by strong letters.
28. He then stated that construction by the claimant was not completed in 2016 and was ongoing until the date of the trial in this matter this year and has spanned six years and that the defendant is responsible. That was the evidence of the claimant.
29. The first witness for the defendant was Harris Kumchulesi, a Lands Officer based in Blantyre. He stated that on transfer of the land to the claimant herein there was a contract between the Minister responsible for Land and the claimant. And that the Minister never prevented the claimant from developing its land.
30. He then pointed out that Dr. Mazibuko never worked for the Minister responsible for Land. But that Dr. Mazibuko's position was based on his perception of the transaction that led to the transfer of the public plot to the claimant that he thought belonged to the Museums of Malawi. He also appreciated the position of Dr. Mazibuko because in transferring the land in

question herein the Minister responsible for Land did not engage the Museums of Malawi by consulting or merely informing them.

31. He then indicated that the claimant had an effective remedy of going to court to restrain Dr. Mazibuko rather than exchanging letters. He also observed that the claimant had a further option of forcing itself on its plot to start development. He asserted that the claimant's omission to seek an effective remedy in court or indeed to proceed with self-help to its property was done deliberately and with malice. He believed that the claimant's intention was to benefit from its own omission herein and he asked this Court not to help the claimant which slept on its own rights.
32. Mr. Kumchulesi asserted that the sum claimed herein has been hugely exaggerated because the development in question has been ongoing for almost six years since it commenced. And that it is not true that the claimant if it was allowed to commence construction in 2014 it would have finalized the same in the same year. He added that even if the claimant commenced developments in 2014 it would still have been caught up by the rising costs of construction and that this defeats the claimant's theory behind its claim.
33. During cross-examination, he indicated that he was not aware that the claimant was prevented from construction by the Museums of Malawi.
34. The other witness of the defendant was Dr. Mazibuko. He stated that he is the Director of Museums of Malawi. He gave a brief history of the land in question.
35. He indicated that the land in issue herein was public land and belonged to the Museums of Malawi. And that formerly it was known as Plot number 497 (Blantyre) but that due to changes in the numbering system the plot is now known as Plot number BE 60.
36. He elaborated that, initially, the land belonged to African Lakes Corporation Limited (ALCL) but was bought by the Museums Board of Trustees from ACLC in 1961 under Title Deed number 27190. He added that when the Museums of Malawi became a Government Department in 1981 following the Museums (Desolution) Act, 1981, ownership of the land remained with the Museums of Malawi as a Government Department.
37. Dr. Mazibuko asserted that, without consultation or mere information about the sale of the plot in issue herein, the Ministry of Lands 'sold' the plot around 2013. He indicated that this was shocking to his Department hence his

communications expressing resistance to what he strongly believed to be a wrongful transaction.

38. He indicated that, however, his resistance was not physical. And that it was merely administrative. He added that he did not even seek a legal remedy against what he perceived as an illegal sale of land that he reasonably believed to be property of the Museums of Malawi.
39. He elaborated that, on the other hand, his office did not even think of approaching the Attorney General, for legal intervention because it knew it was not the landlord. He observed that the landlord in this matter is the Ministry of Lands and his own office is under the Ministry of Tourism.
40. He noted that the claimant as legal owner of the plot opted to remain dormant in the situation and did not seek legal redress. He noted that the claimant's omission to seek legal redress was deliberate and done with malice. He observed that what the claimant intended was to create a scenario where it would claim unfounded damages which if granted would amount to unjust enrichment.
41. He then asserted that in the unlikely event that this Court finds merit in the claimant's claim, he believed that the sums claimed are hugely exaggerated because the development in question on the land has been under construction for almost six years. And that it is therefore not true that if the claimant was allowed to commence development in 2014 it would have spent a certain sum alleged and that this defeats the claimant's case theory.
42. During cross-examination, he stated that he noted the claimant's certificate of lease herein which he disputed as erroneous. He agreed that he wrote the letters exhibited by the claimant herein.
43. During re-examination, he asserted that he disputed the claimant's certificate of lease herein as not procedural. He reiterated that he was not consulted and that is why he wrote Ministry of Lands to find out what happened and who did not respond. He added that being a custodian of the land he would not allow strangers to come on the land. He added that he did not know the procedure for disposal of such land, how a buyer was identified and he was curious.
44. Both parties made submissions on the evidence and the applicable law on the first issue whether the Museums of Malawi wrongfully prevented the claimant from carrying out development of the land and/or exercising rights of

ownership of the land in issue. And whether the claimant suffered loss and damage as a result.

45. This Court considers whether the Museums of Malawi wrongfully prevented the claimant from carrying out development of the land and/or exercising rights of ownership of the land at issue.

46. The claimant referred to section 24 of the Registered Land Act which provides on interest conferred by registration 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.

47. It also referred to section 25 of the Registered Land Act which provides for rights of a proprietor as follows:

The rights of a proprietor, whether acquired on first registration or whether acquired subsequently for valuable consideration or by an order of court, shall be rights not liable to be defeated except as provided in this Act and the Land Act and shall be held by the proprietor, free from all other interests and claims whatsoever, but subject—

(a) to the leases, charges and other encumbrances, if any, shown in the register; and

(b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 27 not to require noting on the register:

Provided that—

(i) nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee, or as a family representative;

(ii) the registration of any person under this Act shall not confer on him any right to any minerals or to any mineral oils as defined in the Mining Act and the Mining Regulation (Oil) Act respectively unless the same are expressly referred to in the register.

48. The claimant also referred to section 159 of the Registered Land Act which provides that except as otherwise provided, this Act binds the Government.
49. The claimant submitted that, on the facts and circumstances of the present case, the Museums of Malawi wrongfully prevented it from carrying out development of the land and/or exercising rights of ownership of the land in issue.
50. The claimant pointed out that the evidence has shown during trial that the Museums of Malawi wrongfully and persistently claimed ownership of the land when the land belonged to and was registered in the claimant's name; wrongfully and persistently requested the claimant to remove construction materials from the land; and wrongfully and persistently threatened criminal charges against the claimant in the event of failure to remove said construction materials from the land. It argued that such conduct was in direct violation of sections 24 and 25 of the Registered Land Act, which stipulate interest in land conferred by registration and rights of a proprietor of land.
51. The claimant observed that the last two paragraphs of the defendant's letter dated 22nd December 2014 are worth quoting in order to appreciate the depth, reality and force of the defendant's conduct against the claimant with respect to the land:

If I was to advise you on what you could have done, I would say that the best you can do is to ask for a refund of your money wherever it was paid or you discuss to have another land allocated to you by the same people. We would like to emphasise that you will just be wasting your time and resources if you decide to develop the land in question because it is our property and we already have plans for it.

Otherwise, this is the last communication we are sending to you and we don't intend to write you again. Should you go ahead with your plans to commence construction works on our land, we will move the relevant State agencies to deal with the matter decisively.

52. The claimant asserted that if such a threat came from a mere person, company or organization, it is likely any reasonable person knowing their rights over the land could simply have ignored the same and proceeded with construction. It observed that, however, here we are not dealing with a mere person, company or organization. And that, to the contrary, we are dealing with a

Government department threatening to use the whole State machinery, if the spirit of the whole letter or all the letters is grasped, against the claimant regardless of the fact that the land belonged to the claimant.

53. The claimant submitted that a reasonable person with knowledge of the fact that legal and political power can at times be abused to harm even the innocent, would likely not proceed with construction in such circumstances until careful steps were taken to clarify things. And that this is the exact situation in which the claimant found itself. The claimant submitted further that, it would fail the law and its aims, in such circumstances, to tell the claimant, "No, you should have proceeded with construction because there was no physical restraint." It asserted that there was real danger of harm, unjust harm, if construction proceeded. And that good conscience and light of reason strongly demand that in such situations, the most powerful party, in this case the defendant, who is deliberately on the wrong side of the law with clear intention to abuse public powers in order to defeat lawful rights of a less powerful party being the claimant, should be the one to take the essence of all reprisals.
54. The claimant then submitted that we are a nation governed by laws the sanctity of which is enacted at the highest and most fundamental of all our laws, namely, the Constitution of our Republic. It noted that section 10 (1) of the Constitution clearly stipulates that the said Constitution shall be regarded as the supreme arbiter and ultimate source of authority in interpretation of all laws. It noted further that, most importantly, it is a fundamental principle of our Constitution, under section 12 (1)(f), that all institutions and persons shall observe and uphold rule of law and that no institution or person shall stand above the law.
55. The claimant then asserted that the conduct by the Museums of Malawi in violating sections 24 and 25 of the Registered Land Act erodes the very core of rule of law as demanded by the highest law of our land. It submitted that rule of law will be thrown to the dogs and the most fundamental principles upon which our Republic is constituted will be watered down if Government institutions like the defendant are allowed to disregard the law as they please. Further, that the very security that the law provides will be weakened and lawlessness shall prevail in infinite hues and colours. It added that this case is an opportunity for the Court to once again stress, straighten up things and let rule of law prevail.
56. Accordingly, the claimant submitted that, on the facts and circumstances of the present case, the Museums of Malawi wrongfully prevented it from carrying out development of the land and/or exercising rights of ownership of the land at issue.

57. The claimant then submitted that on the facts and circumstances of the present case, as a result of the defendant's wrongful conduct, it suffered loss and damage.
58. The claimant asserted that the evidence has shown during trial that it failed to develop the land as planned due to the defendant's wrongful conduct and thereby sustained damage and excessive inconvenience due to delayed development of the land. The Claimant indicated that it did not just come to Court with empty hands and empty statements regarding the damage and loss incurred. It pointed out that it has given evidence, which on balance of probabilities, shows that it has been exposed to K394, 712, 110.00 special loss and damage, the same being extra costs for developing the land calculated as the minimum difference between the cost of developing the land in 2014, when the Museums of Malawi prevented the claimant from doing so, and the cost of developing the land in 2016, when the claimant was finally allowed possession and use of the land.
59. The claimant added that voluminous quotes, truly technical documents made by experts in the field of construction, have been tendered in Court showing the figures involved. It noted that the incidence of money (Kwacha) devaluation, depreciation and inflation due to time are facts that Courts ordinarily know and recognize in legal disputes. The claimant indicated that, however, it did not leave the impact of such incidence on its project to conjecture but that experts (actual construction companies) were approached and they did produce actual quotes, which the claimant has tendered in Court, showing the impact. The claimant asserted that the damage, loss and inconvenience it has suffered as a direct result of the defendant's wrongful conduct is, as such, real.
60. Accordingly, the claimant submitted that, on the facts and circumstances of the present case, as a result of the defendant's wrongful conduct, it suffered loss and damage.
61. On its part, the defendant submitted that the claimant had a right to access the courts and to obtain an effective remedy against the conduct of the defendant Department of Museums. It referred to section 41 (2) and (3) of the Constitution which provides for such a right.
62. The defendant then agreed that the claimant got a right to the land by reason of registration of its lease herein. He observed that the claimant opted not to

enforce its right through the courts when the Department of Museums protested herein and that now the claimant seeks a huge sum of money to compensate it for its own failure to enforce its rights herein. The defendant implored this Court not to aid the claimant in the circumstances where it slept on its own rights.

63. The defendant also argued that in the event that this Court finds the defendant's conduct to be wrongful then this Court should find that the claim by the claimant herein for K394 712 110 is flawed.
64. He submitted that the claimant's theory is misleading as it assumes that the claimant commenced construction in 2016 and completed the same within that year and realized the loss sought to be reimbursed in this matter. He observed that, on the contrary, the construction by the claimant has been ongoing for six years until the date of the trial herein.
65. The defendant asserted further that it was established at trial that the estimations leading to the claim by the claimant herein were arrived at by quantity surveyors who are the relevant professionals who could have guided this Court on the cost of development.
66. He observed that instead of adducing evidence of quantity surveyors, the claimant solicited quotations from companies it unilaterally chose without disclosing the criteria used in the process and then used the same to base its claim herein.
67. The defendant sought that the claimant's claim be dismissed in the circumstances.
68. As submitted by both parties, this Court observes that indeed registration of the claimant as indicated on the certificate of lease herein is evidence of ownership of the land in issue herein by the claimant with all the attendant rights. See section 24 and 25 of the Registered Land Act.
69. This Court has to consider whether the claimant has proved to the requisite standard that the letters written by the Dr. Mazibuko on behalf of the Department of Museums herein constituted wrongful interference with the right of the claimant to develop the land in issue herein.
70. This Court observes that the claimant distinguishes the impact of the letters as written by Dr. Mazibuko on behalf of the Department of Museums from the same letters had it been that they were written by an ordinary person or company. This Court has considered the claimant's assertion that because it

was the Department of Museums writing then the claimant had to desist from carrying on with any development given the clout of the Department of Museums as a Government Department. And that the claimant would not have reacted similarly if the letters emanated from an ordinary person. However, this Court finds that the alleged distinction is insignificant and cannot be relied upon by the claimant in the circumstances of this matter.

71. The insignificance arises from the undisputed background to the land as given by the Department of Museums. This land was owned by the predecessor in title to the Department of Museums. When the Department of Museums took over title to the land from its predecessor it is when the land vested in the Government through the Ministry of Lands. The claimant dealt with the Ministry of Lands in circumstances that appear to be opaque, in so far as the Department of Museums is concerned. Through that opaque process, the claimant was offered the land herein by the Ministry of Lands without any consultation with the Department of Museums and without any information being provided to the Department of Museums by the Ministry of Lands in that regard. This appears very bizarre, to say the least.
72. One would ordinarily have expected the Ministry of Lands to have consulted or at least provided information to the Department of Museums in the process of taking away of the land herein or as the issue was being considered by the relevant Ministry of Lands. In a typical dereliction of the duty of good public administration, the Ministry of Lands unilaterally dealt with the land for the benefit of the claimant and to the detriment of the Department of Museums. In that scenario, this Court is not persuaded that the claimant would have cowered in fear of letters of protest from the Department of Museums in relation to the land that the claimant obtained in the circumstances herein and not developed its land herein as a result.
73. This Court therefore is of the view that the protests by Dr. Mazibuko in the circumstances were justified. It was reasonable for him to act administratively to get to the bottom of the matter herein and threaten to use all legal means to contest the taking away of the land in issue herein that was effected without any recourse to the Department of Museums. In the circumstances, the protest by letters embarked upon by the Department of Museums is not in the eyes of the law tantamount to interference with the right of the claimant to ownership or possession of his land herein. The protests alluded to legal measures and

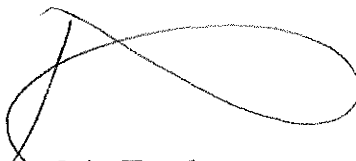
were never physical in relation to the land in issue herein. There was no restraint either physical or otherwise as against the claimant in the circumstances.

74. Wrongful interference with possession if it was physical and direct would have amounted to a trespass in relation to which the claimant would have had a cause of action on which to recover. See *Tea Brokers (Central Africa) Ltd v Bhagat* [1994] MLR 339 HC. If the wrongful interference was indirect, that would have been a nuisance. See *Magombo v Nawena* [1993] 16 (1) MLR 269. In this matter we neither have a trespass or a nuisance and the claimant has advisedly not advanced its case along those lines.
75. The wrongful interference alleged by the claimant herein has not been proved on account of the justifiable protest by the defendant in view of the opaque circumstances that surrounded the taking away of its land by the Ministry of Lands in favour of the claimant. The claimant's case would therefore fail for want of proof.
76. This Court also agrees with the defendant that the claimant could have gone ahead to commence its development of the land considering that it was in no weak position in relation to the protesting Department of Museums as already found by this Court.
77. This Court is however not convinced that the claimant's claim should fail on account of the fact that it never sought legal remedies herein and thereby delayed in its commencement of construction that has led to this claim. The considered view of this Court is that, as indicated by the claimant at trial, the claimant was perfectly entitled to pursue an amicable solution to the matters raised by the claimant herein. That should not ordinarily be a bar to a legitimate claim if it had been made out.
78. This Court having found that there was no wrongful interference herein would have left the matter there but considers it necessary to consider proof of loss alleged by the claimant.
79. This Court agrees with the defendant that the assumption behind the claim of the sum of K 394 712 110 is flawed. The evidence of quotations was not direct evidence. It is hearsay. It is unknown how the figures in the quotations were arrived at by the companies engaged by the claimant since the authors of the quotations were never in Court to testify on the same. There was no opportunity for the defendant to question the quotations. One would indeed

have expected quantity surveyors, who are qualified and legally recognized to speak on costs of construction, to have explained in detail the figures in the alleged quotations. That never happened in this matter and is fatal to the claimant's claim as submitted by the defendant.

80. The other vital point referred to by the defendant is that the claimed sum of K394 712 110 appears to be highly speculative. The claimant assumes indeed that construction would have been concluded in 2016 when it commenced works herein. The reality is however that the claimant has been involved in construction for six years now and in the circumstances it is illogical to base the claim on the assumption that construction would have been done in 2016 and without bringing quantity surveyors to justify the sums in the quotations. There is also no evidence of how much the claimant has actually spent this far to justify the alleged huge loss indicated by the claimant herein.
81. In the foregoing circumstances, this Court finds that the claimant has failed to prove its claims to the requisite standard and the claim fails with costs to the defendant.

Made at Blantyre this 23rd December, 2021.



M.A. Tembo
JUDGE

