

JUDICIARY
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY (CIVIL DIVISION)
CIVIL CAUSE NO. 116 OF 2021
(Before Honourable Justice Kenyatta Nyirenda)

BETWEEN:

SAMSON CHAZIYA..... CLAIMANT

AND

LINESS BANDA..... 1ST DEFENDANT
PELLINGS MKWAWIRA 2ND DEFENDANT
BENSON CHIKHOSWE 3RD DEFENDANT
MODRICK CHIKHOSWE 4TH DEFENDANT
ISHMAEL KANANAMA 5TH DEFENDANT
JULIUS CHING'OMA 6TH DEFENDANT
MRS. JERE 7TH DEFENDANT
MR. MKWAMBA 8TH DEFENDANT
MRS. STEVE PHIRI 9TH DEFENDANT

CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA

Mr. Mndala, Counsel for the Claimant

Mr. Chiudzu, Counsel for the Defendants

Mr. Henry Kachingwe, Court Clerk

RULING

Kenyatta Nyirenda, J.

This is my Ruling on an inter-partes application by the Claimant for an order of interlocutory injunction restraining:

"the Defendants or their agents from renting out, encroaching, trespassing, taking possession and continuing with any activities on Ngwata Estate, appropriately measuring 151 hectares situate at Chanjowa Village, T/A Wimbe in Kasungu District",

pending the determination of the main case or a further order of the Court.

The application is supported by a statement, sworn by the Claimant, which reads as follows:

3. ***THAT** by virtue of Letters of Administration dated the 21st day of November, 2018 I was appointed Administrator of the Estate of William Chaziya who died on the 29th day of May, 2016 at St Andrews Health Centre in Kasungu. Vide a copy of the Letters of Administration marked as "SC 1."*
4. ***THAT** at the time of his death the said William Chaziya was survived by a wife and 6 children who are now all adults and I am the oldest amongst the children.*
5. ***THAT** on his death William Chaziya left property among which is a leasehold Farm called Ngwata, approximately measuring 151 Hectares which is situated at Chanjowa Village, Traditional Authority Wimbe in Kasungu District. Vide a copy of the lease document marked as "SC 2."*
6. ***THAT** in or around August, 2021 I made an application for renewal of the lease and I got correspondence from the Regional Commissioner for Lands informing me their office needed to conduct inspection exercise on the land. Vide a copy of the letter from the Regional Commissioner for Lands marked as "SC 3."*
7. ***THAT** the 1st defendant is a sister to the claimant's father and the rest of the defendants are on the land having been put there by the 1st defendant.*
8. ***THAT** the 1st defendant came onto the farm in or around the year 2004 and when she started inviting and settling other people on the land she was ordered by the late William Chaziya to move out of the farmland.*
9. ***THAT** in the year 2009, the late William Chaziya while still alive, instituted proceedings in the First Grade Magistrate Court, sitting at Kasungu seeking an order evicting the defendants from the farmland. Vide an affidavit deposed by the late William Chaziya and a subsequent order of eviction of the said court respectively marked as "SC 4" and "SC 5."*
10. ***THAT** therefore the defendants did not have a licence and or consent from the late William Chaziya to settle and or remain on the farm.*
11. ***THAT** after the demise of William Chaziya the defendants continued to trespass onto the land and have on several occasions physically harassed me. I have also suffered untold anguish and misery at the hands of the defendants.*
12. ***THAT** the defendants are on the land as trespassers without any licence or consent from my late father and or myself.*

13. ***THAT** as already stated herein on the 12th day of November, 2018, I was granted Letters of Administration in respect of my father's deceased estate I thus by virtue of the said letters became entitled to the administration and management of Ngwata Farm.*
14. ***THAT** my attempts to administer or manage Ngwata Farm has been frustrated by the defendants. They have used force against me or my servants. They continue to have occupation of the farm.*
15. ***THAT** the defendants have also frustrated my efforts to renew the lease of the estate by chasing and intimidating officers from the Regional Commissioner for Lands.*
16. ***THAT** due to the acts of the defendants I have lost occupation and use of Ngwata Farm land from 2018 growing season, suffered trespass to the land and suffered inconvenience, psychological and physical pain and suffering.*
17. ***THAT** I have since instituted legal proceedings in this very court, seeking among other things, possession of the estate and an order of evicting the defendants from the farm.*
18. ***THAT** there is fear that if not stopped the Defendants will continue to trespass on the land and further carry out activities on the land in a manner not desired by myself.*
19. ***THAT** I also undertake to pay damages in the event that I am required to do so by this court."*

The Defendants are opposed to the application and they rely on the following statement, sworn by the 1st Defendant:

3. ***THAT** I am the sister to the late William Chaziya whose son is the Claimant herein.*
4. ***THAT** in 1990 I was given my portion of land at Ngwata Village by my late brother William Chaziya, and subsequently settled on the land in 1996.*
5. ***THAT** in 2006 my late brother William Chaziya became Chief of Ngwata Village and remained Chief for 5 years after which his nephew Mathews Banda became Chief. Exhibited hereto and marked as "LB1" is a letter explaining the establishment of Ngwata village by Senior Group Village Headman Chanjowa.*
6. ***THAT** even after the death of William Chaziya I have enjoyed uninterrupted possession of the said portion of land at Ngwata Village, nevertheless, I verily believe that land that belongs to me is customary land and not leasehold land as I contend the validity of the lease obtained by the late William Chaziya, as it was never consented to by the T/A Wimbe. Exhibited hereto and marked as "LB2" is a letter drafted by T/A Wimbe addressed to the District Commissioner for Kasungu concerning the contended land.*
7. ***THAT** I have, since coming into possession of the said land, never invited and settled the other Defendants named herein onto the land in contention. Exhibited hereto and marked as "LB3" explains as to how the 3rd Defendant obtained his land, Exhibit "LB4" explains how the 4th Defendant obtained his land, Exhibit*

"LB5" explains how the 5th Defendant obtained his land, Exhibit "LB6" prescribes how the 7th Defendant bought her land from one Mr. David Phiri, Exhibit "LB7" prescribes how the 8th Defendant bought his land, and lastly Exhibit "LB8" explains how the 9th Defendant bought her land.

8. *THAT before the death of William Chaziya, proceedings were commenced in 2009 at the First Grade Magistrate Court sitting at Kasungu where it was held that my brother the late William Chaziya's claim was statute barred. I was not a named Defendant in the proceedings, nevertheless, the 2nd Defendant was party to the proceedings. Exhibited hereto and marked as "LB9" is the judgment from the First Grade Magistrate Court sitting at Kasungu from 2009.*
9. *THAT the Claimant does not live on the contented land and has never approached me to ask me to vacate the land even after the said Claimant obtain Letters of Administration upon my brother's death.*
10. *THAT the Claimant has now commenced legal proceedings against myself and 8 other Defendants which, inter alia, he seeks to gain possession of the land in contention and evict myself and the other named Defendants.*
11. *THAT I am frustrated by the Claimant's attempt to gain possession of the land as I have been there for 25 years. Which has also caused me emotional stress and turmoil.*
12. *THAT if the injunction is granted it will cause great harm to my livelihood as the land in question is where I have farmed for food for 25 years, and also plan on using this rainy season to plant maize for my sustenance as I have always done.*
13. *THAT if the injunction is granted, I will be destitute with no place to live or farm and may likely suffer due to my old age as I am 61 years of age."*

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 the facts in the present case are very much in dispute. Both parties, the Claimant on one side and the Defendant on the other side, claim to be the owner of the land in dispute. I, therefore, find that the matter raises triable issues.

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 *Julie F. Mulipa v. Mr. and Mrs. Bibiyani and Others unknown*,

Land Cause No. 105 of 2016 (unreported), wherein Tembo, J., while quoting **Nanguwo v Tembenu and another, HC/PR Civil Cause No. 451 of 2013 (unreported)**, stated as follows:

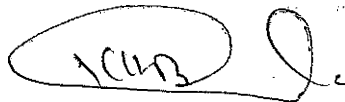
"What this Court wishes to observe is that land is inherently unique and therefore damages are not an adequate remedy where the same is dealt with adversely. Therefore, the issue on adequacy of damages is ordinarily out of the question in relation to applications for injunction in relation to land."

As regards the balance of justice, sometimes it is best to grant an injunction so as to maintain the status quo until the trial and at other times, it is best not to impose any restraint on the defendants: see **Hubbard v. Vosper [1972] 2 Q.B. 84**.

In the present case, it will be recalled that the main thrust of the case of the Defendants is that the grant of an order of injunction in the present circumstances would be unfair on the Defendants as they have had continuous and undisturbed possession of the land for the last 15 years or more. This has gone unchallenged. Further, there is a judgement of the First Grade Magistrate Court sitting at Kasungu which raises the issue of whether or not the present action is caught by the doctrine of res judicata. Furthermore, as was correctly submitted by Counsel Chiudzu, unlike the Claimant who does not live on the land in dispute, the Defendants live and cultivate on the land in dispute and, as a result, stand to lose a lot more if the order of interlocutory injunction is granted.

Having considered the foregoing matters, I am satisfied that the balance of justice lies in maintaining the status quo. Accordingly, the application for an interlocutory injunction is dismissed with costs.

Pronounced in Chambers this 23rd day of November 2021 at Lilongwe in the Republic of Malawi.



Kenyatta Nyirenda
JUDGE