



REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL DIVISION  
LAND CAUSE NO. 43 OF 2021  
(Before Honourable Justice Mambulasa)

**BETWEEN:**

TINKHANI KASAMBALA.....1<sup>ST</sup> CLAIMANT

AND-

EVERLISTO MAVUTO PHIRI.....2<sup>ND</sup> CLAIMANT

-AND-

FLORENCE DAMBOLACHEPA.....3<sup>RD</sup> CLAIMANT

-AND-

AIREDI KUFATSA ZABULONI & CHAONA LUCIOUS

KWAKWALA.....4<sup>TH</sup> CLAIMANT

-AND-

SADA CHITSEKO.....5<sup>TH</sup> CLAIMANT

-AND-

MARIA KAMBUZI (MRS. KALAMBO).....6<sup>TH</sup> CLAIMANT

-AND-

PATRICK KOMBE.....7<sup>TH</sup> CLAIMANT

-AND-

PETER A. MGANGIRA (SENIOR).....1<sup>ST</sup> DEFENDANT

-AND-

MAI MADISI.....2<sup>ND</sup> DEFENDANT

**CORAM: HON. JUSTICE MANDALA MAMBULASA**

Mr. Chaona Lucious Kwakwala, Advocate for the Claimants

Mr. Innocent Patheretu Kubwalo, Advocate for the Defendants

Mr. Obet Chitatu, Court Clerk

### **RULING**

**MAMBULASA, J**

#### **Introduction**

1. On 6<sup>th</sup> April, 2021 the Claimants filed a without-notice application seeking an order of interlocutory injunction restraining the Defendants by themselves, or their servants and or agents, from building a fence closing the road leading to the Claimants' residential plots and or houses situate at Nachipi Village at Likuni in the area of Traditional Authority M'bwatalika

in Lilongwe District until the determination of this matter or a further order of the Court.

2. All the Claimants in this matter bought their plots from the 1<sup>st</sup> Defendant between the years 2017 and 2018. The 2<sup>nd</sup> Defendant is a friend to Stella Namwali who is the registered owner of Title No. Chitipi 8/4/169B. The Land Certificate for Title No. Chitipi 8/4/169B shows that it was issued to Stella Namwali on 10<sup>th</sup> June, 2011. The 2<sup>nd</sup> Defendant was merely requested by Stella Namwali to assist her with the supervision of a construction project on her said plot.
3. The application for an order of interlocutory injunction was supported by a sworn statement made by Mr. Chaona Lucious Kwakwala, the fourth claimant in this matter and an advocate and officer of this Court. The application was taken out under Order 10, rule 27 as read with rule 30 of the Courts (High Court) (Civil Procedure) Rules, 2017. The application was filed on 6<sup>th</sup> April, 2021 but was brought to the attention of the Court on 12<sup>th</sup> April, 2021 when it perused, considered and finally granted the order sought as prayed for by the Claimants.
4. The Court then directed that a with-notice application for the continuation or setting aside of the order of interlocutory injunction, as the case may be, which had been granted to the Claimants was going to be heard on 11<sup>th</sup> May, 2021. When the matter was called on 11<sup>th</sup> May, 2021 for hearing, it was postponed for two reasons. First, Advocate Mr. Kubwalo had just been served with a Sworn Statement in Response to the Defendants' Sworn Statements and so he needed time to carefully consider it and if necessary,

consult with his clients on the same. Second, while the 1<sup>st</sup> Defendant's niece, Stella Namwali, had constructed a fence which the Claimants were complaining about blocking their access road, there was an allegation that there was another existing road which the Claimants had abandoned which would get them to their residences and plots. Apparently, they abandoned it when the 1<sup>st</sup> Defendant's niece, Stella Namwali had bought some portion of land that lay in front of her plot and constructed thereon an access road to her plot. The Claimants are alleged to have taken advantage of this access road as it would get them to their residences and plots until when Stella Namwali constructed a fence around her plot. On the other hand, the Claimants stated that they did not know and had never used the road which the Defendants together with Mrs. Menia Navitcha, Patison Chinsapo and Morgan Njegenje said they had always used and abandoned.

5. The Claimants alleged that the access road which passed through the 1<sup>st</sup> Defendant's niece, Stella Namwali's plot was not constructed by her in 2019. Mr. Kwakwala exhibited photographs dating back to 2018 which showed that the access road which has been blocked by the construction of the fence by Stella Namwali existed before 2019. Mr. Kwakwala further alleged that all the Claimants were made to pay an extra Fifty Thousand Malawi Kwacha (MK50,000.00) by the 1<sup>st</sup> Defendant that was meant to extend the access road that leads to their residences and plots.
6. The Court took the view that it needed to visit the *locus in quo* to ascertain some facts since the position of the parties seemed to be diametrically opposed to each other. This the Court did on 30<sup>th</sup> May, 2021 and it informed the parties that it could proceed to render its ruling in the matter on the