



**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NUMBER 741 OF 2018**

BETWEEN:

THE REGISTERED TRSUTEES OF THE CHURCH.....CLAIMANT

OF CENTRAL PRESBYTERIAN NKHOMA SYNOD

AND

RABECCA KAWANGA.....DEFENDANT

CORUM: R.M CHINANGWA

JUDGE

Mbwana

Counsel for the Claimant

Mlumbe

Counsel for the Defendant

Chitao

Counsel for the Respondent

JUDGEMENT

Introduction

1. The claimants seeks an order declaring the claimants as the rightful owner of the land on deed title number 35839 and its extension thereto and costs of this action.

2. The defendant has opposed the claim. Both parties paraded witness and a summary of their evidence is provided below.

Claimants Evidence

3. In 1968, the claimants secured some land from chiefs. Later in 1969 the claimants obtained a lease on the said piece of land dated 13th August 1996.
4. A need arose to extend the said land as the claimants congregation grew. The claimants obtained land from surrounding villagers. The villagers that were compensated were Chizondi; E. Kuntambira, B. Chilenga, Nachenga Tepeka; Mtakate Masocha; John Aidi; George Mkweza, H. Masocha; Givina Mulenga; Thomson Thom
5. In 1995 the defendants biological mother encroached on the claimants land. In 1996, the District Commissioner resolved the encroachment dispute in favour of the claimants. In 1999, the same dispute arose and was resolved in the same manner.
6. In 2013, the defendant encroached on the claimants land. The claimants built a perimeter wall around their land, but the defendant demolished the same and built her house on the claimants land.
7. It is argued that Traditional Authority Kalonga was not installed chief at the time the claimants acquire the land. In addition, it is argued that the defendants land was far from the claimant's land, as the claimants land was directly adjacent to Mr Phiri and he was the one who was compensated.

Defendants Evidence

8. In response the defendant stated that her late father gave each of her siblings a piece of land. Her piece of land is close to the claimant's land. She built her house in 2012 on her land.
9. The defendant argues that the land in dispute has always belonged to her family and they did not receive any compensation for the piece of land from the claimants. The claimant did not consult the defendants when they applied for a lease over the land. This was confirmed by the testimony of Traditional Authority Kalonga, Langwani Paulos Mwale.
10. During an attempt by the Regional Commissioner for Lands to resolve the land dispute as recorded in a letter dated 14th September 2020, it did come to the claimants and defendants knowledge that the land in dispute is public land.

Issue for Determination

11. This court has to determine who owns the land in question.

Analysis of Law and Evidence

12. It should be stated at the outset that the land in dispute is customary land. Much as the Regional Lands Commissioner through a letter dated 14th September 2020 hold the view that the land in dispute is public land, this court was not shown evidence to prove the same in accordance with section 27(1) and section 40 as read with section 41 of the Land Act. Through this law there was need of a Gazette or a certificate purporting to be signed by the Minister that the land has been designated as public land. It is on this account that this court will determine the dispute on account that the land in question is customary land.
13. It should also be noted at the outset that the claimants have a lease for the initial piece of land they acquired and not the extension they sought at a later date which is the subject matter in this case.
14. Regarding the customary land in dispute this court notes the dispute pertains to whether the defendant or one Mr Phiri owns land adjacent to the claimants; if the defendant owns the land adjacent to the claimants whether the claimants followed the correct procedure in acquiring the same. The dispute arises on account that the claimants contend that they compensated Mr Phiri who owned the land in dispute and the defendant is an encroacher.
15. Under section 25 of the Land Act all customary land is vested in the President and the chiefs administers its usage. In **The Administrator of The Estate of Dr H Kamuzu Banda v Attorney-General** [2002–2003] MLR 272 (HC) customary land was given to Dr H. Kamuzu Banda by chiefs. In addition, it was held in **Kampaundi v Rev Sisco** [2002–2003] MLR 117 (SCA) that title to customary land moves with possession. This court finds that the defendant being in possession of the extension part of the land has title to the said land. The claimants haven't substantiated their claim on the same in the absence of Mr Phiri to show that he was the first person in occupation of the land in question and that after he handed over the same to the claimants. He was not available to testify despite the church stating that the villagers were compensated. His name is not even on the list of those compensated.

16. Now if the claimants are to acquire customary land from the defendants or its previous owners, for one they would have to go through the chiefs of the area by virtue of section 25 of the Land Act which gives Chiefs the mandate to administer customary land. There is no record or proof of consultation with the chiefs at the time compensations were paid as per the list provided in court. In addition, though the claimants argue that they compensated the defendant for the land in dispute, the respondents name does not appear on the list of those compensated.

Finding

17. The claimants claim fails. Each party is to bear its own costs.

Pronounced this 23rd day of July 2021 at LILONGWE

A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a long horizontal stroke that curves upwards at the end.

R.M CHINANGWA

JUDGE