



**JUDICIARY
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY (CIVIL DIVISION)
LAND CAUSE NO. 122 OF 2020**

BETWEEN

LEZINA BIKISALA CLAIMANT

AND

NUMERI NKONYO DEFENDANT

CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA

Mr. Kubwalo, of Counsel, for the Claimant

Mr. Mhone, of Counsel, for the Defendant

Mr. Henry Kachingwe, Court Clerk

RULING

Kenyatta Nyirenda, J.

This is this Court's ruling on an application by the Claimant for an order of interlocutory injunction.

The case commenced on 5th November 2020 with the Claimant issuing a Writ of Summons against the Defendant claiming:

- "a. an permanent order of injunction restraining the Defendant by himself, servants, agents or otherwise from encroaching or continuing to encroach, trespassing either by way of carrying out any activity or howsoever, selling or offering to sell, or otherwise interfering with the land beyond the piece of land that the Defendant took over from his late father measuring 20 by 30 meters located at Ntanda village, Traditional Authority Msakambewa in Dowa; and*
- b. costs of the action."*

On the same day, the Claimant filed an ex-parte application for:

"an order of interlocutory injunction restraining the Defendant by himself, servants, agents or otherwise from encroaching or continuing to encroach, trespassing either by way

of carrying out any activity or howsoever, selling or offering to sell, or otherwise interfering with the land beyond the piece of land that the Defendant took over from his late father measuring 20 by 30 meters located at Ntanda village, Traditional Authority Msakambewa in Dowa until the conclusion of this matter or until a further order of the Court.”

The application is supported by a statement, sworn by the Claimant, and the material part thereof provides as follows:

- “2. **THAT** *I come from Ntanda village, Traditional Authority Msakambewa in Dowa.*
3. **THAT** *I was born in 1947.*
4. **THAT** *in or about the year 1964, the father to the Defendant, moved to our Ntanda village which was headed by my father.*
5. **THAT** *my father welcomed the father to the Defendant and allocated him some piece of land to build a house as well as some piece of land to farm. The piece of land allocated to the Defendant’s father was situated at some distance from the house of the Defendant’s father at a place called Matamangwe.*
6. **THAT** *as years went, the Defendant’s father asked my father if he could lend him a small piece of land closer to his home where he could grow maize for consumption as green maize. He made this request due to the fact that he had grown older and weaker and could no longer manage to go and farm at Matamagwe where his land was which was far as noted in the immediately preceding paragraph.*
7. **THAT** *my father granted the Defendant’s father his wish and allocated him a piece of land measuring about 20 by 30 meters which was made up of about 20 ridges.*
8. **THAT** *when the Defendant’s father died, the Defendant took over the piece of land mentioned in the immediately preceding paragraph.*
9. *Surprisingly, in or about 2011, the Defendant started to go beyond the piece of land that was allocated to his father and started to trespass into land that was given to me by my late father.*
10. **THAT** *I protested and took the matter to the matter Group Village Headman Kaiwe up to Senior Chief Msakambewa.*
11. **THAT** *disappointingly, the local leaders found in favour of the Defendant without appreciating and considering all the relevant facts.*
12. **THAT** *for instance, Senior Chief Msakambewa made a finding that the Defendant had used the land for 39 years and that therefore, it would not be fair to stop him.*

13. ***THAT** however, the position taken by the Senior Chief Msakambewa was factually wrong as in his reckoning, the Senior Chief included the number of years the Defendant's father had used the piece of land mentioned in paragraph 6 hereof. If the Senior Chief had concentrated on the period the Defendant had been encroaching my land beyond the small piece of land given to his father by my father, the Senior Chief would have concluded that the period began to run from 2011.*
14. ***THAT** lately, the Defendant has been showing my land to potential buyers which means he is desirous of selling my land.*
15. ***THAT** if not restrained by an order of injunction, the Defendant will continue to trespass on my land and will sell it."*

I ordered the ex-parte application to come by way of an inter-partes hearing.

The Defendant filed two sworn statements in opposition made by the Defendant and Mr. Kachepa Mwale respectively. The sworn statement by the Defendant reads as follows:

- "3. *I have read the sworn statement of **LEZINA BIKISALA** in reply to my sworn statement in opposition and here below is my response.*
4. *In 1964 my father was given land at Ntanda Village measuring close to 6 acres and another piece at a place known as Matamangwe where all the village fields are measuring close to 5 acres.*
5. *Contrary to the Claimant's assertions, although I was born in 1960 and was only four years old when the Claimant's father gave my father the two pieces of land, my father lived long enough that I was able to see and know where the two pieces of land were and their dimensions.*
6. *My father died in 1998 and it is not true that in 1987 he complained of being too old so that he could be given the alleged 20m x 30m piece of land. In actual fact the alleged piece of land measuring 20m x 30m was given to one Ephraim Mende.*
7. *In or about 1988, immediately after the passing on of the Claimant's father, I found a seasonal job with Limbe Leaf Company Ltd in Kanengo. Being a seasonal job I was able to go back to the village every time the tobacco season was over. In fact I was still farming in Dowa at that time.*
8. *At around the 1980s, the Claimant was not staying at Ntanda village because she had gone to Nkhotakota where her husband was working.*
9. *In 2002 I followed my wife to Matekenya Village but I came back a year later so it is not true that I left Ntanda Village completely as it has been alleged.*

10. *I am not aware of ever using the 20m x 30m piece of land because the same was given to Ephraim Mende and it is now being used by his son who goes by the same name because Ephraim Mende senior is deceased.*
11. *It is not true that the Claimant's deceased husband planted sisal on the land in question. In fact the time the sisal was being planted, the Claimant and her husband had gone to work in Nkhotakota.*
12. *The Claimant cannot feign ignorance of part of the land being sold to Bible Believers Church considering that the church has been at the village since 2007 and during that time, it was her husband who was the village headman and that has not been disputed. In any event, the Claimant herein is not a handwriting expert and she cannot competently attest to how her late husband's the signature characters looked.*
13. *The Claimant has never raised any query with the church on the acquisition of land because she is well aware that the said land was legitimately disposed of and her late husband sanctioned the transaction.*
14. *I still maintain that there are no tribal issue(s) warranting the granting of an injunction as sought. The Claimant is only bent to upset the status quo that has existed for over 50 years through perversion of facts as it has been shown above and in my earlier sworn statement.*
15. *The Claimant has over the past two weeks whilst this action is ongoing also removed the sisal on the land despite her commencing action in this court claiming that she owns the land.*

WHEREFORE *I humbly pray before the Honourable Judge not to grant an interlocutory order of injunction as prayed for."*

The sworn statement by Mr. Kachepa Mwale supports the sworn statement by the Claimant. He states, among other matters, that it is actually the Defendant who trespassed on the Defendant's land and started doing unauthorised activities thereon.

The Claimant filed with the Court a sworn statement in reply to the sworn statement in opposition.

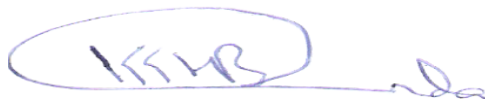
An interlocutory injunction is a temporary and exceptional remedy which is available before the rights of the parties have been finally determined. Order 10, r. 27, of the CPR provides that a court may grant an injunction by an interlocutory order when it appears to the court that (a) there is a serious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

Having carefully read the sworn statements and the submissions by Counsel, it is the considered view of this Court that the application has to be denied. It is trite that in

the exercise of its equitable discretion, the Court will refuse to grant an interlocutory injunction if the interlocutory injunction effectively gives the claimant the full right sought in the main case: see **Chirwa v. Kaunda t/a Chika Building Contractors [1993] 16(2) MLR 502**. This is precisely what would obtain in the present case if the Court were to grant the order of interlocutory injunction being sought.

In view of the foregoing and by reason thereof, the application is dismissed with costs.

Pronounced in Chambers this 4th day of January 2021 at Lilongwe in the Republic of Malawi.



Kenyatta Nyirenda
JUDGE