



**JUDICIARY
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY (CIVIL DIVISION)
LAND CAUSE NO. 11 OF 2022
(Before Honourable Justice Kenyatta Nyirenda)**

BETWEEN

JUMA TEMBO CLAIMANT

AND

GVH MSETEZA 1ST DEFENDANT

KASUNGENI MATSUKWA 2ND DEFENDANT

OTITI SITIMA 3RD DEFENDANT

CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA

Mr. Thindwa, Counsel for the Claimant
Mr. Chiwaya, 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 from dealing with or cultivating on the Claimant's land situated at Mseteza Village in Lilongwe District.

The application is supported by the following statement, sworn by the Claimant:

- “3. **THAT** I and my 12 siblings inherited land from our father being roughly 10 acres in size situated at Mseteza Village in Lilongwe.
- 4. **THAT** the land was allocated to our father by his Uncle in 1961 on which he farmed on till his death in 2004.

5. *THAT my father's siblings being the Defendants herein, were also allocated plots of land by the same Uncle to work on as farm land.*
6. *THAT in the time that their father was alive (57 years), my siblings and I helped our father work on the farm with no help whatsoever from the Defendants.*
7. *THAT upon my father's death, his siblings started working on the land to our exclusion in addition to the land that they were initially allocated.*
8. *THAT we planted trees on the land in or about 1980 but the Defendants have been cutting them down haphazardly.*
9. *THAT we took their grievances to Traditional Authority Mtema who summoned the Defendants in efforts to have the land handed back to us.*
10. *THAT at the meeting, the Defendants admitted that we were indeed entitled to the land and gave the impression that they would give return ownership back to us.*
11. *THAT after the meeting however, the Defendants only gave us 17 lines to till instead of the whole farm itself and upon our refusal of the lines, stated that they will not give up the whole land.*
12. *THAT all my efforts to recover the land from the Defendants have proved to be futile.*
13. *THAT the Defendants are now working on the land for the 2021/2022 farming season.*
14. *THAT my siblings and I, on the other hand do not have any land to farm on for food for the upcoming year.*
15. *THAT if not stopped, the Defendant will continue working on the land as they please and cause further detriment to my siblings and I.*
16. *THAT I believe that the Court should restrain the Defendants or their agents or servants from using the land, cultivating, erecting or building, selling or disposing of the land situated at Mseteza Village in Lilongwe.*
17. *WHEREFORE, the Claimant prays for an interlocutory injunction restraining the Defendant by its servants, agents or whomsoever from selling, cultivating, building/erecting, disposing of the Claimant's land."*

The Defendants are opposed to application and they rely on a sworn statement by the 1st Defendant which states as follows:

- “3. *THAT I and the other Defendants have read the sworn statement of the Claimant in support of the application for injunction and we wish to oppose to the same on the grounds set out herein below.*

Lack of capacity to sue

4. THAT the Claimant brings the action on behalf of himself and his unnamed 12 siblings over a piece of land situated within my jurisdiction, purportedly inherited from their father.
5. THAT from the Claimant's own pleadings, the land in issue ought to be treated as deceased estate and the Claimant has not produced any authority (in form of letters of administration) authorizing him to manage the deceased estate and represent the other said siblings.

History of the land

6. THAT the land in issue was never allocated to the Claimant's father as alleged.
7. THAT the Claimant's father was staying at his father's village (Dongolosi Village) within Traditional Authority Mtema in Lilongwe together with the Claimant until he was chased to go back to his mother's village (Mseteza village) in the said 1961.
8. THAT when the Claimant's father returned to my area, he was told that all the land was already allocated his azilongo per the Chewa culture who were already cultivating on it.
9. THAT the Claimant's father requested for temporary allocation of the land whilst he was looking for another land where he was to settle and cultivate with his family.
10. THAT the land in dispute was thus given to the Claimant's father on this temporal arrangement and the Claimant's father had been acknowledging this fact during his entire life.
11. THAT in the year 1990, the Claimant's father proceeded to buy a piece of land at Mnthanjwe village, Traditional Authority Malengachazi in Nkhotakota District and the Claimant moved to this land in the same year.
12. THAT we have always known the Claimant to be in Nkhotakota and on the said land which was purchased by his father until last year, 2021 when we heard that he was in Dowa at his mother's village.
13. THAT from the Claimant own sworn statement, he has confirmed being currently residing at Chizewe Village, Traditional Authority Kayembe in Dowa District.
14. THAT we have further been informed that the Claimant unilaterally disposed of the land in Nkhotakota and this is an attempt to get himself land which his father never owned.

Maintaining status quo

15. *THAT the Claimant's father remained in the village after purchasing the land in Nkhotakota and the Claimant moving there and he was allowed to continue using the land on an understanding that the same shall immediately be returned when children of his azilongo are able and in need of it.*
16. *THAT after his death in 2004, I duly allocated the land to the rightful members of the family and myself and other two (2) named Defendants never got a piece of land.*
17. *THAT those who were allocated the land have been cultivating it since 2004 and without any disturbances until the return of the Claimant in 2021.*
18. *THAT currently, the land was fully cultivated and largely planted with maize which is about flowering.*
19. *THAT granting the injunction being sought herein will in no way be maintaining the status quo but bring inconvenience and irreparable loss to the current users of the land."*

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 respective 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. This being the case, I hold that the matter raises triable issues.

The Court must also consider whether damages are an adequate remedy. Damages emerging from claims of land are not considered as an adequate remedy in view of the unique value that every piece of land has to its owner. In the case of **Mulipa v. Mr. & Mrs. Bibiyani and others unknown, HC/PR Land Cause No. 105 of 2016**, Justice Tembo put the point in the following words:

"What the 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 application for injunction in relation to land. See Nanguwo v Tembeni and another civil cause number 451 of 2013 (High Court) (unreported)"

As regards the balance of justice, sometimes it is best to grant an order of interlocutory 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 defendant: see **Hubbard v. Vosper** [1972] 2 Q.B. 84.

In the present case, the parties are agreed that the present dispute arises from acts that took place in 2004 when the Claimant's father passed away and, by the Claimant's own admission, the 1st Defendant's sibling started to work on the land in dispute to the exclusion of the Claimant and the Claimant has never been able to recover the land since 2004. In the circumstances, I am very much persuaded by the submissions by Counsel Chiwaya that the circumstances of this case favour maintaining the status quo. Accordingly, the application by the Claimant for an order of interlocutory injunction is NOT allowed.

Pronounced in Chambers this 29th day of March 2022 at Lilongwe in the Republic of Malawi.

Kenyatta Nyirenda
JUDGE