

**THE MALAWI JUDICIARY  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY**

**MISCELLANEOUS CAUSE NUMBER 157 OF 2020**

**BETWEEN**

**GRACE MWANGONDE AND BRENDA MWANGONDE....CLAIMANTS**

**AND**

**PRICHARD MWANGONDE.....DEFENDANT**

**CORAM: JUSTICE J. N'RIVA**

Mr Lihoma, of counsel for the Claimants

Mr Jiva, of counsel for the Defendant

Ms Nkangala, Court clerk

**ORDER**

The application before this Court is for a prayer to have a caution entered into by the defendant discharged. The application is supported by a sworn statement by Grace Mwangonde and another sworn statement by Brenda Mwangonde verifying the contents of the sworn statement of Grace Mwangonde. The application is opposed by the defendant who also filed a sworn statement.

To begin with, it should be noted that the parties in the present matter are siblings. The brief history of the matter is found in the sworn statements that have been filed in this Court. The defendant stated in his sworn statement in opposition of the application for the removal of the caution that:

- Their parents died and left a property known as Title number Soche East JB2/39 which he had been maintaining since 1989 when their parents went back to Rumphu after retiring. Their father died in 2001 and their mother died in 2016. Their father then through a telegram messages told him that the property now belonged to him.
- Three months after their mother died, Nina Mwangonde one of his four sisters approached the office of the Administrator General's and told them that she was told to sell the property Title number Soche East JB2/39.
- They were called for a joint discussion at the office of the Administrator General where it was determined that all the beneficiaries should share the rentals realized from the said property.
- The determination was not documented, and his sister Nina stated that she was no longer in agreement with the determination and would rather seek other remedies.
- On or about September 2020, he learnt that the claimants were selling the property and he decided to put a caution on the said property prompting the claimants to then obtained letters of administration irregularly.
- He has demonstrated that he is the one who has vested interest in the said property and not the claimants.
- He prays to this Court that the caution on the property should not be removed until the matter is settled and that the letters of administration that were obtained by the claimants be revoked.

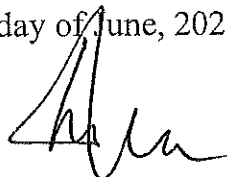
In response to the sworn statement in opposition to the application for the removal of the caution, Brenda Mwangonde refuted the defendant's claim that the property was given to him through a telegram message and stated that the defendant had failed to produce the evidence. She also refuted the defendant's claim that her other sister Nena went to Administrator General's office after their mother's death but rather that it was the defendant who, after their mother's death, started collecting rentals from the property and kept the money to himself. She

stated that their uncles came to resolve the dispute and it was agreed that an account be opened at the bank so that the rentals should be deposited there and be shared equally among the children, However, the defendant refused to facilitate the opening of this account prompting the four sisters to lodge a complaint at the office of the Administrator General who requested all of them to go and resolve the matter but after the defendant refused, they were advised to obtain letters of administration so that they sell the property and share the proceeds. She stated that they notified the defendant about this, but he refused to cooperate when they tried to appoint him as one of the administrators. The claimants were later appointed as administratrices and they proceeded to obtain letters of administration prompting the defendant to go and obtain caution on the property. She stated that by obtaining the caution, the defendant is making a calculating move so that he frustrates the process of selling the property.

The Court agrees with the claimants that the property in question cannot remain with the defendant as if he is the only beneficiary. If the defendant were the sole owner of the property, he would not have hesitated to produce evidence to back up his claims. This Court finds that the claimants too have an equitable interest in the property. The Court also agrees with the claimants that since they are the ones given the powers to administrate the property, the defendant has no basis to prevent the removal of the caution.

This Court grants that the caution be removed, and that the property be dealt with accordingly. It is so ordered.

Made in Chamber, this 8<sup>th</sup> day of June, 2021



J N'RIVA

JUDGE