

REPUBLIC OF MALAWI
MALAWI JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRAR
CIVIL DIVISION
LAND CAUSE NO. 570 OF 2016

BETWEEN

REXTER NKHOMA.....PLAINTIFF

-and-

MABVUTOSAMSON.....1ST DEFENDANT

MR BANDA.....2ND DEFENDANT

MR MALIZANI.....3RD DEFENDANT

MEMBERS OF CENTRAL AFRICAN ASSEMBLIES

OF GOD (CHIRIMBA) CONGREGATION.....4TH DEFENDANT

Coram: Honourable Mr. Justice D.T.K. Madise

Mr. Masanje Counsel for the Plaintiff

Mr. Tandwe Counsel for the Defendant

Mr. Manda Official Court Interpreter

Madise, J

JUDGEMENT

1.0 Introduction

1.1 The Plaintiff commenced this action by way of a writ of summons against four Defendants seeking an order of court to reinstate his claim on a piece of customary land in Machinjiri in Blantyre. The Defendants filed their defence but on the appointed day for the hearing of the case, they did not show up and no reason were given for their non-attendance. Their lawyer did not attend court either.

1.2 This was the second adjournment at the instance of the Defendants. Being unsatisfied with a statement that Counsel had gone to attend a funeral I allowed the Plaintiff to present his case.

2.0 The Pleadings

2.1 The Plaintiff Claims he had bought a piece of customary land at Suya Village T.A. Machinjiri in Blantyre. The parties were praying together at the location under the umbrella of Central African Assemblies of God at Chirimba. When the Plaintiff bought the land he let it out to the Church. Later he founded The Act of Apostles Faith Church which also used the same piece of land.

2.2 When the Plaintiff left the area he handed over the running of the church to the Defendants who have now erected permanent structures on the land. The Plaintiff wants his land back. The Defendants disputed this in their defence but they were nowhere to be seen to adopt their defence at the hearing of the within matter.

3.0 The Facts

3.1 The Plaintiff's story is that he was a Pastor at United Apostolic Faith for some time in Chileka. When he was denied to head the Church, he moved to Chirimba to under the same church. He then established his own Church in 2004 the Acts of Apostolic Faith Church and he and other continued to worship

on the same piece of land which was used by the old Church. Since the church had no land the Plaintiff decided to let out a portion of his land to the Church which he had bought in 1995 from Shaibu Phiri.

3.2 During that time the Plaintiff had marital problems with his wife and he decided to leave the Church in the hands of the Defendants while he sorted out his martial problems. The Plaintiff left Chirimba and went to live in Chemusa but he allowed the Church to continue using the land.

3.3 In 2008 Mr. Samson told the Plaintiff that some donors were willing to put a permanent structure on the land but the Plaintiff refused. The Plaintiff alleged that Mr. Samson approached him two more times with the same offer but he refused. In 2012 he left Blantyre for 6 months and went to work in Chintheche.

3.4 On his return he found there was a church which was erected on his piece of land. He was further informed that Mr. Samson had joined the Church called Central Anglican Assemblies and it was this Church that had erected the structure on his piece of land.

3.5 In conclusion the Plaintiff stated that the Defendants had no authority to build on his land. When the matter was referred to the village headman Suya the latter ruled in favour of the Defendants. The Plaintiff then decided to seek the aid of the Court.

3.6 The Plaintiff summoned Eliza Sakani Nkhoma his daughter. She told the Court that when the Church was established the offerings were too little and the congregation used the Plaintiff's money to purchase the piece of land in question. She stated that when the Plaintiff was buying the piece of land from Mr. Shaibu she was present.

3.7 Levia Phatana stated that her bother Shaibu Phiri sold a piece of land to the Plaintiff. She stated that she was part of the Defendants Church and the Plaintiff only let out the piece of land. As earlier stated the Defendants did not defend this action.

4.1 The issues

There are two issues for determination before me;

(1) Whether the said piece of customary land belongs to the Plaintiff.

(2) If yes whether an order can be made reinstating his right of claim to this piece of customary land.

5.0 The Law

5.1 The burden and standard of proof. It is settled law in this Republic that in civil matters the burden and standard of proof is this; he who alleges must prove and the standard required is on a balance of probabilities. Whichever story is more probable and convincing should carry the day in this court. The plaintiff therefore bears the burden of proving his case as a positive is easier to prove than a negative.

5.2 Section 26 Land Act. Land in Malawi is divided into three categories. There is public land meant for government, private land for private persons and customary land for the inhabitants of Malawi. The latter is for communal use and legal ownership and title are alien to customary land.

6.0 The Determination

6.1 The Plaintiff has made a claim that he had possession of the said customary land which he had acquired from one Shaibu Phiri. That he build a Church on the said land and invited others to be praying with him. The Plaintiff claims when he built his church he still retained “ownership” of the land. In legal terms he still retained possession and usage of the said piece of land.

6.2 The Plaintiff has stated that when he left the Church and the area due to family problems he handed over the Church to the Defendants. He claims however that he did not give away possession and control of the said piece of land.

6.3 On his return he found that the Defendants have built a Church on the land. He now claims it back. What agreement was made when the Plaintiff was leaving the Church and the area? There is nothing on file. What did the Plaintiff envisage will happen when he was leaving the Church which was built on this piece of land? We do not know.

6.4 The Plaintiff left the Defendants to run the affairs of the Church and no agreement was made as to what will happen upon his return. In my considered view, the Defendants had done what every reasonable man could have done in the circumstances.

6.5 The Plaintiff expected the Defendants not to make any developments on the land. I do not think so. The Plaintiff is merely jealousy that during his absence the Church had grown. The Plaintiff expected the Defendants to fail and today he is a disappointed man.

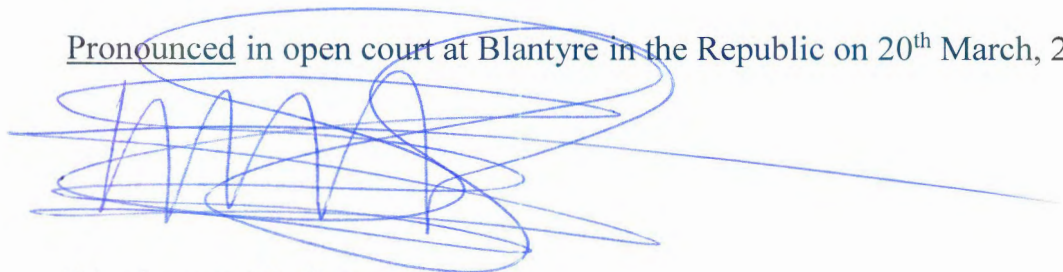
6.6 Churches are not owned by individuals. They are owned by a collective of congregants. The law will find it strange for one to claim ownership of a church. The Plaintiff in my considered view has failed to satisfy me on a balance of probabilities that the said piece of land was still in his possession and control after he had left the Church and the area.

6.7 I am not convinced that he still retained control and possession after leaving for Chemusa. His story is not probable. I therefore dismiss his claim but I however order that the Defendants should give the Plaintiff a token of thanks for receiving this piece of land from the Plaintiff at no cost.

6.8 The Plaintiff must be praised for doing a noble thing by allowing this piece of land to be used for the worship of God. The Defendant must obtain summons for assessment of this token of appreciation before the Registrar within 14 days. Costs are the exclusive preserve of the Court. I order each party to pay their own costs.

I so order

Pronounced in open court at Blantyre in the Republic on 20th March, 2018.

A large, complex blue ink signature scribble, consisting of multiple overlapping loops and lines, extending horizontally across the page.

Dingiswayo Madise,

Judge