



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
CIVIL DIVISION
PRINCIPAL REGISTRY
APPEAL CASE NUMBER 88 OF 2017

(Being Civil Cause Number 127 of 2016 before the Second Grade Magistrate's
Court sitting at Chikwawa)

BETWEEN:

RUTH DICKSONAPPELLANT

-AND-

MELENIA MASACHE.....RESPONDENT

CORAM: Hon N'riva Judge
Appellant present in person
Respondents present in person
Mtegha Court Clerk

JUDGMENT

This is an appeal against the decision of the Second Grade Magistrate sitting at Chikwawa. Before the court below were claims of unlawful sale of land and unlawful purchase of land. The appellant sued the respondent, as a seller, and another, as a purchaser. After hearing the case, the court found in favour of the defendants.

That is to say the court dismissed the claims of the plaintiff. The court found that the first defendant was the lawful owner of the land. To put this in the context, the appellant was claiming ownership of land which the respondent sold the other defendant. Being dissatisfied with the judgement, the plaintiff, now the appellant in this court, lodged an appeal in this court, against the decision of the trial court.

The grounds of appeal are difficult to comprehend. It is difficult to find from the grounds of appeal what the appellant is not convinced with. An appeal, normally, points out the areas where the trial court has made an error of fact or of law.

The appellant outlined four points upon which she is against the judgement of the court below. The first one is that at the village headman Kavalo's tribunal, Melania Masache said that she did not have a witness, but she was surprised that in the court she had witnesses.

The second and third points can best be described as the appellant giving evidence in her favour. The two points outline the circumstances leading to her assertion that the land belongs to her. The fourth point is that T/A [Traditional Authority] Kasisi denied knowledge of the assertions that the appellant was making. The assertions are that the land was given to a Mr Dimba, that he tried the issue and that he received a letter from one Benito Masache.

The appellant argues that she made an application before the Court for her to produce recorded evidence of T/A Kasisi. The court refused and assured her that it would not take into account the evidence of the T/A. The appellant suggested that he recorded the T/A well knowing that he was capable of disowning his own words. The appellant suggests that the Magistrate nevertheless took into account the T/A's evidence. The appellant argues that there is a written document in the custody of the T/A as well a recording of his words that the land belonged to her.

She further said that the court said that it was not going to take into account the T/A Kasisi's evidence but consequently, the Court took the evidence into account. She stated that at the hearing at the T/A's tribunal, the T/A said that he could not preside over the issue because the respondent was his daughter. The T/A advised her to go to Catholic Commission for Justice and Peace or the courts.

In this court, the appellant also gave evidence to substantiate that she was the lawful owner of the land since 1994 until 2015 when there were floods. Upon return, she found other people cultivating the land. She also gave evidence of what transpired in chiefs' tribunals.

As I pointed out earlier on, the aim of an appeal is to decide whether or not the trial court has made an error in law or in fact.

On the first point, that the defendant had no witnesses in one of the chiefs' tribunals yet she had witnesses in the court, I do not find that to be a plausible ground of appeal.

If the defendant had no witnesses at the chiefs' tribunal but later had witnesses, one cannot say that that should be a ground to say that the court erred in finding in favour of the defendants. I dismiss that point, as a ground of appeal.

As I stated before, the second and third points were more or less the narration of points of evidence in support of her claim. In any event, that is not the way to go about appeals. As I have pointed out, appeals are aimed at establishing the points at which the trial court fell into error of law and fact. The appellant merely put up evidence and not grounds of appeal. In this matter, the court below heard evidence from the appellant's side as well as the side of the respondent. On the evidence before the court, the Magistrate found that the evidence was in favour of the defendants. The court found that the land belonged to the respondent, and therefore, that, apparently, there was no issue of unlawful sale of the land.

One issue which we can consider as a ground of appeal is the allegation by the appellant that she requested to bring the recording of the T/A Kasisi's determination in the court. The appellant argues that the court denied that application. The appellant further suggested that the court assured her that it was

not going to take into account the evidence of the traditional authority. However, the court went on to take into account the evidence of the traditional authority.

The question is whether this is a plausible ground of appeal. To begin with the issue of bringing in the evidence of the Chief is not included on the record. That is to say the application by the appellant and the court's decision to dismiss the application are not on the court record. Be that as it may, the evidence of the T/A is on record as the witness for the appellant. He also denied the allegation that he also denied ever trying or presiding over the dispute in 1984.

In any event, the appellant called the witness. The witness gave evidence against her.

Taking into account what the appellant told this court, I am at a loss to understand as to what evidence the Chief would have brought before the court. If anything what she told the court at this appeal hearing is that the T/A was supposed to preside over a dispute between her and the respondent. The T/A, the appellant says, declined to hear the matter on the ground that the respondent was 'his daughter'. I fail to appreciate what probative value the alleged recording would have on the matter in the court below.

I have looked at the evidence in the trial court. I have scrutinised the evidence given in that court. On the evidence before the court, the court was justified to arrive at the conclusion as it did.

I believe that, on a balance of probabilities, the court was convinced with the defence case than the case of the appellant. The appellant called the T/A as her witness and he gave evidence against her.

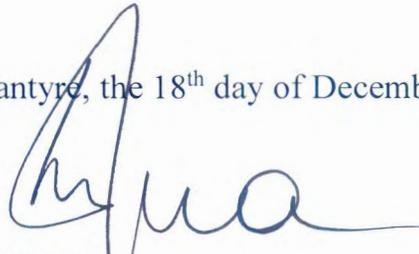
The trial court had the advantage to see and hear the witnesses and assess the dependability of their testimonies.

All in all, I also find this 'ground' of appeal to be wanting.

In summary, I entirely dismiss the appeal. Because the respondent did not attend the appeal, I make no order of costs.

The appellant has a right to appeal to the Supreme Court of Appeal against this decision.

DELIVERED in Open Court at Blantyre, the 18th day of December 2017

A handwritten signature in blue ink, appearing to read 'J N'RIVA', written over the printed name below.

J N'RIVA
JUDGE