



**IN THE HIGH COURT OF MALAWI  
ZOMBA DISTRICT REGISTRY  
CIVIL CAUSE NO. 42 OF 2020**

**BETWEEN**

**CHRISTOPHER CHILIMBA**

**CLAIMANT**

**AND**

**MARIAM HALIDI KALIYATI**

**DEFENDANT**

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**Ntaba, J**

**ORDER**

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**1.0 BACKGROUND**

- 1.1 On 5<sup>th</sup> September, 2023, this Court heard the contempt proceedings against the Defendant, Ms. Mariam Halidi. The Claimant presented his case by adopting his sworn statement as well as skeleton arguments in support of the application. He highlighted that the Defendant had continued to disobey all of the Court's orders. The Defendant, Ms. Halidi, informed the Court that her mother, who was the first Defendant, Saina Halidi, had passed away leaving only her. She also stated that her name was not Mariam Halidi but Mariam Kaliyati, as Halidi was her mother's name. She confirmed that she lived on the said land. She attempted to act as if she had never been served with any court documents; however, it was ascertained that she was being untruthful. She argued that she was not being disrespectful to the court. Following the hearing of the parties, the Court ruled as follows -
- 1.1.1 the order dated January 31, 2023, which stated that she should be committed for 20 days and pay a fine of K100,000, be suspended subject to her following the Court orders and not committing any further contempt;
- 1.1.2 the buildings or structures that were hindering Mr. Chilimba's access to his land were to be demolished on September 8, 2023, without any hindrance from the Defendant.
- 1.2 The order of 5<sup>th</sup> September, 2023, indicated that the demolition of the buildings or structures should take place in the presence of court officials and police. On the said date, the court officials who attended were my clerk, Mr. Dave Banda, and Mr. Chauma, a court marshal who accompanied the Claimant and the Chief. They

reported that they failed to have the police accompany them despite being ordered to do so. Mr. Banda wrote a report on the incident and submitted it to the court. The report highlighted that when they attempted to remove the barriers, including a pot latrine, which were blocking the said access, the Defendant and her relatives refused to cooperate. They further insulted and threatened the Claimant, and he later informed Mr. Banda that he was assaulted.

- 1.3 The Defendant filed a sworn statement where he stated that the Defendant refused to comply with the orders of the court, including the one issued on 5<sup>th</sup> September, 2023, which suspended her committal to prison and the payment of the fine as ordered on 31<sup>st</sup> January, 2023. He confirmed that on 8<sup>th</sup> September, 2023, the Defendant, together with her relatives, started verbally abusing him to the point where it became impossible to discuss and implement the court's order. They also began physically assaulting him with sticks. He recalled that Mr. Banda advised the Defendant and her relatives about the seriousness of disobeying a court order and physical assault; however, they did not listen. He stated that the belligerent and aggressive behavior of the Defendant and her relatives caused the implementation of the order to fail and resulted in the court officials fleeing from the scene. Furthermore, when the court officials left, the Defendant started attacking him with stones, and the village headmen who were there had to rescue him from the attacks. Incidentally, they also followed him to his house where they threw stones at his house.
- 1.4 Additionally, Hussein Mponda, who asserted that he is the Village Headman of Mkwate village, also provided a sworn statement. He stated that on 7<sup>th</sup> September, 2023, he received a message from the Defendant informing him that he should attend a meeting to be held the following day near the Claimant's house, where the land in dispute is located. On 8<sup>th</sup> September, 2023, when the court officials arrived at the scene where the Defendant's latrine was located to show the court officials the demarcations, onlookers started shouting at him. Considering the commotion happening at the scene, he and the other four chiefs present, along with the court officials, decided to move a bit further away from the crowd to discuss further how to proceed with the matter. However, as they retreated, the crowd started following them while shouting loudly. Accordingly, they informed the court officials that due to the commotion, they should return and return on a different day.

## 2.0 COURT'S DETERMINATION

- 2.1 Firstly, contempt of court is an issue which every court takes seriously and expects parties to cases shall follow its orders. In *Tembo et al v Attorney General* [2002-2003] MLR 229 (HC) defined what constitutes behaviour which fits into what contempt of court. In this case, the Supreme Court of Appeal noted that contempt of court whether criminal or not is wilful disobedience to its duly issued orders. In *Scott v Scott* (1913) A.C. 419 makes it clear when contempt is criminal. Further in *Peter Chupa v The Mayor of the City of Blantyre and Others*, Civil Cause No. 133 of 2001 (HC)(PR)(Unrep) where Twea, J (as he then was) stated in that case that -

*“The parties were agreed that contempt consists of committing acts which tend to interfere with the administration of justice. This includes contempt in the face of the Court, such as insulting behaviour to the Court or violence to judicial officers. This is what has been called “criminal” or “special” contempt. But in respect of “civil” or “ordinary” contempt, it will be termed criminal if it involves misconduct or refusal to obey specific orders of the Court. To this extent it will be criminal and will be treated and dealt with as such. The parties in this case argued that there was a valid Court order and that this Court order was not obeyed. They further agreed that to this extent the contempt in issue takes the proportions of criminal conduct and that the burden and standard of proof will be, to that extent, at criminal level.”*

- 2.2 The Defendant's conduct, as asserted by three (3) different witnesses herein, clearly shows that the Defendant, who solicited her relatives, some of whom were noted as being present in court by Mr. Banda on 5<sup>th</sup> September, 2023, disobeyed this Court's order and also used violence against the Claimant. This Court was very meticulous in explaining to the Defendant that if she disobeyed this Court again, sanctions would be issued. The totality of the above indicates that once again, the Defendant has shown contempt of court despite being granted leniency. It is this Court's considered opinion that this latest act constitutes contempt of court and requires that it reinstates its suspended order to imprison and fine the Defendant. Taking into account the observations of Wellock J in the Canadian case of *Poje v Attorney General for British Columbia* (1953) S.C. 2516 at 527, the context in which these incidents occurred, the large number of people involved, and the public nature of the defiance of the Court's order transform the conduct here from the realm of mere civil contempt, such as an ordinary breach of an injunction related to intellectual property rights, for example, into the realm of public depreciation of the authority of the Court, tending to bring the administration of justice into disrepute.
- 2.3 Consequently, the evidence of the Defendants/Contemnors' wilful disregard of the Court's orders and decisions is overwhelming. In this case, this blatant disregard of the Court's mandate is not only evident through their non-compliance but also through their criminal conduct related to the orders issued herein. Incidentally, the law on contempt states that the Court has the power to have the offender arrested and sent to prison for a specified period or until the court's decision is complied with. Secondly, the court has further powers to fine the said offender or take security for good behaviour, and this position is clearly articulated in *Skipworth and the Defendant's Case* (1873) L.R 9 Q.B 230 @ 241.

### 3.0 **ORDER**

- 3.1 This Court hereby in terms of the Defendant's continued contempt orders as follows
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- 3.1.1 the Defendant shall be committed for twenty (20) days to the nearest prison for contempt due to non-compliance with the Injunction Order granted on 18<sup>th</sup> September, 2020, as well as the Orders granted on 21<sup>st</sup> December, 2020,

and 5<sup>th</sup> September, 2023, or until they comply with the said Court orders;  
and

- 3.1.2 the Defendant is further fined K100,000.00 to be paid to the Court before concluding her committal sentence.
- 3.2 The Claimant, in the presence of police who are hereby ordered to be present, shall proceed to demolish the buildings or structures hindering the enjoyment of his land in this matter. The police shall ensure that the demolition shall proceed as ordered. Additionally, the Claimant shall also duly inform court officials and the aforementioned village headman of the date for the said demolition.
- 3.3 The police and the village headman are further ordered to address the people who may gather during the day, especially the relatives of the Defendant. They should make it clear that any further trespassing, intimidation, or assault against the Claimant will be considered crimes and may lead to imprisonment. Mr. Chilimba is encouraged to report any instances of intimidation or assault he experiences to the police.
- 3.4 The Defendant is also ordered to pay the costs awarded on 31<sup>st</sup> January, 2023, and 5<sup>th</sup> September, 2023, within 45 days of this Order.

I order accordingly.

**Made in Chambers on 29<sup>th</sup> September, 2023 at Zomba.**

  
**Z.J.V Ntaba**  
**JUDGE**