



**JUDICIARY  
IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY (CIVIL DIVISION)  
LAND CAUSE NO. 141 OF 2020**

**BETWEEN**

**JOSEPH DAVID CHAVULA ..... CLAIMANT**

**AND**

**DAPHNE SINGINI ..... DEFENDANT**

**CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA**

Ms. Chihana, of Counsel, for the Claimant

Mr. Mwabutwa, of Counsel, for the Defendant

Mr. Henry Kachingwe, Court Clerk

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**RULING**

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*Kenyatta Nyirenda, J.*

This is my Ruling on an inter-partes application by the Claimant for an interlocutory injunction restraining the Defendant, either by himself, his servants or agents or whomsoever otherwise, from undertaking any construction works on the Claimant's land Title No, BULI 19/1/27 situated at Mazaza Village in Lilongwe City pending the determination of the main action. The application is brought under Order 10, r. 27, of the Courts (High Court) (Civil Procedure) Rules, 2017 [Hereinafter referred to as the "CPR"].

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

- "3. **THAT** I am the title holder of land in Title No. BULI-19/1/27. I attach and exhibit a copy of the Land Certificate marked "**JDC1**".
4. **THAT** since the year 2014 I have been in quite possession of the land without any interruptions whatsoever.

5. *THAT suddenly I received news that the Defendant is on my land demanding ownership. She has encroached by putting quarry stones, bricks, and using a tractor, tilled half of the said land.*
6. *THAT my contention is that their actions are illegal of which the Court must put a stop to.*
7. *THAT also I have a right to property which cannot be arbitrarily be taken away as such the Court must intervene to not only protect this right but also ensure that my right to obtaining effective remedy is realized.*
8. *THAT this action presents serious questions of law that ought to be tried.*
9. *THAT damages will not be an adequate remedy if this injunctive relief is not granted.*
10. *THAT it is just for this Court to grant an order of injunction against the Defendant.*

The Defendant is opposed to the application and two sworn statements were filed with the Court in that regard. The first statement was sworn by the Defendant and the relevant part thereof states as follows:

***“Background***

3. *THAT between the years 2002 and 2007 I bought pieces of land in dispute from different villagers within Mazaza village in the City of Lilongwe.*
4. *THAT in 2014 our construction business wound up and that left our family in acute financial difficulties.*
5. *THAT in the same year 2014 I approached the Claimant, who is a son to my sister, to borrow me the sum of K2,000,000.00 which he did, on condition that repayment be made from the sale of agricultural produce.*
6. *THAT the sum of K2,000,000.00 was used to acquire farm inputs and cover labour expenses for the other farm at an area known as Baroni situated within the City of Lilongwe.*
7. *THAT, in appreciation of the loan amount that I got from the Claimant, I allowed him to farm on the piece of land in dispute up until the loan amount was fully paid.*
8. *THAT to my surprise, despite several reminders to collect his money, the Claimant remained non-committal and unco-operative and instead served summons on me.*
9. *THAT I refer to paragraphs 3 to 7 of the sworn statement of the Claimant and state as follows:*
  - 9.1 *I don't remember to have sold the piece of land to the Claimant and over and above I don't remember to have executed a sale agreement.*

- 9.2 *I admit to have not repaid the loan amount to the tune of MK2,000,000.00 and I am prepared to repay now with interest.*
- 9.3 *I borrowed the said sum of MK2,000,000.00 from the Claimant since I considered and treated the Claimant as my biological son whom I raised from my own home from the time we were in Blantyre till when he became fully independent.*
- 9.4 *We never agreed at any point to use my piece of land as collateral hence the purported sale and the subsequent transfer was never endorsed by any family member.*
- 9.5 *I have been farming on the said piece of land since 2017 when I retook possession of the land from the Claimant who farmed on the same land from 2014 to 2017 and I had not experienced resistance from the Claimant up until when he noticed that I had started heaping construction materials.*
10. *THAT the Claimant is bitter with my decision to construct on the piece of land which I find it unreasonable and unfair.*
11. *THAT the value of my piece of land is over MK15,000,000.00.*
12. *THAT the land certificate marked as JDC1 in the sworn statement of the Claimant is highly questionable as the family representative responsible for land transaction within the area knows me as the one owning the piece of land and I have been continuously farming on the said piece of land from 2017 to date; and this is the only piece of land.*

***Suppression of material facts by the Claimant***

13. *THAT the Claimant has failed to disclose the full title as it was not witnessed or signed by the appropriate representative popularly known as 'MWINI NDUNDA'.*
14. *THAT the 'MWINI NDUNDA' who purports to have witnessed and approved the transaction died in 2003 before the creation of the title. I produce a copy of the title and mark the same as 'DS1'.*
15. *THAT the said title No. Buli 19/1/27 was signed by the Claimant as transferee in 2016 after the title had already been created.*
16. *THAT the title in issue was created on 10<sup>th</sup> October, 2014.*
17. *THAT the title raises a lot of questions as it is not matching the dimension of my piece of land, the layout of which has not changed since my acquisition. I produce a copy of the surveyor's map and mark it as 'DS2'.*
18. *THAT the surveyor's map of my piece of land is totally different from the one accompanying the title deed hence there is a possibility that the application is alluding to another piece of land other than my piece of land.*

19. *THAT my piece of land does not cross over Area 25 road and the same could be appreciated from my surveyor's map.*
20. *THAT the consideration in the sum of MK500,000.00 reflected in the title deed was never agreed upon by the parties. The absence of the sale agreement leaves a lot to be desired."*

The second statement in opposition was sworn by Mrs. Belita Sankhani. She confirms a number of statements made by the Defendant and these include that:

- (a) between 2002 and 2007, the Defendant bought the land in dispute from different villagers;
- (b) Hamiltoni Mngongonda Sankhani died in 2003 hence the signature against the transferor on the title is not genuine;
- (c) the Defendant has been farming on the piece of land since 2002 to date;
- (d) neither the family representative nor the village headman knows the Claimant as the owner of the land in dispute;
- (e) the authenticity of the title known as BULI 19/1/27 is totally doubted .

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 claim ownership of the land.

In light of the contestation on both factual matters and the legal questions arising therefrom, I really doubt that this case can be resolved at an interlocutory stage before the factual landscape of the case unfolds during the hearing of the substantive case: see **John Albert v. Sona Thomas (Nee Singh), Sukhdev Singh, Samsher Singh and Hellen Singh, MSCA Civil Appeal No. 46 of 2006 (unreported)**. As was aptly put in **Mwapasa and Another v. Stanbic Bank Limited and Another, HC/PR Misc. Civ. Cause No. 110 of 2003 (unreported)**, "*a court must at this stage*

*avoid resolving complex legal questions appreciated through factual and legal issues only trial can avoid and unravel”.*

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 Chitty on Contract – General Principles, 26<sup>th</sup> ed., Sweet and Maxwell at paragraph 1868 and the decision by the Supreme Court of Appeal in **Village Headman Kungwa Kapinya and Others v. Chasato Estates Ltd, MSCA Civil Appeal No. 75 of 2016 (unreported)**

In view of the foregoing, the balance of justices lies in maintaining the status quo. Accordingly, the application for an interlocutory injunction is granted as prayed, that is, the Defendant, either by himself, his servants or agents or whomsoever otherwise, is restrained from undertaking construction works on Title No, BULI 19/1/27 situated at Mazaza Village in Lilongwe City until the main case herein is determined. For avoidance of doubt, maintaining the status quo means that the Claimant must also refrain from taking action that would adversely affect the land in dispute.

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

**Kenyatta Nyirenda**  
**JUDGE**