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IN THE HIGH COURT OF MALAWI
CIVIL DIVISION
PRINCIPAL REGISTRY
APPEAL CASE NO. 24 OF 2021
BEING CIVIL CAUSE NUMBER 239 OF 2017 AT MULANJE
MAGISTRATE'S COURT

BETWEEN

KINGSLEY JANA..... APPELLANT

AND

BENSON CHIDZIWE.....FIRST RESPONDENT

AND

YUSUF HUSSEINSECOND RESPONDENT

Before: Judge Jack N'riva

Mr Panyanja for the appellant

Mr Kusiwa for the respondent

Mrs Nkangala, court clerk.

JUDGMENT

This is an appeal against the decision of the Second Grade Magistrates Court sitting in Mulanje. The matter involved dispute over land.

The court below found in favour of the appellant and ordered the respondent to pay the appellant compensation amounting to K100,000.00.

This appeal hinges on how the trial court exercised its discretion.

The appellant argued that

1. The Court below did not hear the parties on the part of compensation
2. The Court did not come up with effective remedy
3. That the decision of the Court affected the claimant's right to a right to an effective remedy under the law arguing that damages may not be an adequate remedy on land matters.

Counsel for the respondent argued that the court below exercised its discretion and this Court cannot interfere with that exercise of discretion. He argued that the court below appreciated the fact before it to come to the order of payment of compensation.

The question is whether the court below fell into an error of law.

Counsel for the respondent argued that from the record, when the court below found that respondents had encroached the appellant's land, it ordered the respondents to pay the appellant compensation. The court made its assessment as to the degree of the respondent's encroachment onto the appellant's land and found that it was a low level of encroachment and ordered the compensation as it did.

Clearly, from the record, the court made the finding without granting the parties an opportunity to address it on the appropriate remedy to award the appellant.

The court's decision is without support. On that point I agree with the appellant that the court below made a decision without hearing the parties on that point. In exercising its discretion, the court had to hear the parties on that point.

This Court, therefore, allows the appeal.

The decision of the court below is hereby set aside.

Since the matter was heard while the Magistrates had jurisdiction over land matters, I order that that the Chief Resident Magistrate (South) should assign the matter to another Magistrate to consider the appropriate remedy to the appellant.

Made the 22nd day of March, 2022

A handwritten signature in black ink, appearing to read 'J N'RIVA', written in a cursive style.

J N'RIVA
JUDGE

