



**JUDICIARY
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY (CIVIL DIVISION)
CIVIL CAUSE NO. 776 OF 2012
(Before Honourable Justice Kenyatta Nyirenda)**

BETWEEN

FELIX KAWERE a.k.a SKEVA PHIRI CLAIMANT

AND

VILLAGE HEADMAN GUZANI DEFENDANT

CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA

Mr. Mwale, Counsel for the Claimant

Mr. Maziko Nyirenda, Counsel for the Defendant

Mr. Henry Kachingwe, Court Clerk

JUDGMENT

Kenyatta Nyirenda, J.

Introduction

1. This is a very old case and it has a troubled history. It was commenced on 1st December 2012 against two defendants, namely, Senior Chief Mkanda and Village Headman Guzani being the 1st Defendant and the 2nd Defendant respectively. The statement of claim was very brief and it stated as follows:

“The Plaintiff’s claim is for:

- 1. An injunction to prohibit the Defendants by themselves or servants or agents and others whatsoever from the following acts or any of them, that is to say; continuing to trespass and cultivating on the Plaintiff’s land, harassing, threatening or intimidating the Plaintiff or his family.*

2. *Damages for crops that were seized by the Defendants' agents when they first trespassed on the Plaintiff's land.*
3. *Costs of this action.*
4. *Further or other relief."*

2. On 1st March 2013, the Claimant filed with the Court a notice of withdrawal of action against Senior Chief Mkanda, thereby remaining with one defendant, namely, Village Headman Guzani.

3. On 21st March 2013, the Claimant filed with the Court an originating summons for summary possession of land. The material part of the originating summons states as follows:

"... an application for an order that he do recover possession of land which consists of part of Mwanjana Estate and is located outside Luwelezi Estates in Mkanda in the District of Mchinji on the ground that he is entitled to possession and that the persons in occupation are in occupation without licence or consent."

Affidavit Evidence

4. The originating summons was supported by the following affidavit, sworn by the Claimant on 20th March 2013 (Claimant's Affidavit):

3. *THAT on 30th January 1994 I was given 128 acres of land on humanitarian grounds by Chamwavi Group of Companies. Now exhibited and shown to me marked "FK/SP 1" is a true copy of the letter allocating the said land to me.*
4. *THAT the said land consists of part of Mwanjana Estate which is located outside Luwelezi estate in Mkanda Village in Mchinji District.*
5. *THAT following this I built a house on the said land, wherein I reside with my wife and our 8 children.*
6. *THAT when I was allocated the said land by Chamwavi Group of Companies, I was informed that land officials would come to survey the land. The said survey was carried out on 10 and 11 July 2008 in the presence of Village Headman Guzani's agents. Now produced and shown to me marked "FK/SP 2" is a true copy of the survey.*
7. *THAT I farm several crops but mainly tobacco on the land and planted several trees.*
8. *THAT in 2000 the said Village Headman Guzani had a school built on my land without my permission. I allowed this because at the time some of my children were of school going age and I knew that this would benefit my family as well.*

9. *THAT the school known as Chitsulo Primary School was built on 4 hectares of my land and I even gave the teachers' teaching at the said school land to farm on.*
10. *THAT in or around October 2008, I allocated 45 hectares of my land to Village Headman Guzani to distribute to his subjects. I did this because my wife is from Guzani Village and I was not utilizing all the land at the time. The said 45 hectares was immediately distributed by the said Village Headman.*
11. *THAT after this allocation I personally remained with 83 hectares of land.*
12. *THAT in or around August/September 2010 at 9 o'clock in the morning, I was surprised to find more than 100 villagers from Guzani Village on my land allocating land to each other, even including land that I had already cultivated on.*
13. *THAT when I asked what was going on, I was told to speak to Village Headman Guzani who had allowed them to distribute my land amongst themselves. I then went to meet the said Headman who informed me that Senior Chief Mkanda had written a letter authorizing him to allocate the land to his subjects.*
14. *THAT following this I went to report the matter to the police who advised me that the land should be given back to me as it rightfully belonged to me. However, the trespassers refused to move from my land.*
15. *THAT on 16th September 2010, some of the trespassers namely; Kasiya suto, Elesoni Nkoma and Stefano Nefutani as the prime suspects, but they were later released and not charged according to my knowledge. The said trespassers also refused to move from my land.*
16. *THAT the police then arrested 3 of the trespassers namely; Kasiya Suto, Elesoni Nkoma and Stephanp Nefutani as the prime suspects but they were later released and not charged according to my knowledge. The said trespassers also refused to move from my land.*
17. *THAT after this incident, the police called me and I went with my Village Headman Chimombo. At the police station the police read a letter that they had received from Village Headman Guzani. The letter was allegedly written by Senior Chief Mkanda and addressed to Headman Guzani. The contents of the letter stated that my land was to be given to Village Headman Guzani to enable him allocate the said land to his subjects.*
18. *THAT I subsequently requested a copy of the letter from the police but they told me that they had returned it to the said Headman. The police thereafter tried to ensure that I was given a copy of the said letter but it was never given to me.*
19. *THAT I then reported the matter to the Mchinji Anti-Corruption Bureau, who tried to investigate the matter but were prevented from doing so because the Defendants were uncooperative. Senior Chief Mkanda denies any involvement with the letter and claims that he never wrote or signed a letter to that effect.*

20. *THAT Village Headman Guzani also refused to give the said letter to the Mchinji Anti-Corruption Bureau and the letters whereabouts are unknown. There is now produced and shown to me marked “FK/SP 3” a true copy of a letter from the Anti-Corruption Bureau reporting its findings.*
 21. *THAT I thereafter took the matter to the Mchemani Magistrate Court as Civil Case Number 228/10. Upon conclusion of this matter in March 2012, the court ordered that the trespassers from Guzani be fined and in default of fine be arrested, but this was never done. Now produced and shown to me marked “FK/SP 4” is a true copy of the letter from the said Magistrates court reporting its failure to carry out the court order and a schedule of how much the said trespassers were meant to compensate me for trespass.*
 22. *THAT I politely asked the Defendants’ to stop their illegal actions but the Defendants’ ignored my request and have gone as far as building a trading center on my land.*
 23. *THAT I no longer have access to part of my land as the same is being inhabited by other people who were allocated the said land by Village Headman Guzani.*
 24. *THAT the said Defendants’ have been threatening me and my family and on 5th February 2013 physically assaulted my wife. Now produced and shown to me marked “FK/SP 5” and “FK/SP 6” are copies of the police and medical report confirming this fact.*
 25. *THAT the Defendants’ are continuing to trespass on my land and they have been cultivating on the said land without my permission.*
 26. *THAT the Defendants’ have been in occupation of the said land without licence or consent from me since October 2010.*
 27. *THAT I do not know the name of all persons occupying the said land that are not named in this summons.*
 28. *THAT I seek the indulgence of this court in granting an order that I do recover possession of the said land which consists of part of Mwanjana Estate and is located outside Luwelezi Estate in Mkanda in the District of Mchinji on the ground that I am entitled to possession and that the persons in occupation are in occupation without licence or consent.”*
5. On 17th April 2013, the Defendant filed an affidavit in opposition to the originating summons for summary possession of land (Defendant’s Affidavit). The Defendant’s Affidavit states thus:
- “3. *THAT I refer to paragraph 3 to 5 of the Affidavit in support and state that the land that was given to the Plaintiff by Chamwabvi Group of Companies is outside Luwelezi Estate.*

4. *THAT I refer to paragraph 6 to 11 of the affidavit in support and state that Chitsulo Primary School is located in Luwelezi Estate and the school was built in 1993 by the Malawi Government with the consent from Chamwavi Group of Companies.*
5. *THAT furthermore, no agent of mine was ever present when the purported survey was being done and I have no knowledge of the same happening in my village.*
6. *THAT in addition, I have never been given land by the Plaintiff to distribute to the villagers and the plaintiff is put to strict proof thereof.*
7. *THAT I refer to paragraph 12 to 17 of the affidavit in support and state that I indeed told the Plaintiff that the land was given to me by Central Poultry but the police did not resolve that the land belongs to him nor did any of my subjects burn the Plaintiff's worker's house and the plaintiff is put to strict proof thereof.*
8. *THAT I refer to paragraph 22 to 23 of the Affidavit in support and state that I never refused to give the letter from Senior Chief Mkanda to Mchinji anti-corruption Bureau club and I have never been in contact with anyone from the so called club. The said letter is available.*
9. *THAT I refer to paragraph 22 to 23 of the Affidavit in support and state that the matter never concerned me nor was I among the people being sued by the Plaintiff.*
10. *THAT reference is made to paragraph 24 of the Affidavit in support and the plaintiff is put to strict proof thereof.*
11. *THAT I refer to paragraph 25, 26, 27 and 28 of the affidavit in support and state that I have never threatened nor have I been told by the Plaintiff to stop cultivating or distributing the land in dispute herein.*
12. *THAT Save as hereinbefore specifically admitted the defendant denies each and every allegation of fact contained in the affidavit in support as if the same was herein set forth and traversed seriatim.*

BACKGROUND INFORMATION

13. *THAT Guzani village was founded in 1944 by my Grandfather, the former Village Headman Guzani, who settled on the piece of land which is now known as Luwelezi Estate after they migrated from Lubaini Village, Traditional Authority Mkanda in Mchinji.*
14. *THAT the said Village is located partly in Luwelezi Estate and partly outside the sold estate in Traditional Authority Mkanda's Area in Mchinji.*
15. *THAT at the time my Grandfather was settling there, the said land was vacant but in 1973, the Malawi Government asked my Uncle who was then the Village Headman Mkanda, to move out of the land on the ground that they wanted to use the land as part of an Estate to be run by Chamwabvi Group of Companies.*

16. *THAT since we did not have anywhere to go, my Uncle asked the Government through the District Commissioner of Mchinji, not to take all the land but that they should leave us with some part of the land which will be outside the Estate.*
17. *THAT indeed the government considered us and left us some land which was outside the said estate which we used to rebuild the village and for cultivation.*
18. *THAT in 1987, the Government stopped cultivating on some part of the Estate specifically the land from the graveyard to the land where there is Chitsulo Primary School. Attached and exhibited as “VHG 1” is true copy of the Map showing Generalised Usage of the land on Luwelezi Estate.*
19. *THAT due to the inactivity on the land on this part of the estate, the Villagers from Guzani Village encroached and started cultivating on this part of land.*
20. *THAT we had been cultivating on this part of land since 1987 to 2010 without any disputes and with the knowledge that this part of the land belonged to Luwelezi Estate.*
21. *THAT in 2010, Luwelezu Estate was sold to Central Poultry by Chamwabvi Group of Companies and I was told to inform my subjects who settled inside the said estate to relocate to another land since the new owners wanted to use that part of the land.*
22. *THAT since we did not have any land to relocate the 35 families that were supposed to be evicted, we complained to Group Village Headman Kazyozyo, Traditional Authority Mkanda and the District Commissioner of Mchinji who took our grievances to Central Poultry on our behalf.*
23. *THAT following meetings between the said persons, it was resolved that the land should be given to the people of Guzani Village. Attached and exhibited as “VHG 2” is a letter from Group Village Headman Kazyozyo.*
24. *THAT in December, 2010, the District Commissioner for Mchinji through Group Village Headman Kazyozyo informed me that Central Poultry has given me and my subjects the land which was under dispute from the Graveyard to the school (Chitsuto primary school). Attached and exhibited as “VHG 3” is the letter dated the 18th of December, 2010 addressed to GVH Kazyozyo from the District Commissioner of Mchinji.*
25. *THAT after receiving this news from GVH Kazyozyo, I started to divide the said land to all households in my village that did not have land to use for cultivation but the Plaintiff started claiming that the land was his.*
26. *THAT then Plaintiff took the matter to Traditional Authority Mkanda who told him that the land was given to me as the Village Headman of Guzani by Central Poultry the owners of the land he was claiming. Attached and exhibited as “VHG 4” is a letter from Traditional Authority Mkanda.*

27. *THAT I was surprised to receive a summon in early 2011 to report to Kazyozyo Police on allegations that I am taking away the land that belongs to the Plaintiff herein.*
28. *THAT I went to the said Police Station where after I showed them the letters from the District Commissioner, Traditional Authority Mkanda and from Group Village Headman Kazyozyo, was told to continue distributing the said land to my subjects.*
29. *THAT the Plaintiff was not satisfied with this decision and took the matter again to Traditional Authority Mkanda but before the matter could be resolved the Plaintiff filed this civil action against me and my subjects.*

OUR RIGHTS AND OPTIONS

30. *THAT the land that was given to the village has already been distributed to all my subjects that did not have land to use for cultivation.*
31. *THAT we have been using this land for close to 25 years without any claim of right from anyone not even the Plaintiff herein.*
32. *THAT furthermore, my subjects and myself have already planted crops, both food crops and commercial crops, such as maize, beans, tobacco and Groundnuts among others which are close to maturing.*
33. *THAT the Plaintiff's conduct is greatly inconveniencing me and my subjects who have been using the said land for close to 25 years and it is the source of our livelihood.*
34. *THAT if he has anything to claim, he should claim the same from Central Poultry or Chamwabvi Group of Companies because they are the people that gave us the land that we are using right now."*

6. On 6th May 2013, the Claimant filed with the Court an affidavit in reply to the affidavit in opposition (Claimant's Affidavit in Reply). The Claimant's Affidavit in Reply reads:

- "3. *THAT I have read the Defendant's affidavit in opposition and wish to respond as follows:*
4. *THAT I refer to paragraph 3 to 4 of the Affidavit in opposition and state that the said Chitsulo Primary School was built in 1993 in Saliele Village but it later on moved onto my land in 2000. When Chamwavi Group of Companies gave me the said land in 1994. There was no school on the said land.*
5. *THAT as to paragraph 6 of the affidavit in opposition, I repeat paragraph 10 of my affidavit in support and state that in 2008 I gave the defendant the said land in the presence of Group Village Headman Kawere's clerks namely; Mr Malata, Wedson*

Eliya Phiri and Jacob Kaunda. This was evidenced in writing in a minute book kept by Group Village Headman. Now produced and shown to be marked “FK/SP 1” is a true copy of a letter written by Group Village Headman Kawere to Traditional Authority Mkanda’s office confirming that I gave the said land to the Defendant.

6. *THAT I refer to paragraphs 8 through to 12 of the affidavit in opposition and state as follows; when the matter was brought before the Mchemani Magistrate Court, the Defendants’ being sued were in fact the subjects’ of the Defendant and at all times he was aware of what was going on as he had instigated the said matter. Now produced and shown to me marked “FK/SP 2” is a true copy of a letter from Mchemani Magistrate Court listing the 10 defendants’ who the said court held liable for encroaching on my said land.*
7. *THAT I refer to paragraphs 15 through to 18 of the affidavit in opposition and I am hereby well informed by my Legal Practitioners that the said contents contain hearsay information as the Defendant has no direct knowledge of the facts deponed to.*
8. *THAT I refer to paragraphs 19 to 21 of the affidavit in opposition and state that; indeed Luwelezi Estate was sold to Central Poultry by Chamwavi Group of Companies in 2010. However, this sale did not affect me because a survey had been carried out in 2008 as exhibited in my first affidavit and my land consists of part of Mwanjana Estate and is located outside Luwelezi Estate. Thus the land that was sold to Central Poultry was not in any way my land. Further at no point at all was there any “inactivity” on my land as alleged by the Defendant.*
9. *THAT I refer to paragraph 20 of the affidavit in opposition and state that in 1987 there was no one farming on the said land as the Estates in the Mchinji District belonged to the then President – Kamuzu Banda. Moreover, if indeed the Defendants’ had been farming on the said land, why did they need to be allocated that same piece of land again in 2010 by Central Poultry and by the District Commissioner?*
10. *THAT with reference to the District Commissioners letter exhibited in paragraph 10 of the affidavit in opposition, when I asked the then District Commissioner about the letter authored by him he declined ownership of it and informed me that it was not up to him to allocate land but it was up to the Traditional Authority Mkanda to allocate the said land to Group Village Headmen. Nevertheless, Traditional Authority Mkanda did not have the authority to allocate an Estate to any of his subjects.*
11. *THAT I repeat paragraph 28 of my Affidavit in support of the originating summons as the Defendants’ in occupation are without licence or consent.”*

7. The Claimant also filed with the Court a supplementary affidavit sworn by Senior Chief Mkanda on 3rd May 2013 in support of the originating summons

(Affidavit by Chief Mkanda). The main body of the Affidavit by Chief Mkanda is reproduced below:

“3. **THAT** I have read the affidavit in opposition of the Defendants and wish to respond as follows:

3.1 As to paragraphs 4 of the affidavit in opposition, the said Chitsulo Primary school started in the 1990’s in Saliele Village but only came to be built on the Plaintiff’s land in 2000.

3.2 I refer to paragraph 18 through to 20 of the affidavit in opposition and state that it is not true that the Defendants’ have been farming on the disputed land since 1987, as at this time the estates were then owned by the then President of Malawi, Dr. Hastings Kamuzu Banda. Further, if indeed the Defendants had been farming on this land since 1987, why would they have needed permission from Central Poultry in 2010 to acquire the said land?

3.3 **THAT** as to paragraph 23 of the affidavit in opposition and the letter exhibited as “**VHG 2**”, I state that the said Group Village Headman

Kazyozyo had no authority to write that letter as it was a falsehood of the extent of the allocation that Central Poultry had authorized

3.4 I refer to paragraph 24 of the affidavit in opposition and exhibit “**VHG 3**” and state that the District Commissioner has no authority to allocate land or to adjudicate on land issues as that is within the confines of my jurisdiction.

3.5 I refer to paragraph 26 and exhibit “**VHG 4**” and state that I refute the letter authored by my clerk Nkhoma on my behalf and was not aware of the is letter’s contents until very recently and I never in any encouraged the Defendants’ to encroach and trespass on the Plaintiff’s land.

BACKGROUND INFORMATION

4. **THAT** in 2010, certain members of staff from the department of surveys came to our area to carry out surveys of certain Estates.

5. **THAT** I accompanied these surveyors in the presence of the then District Commissioner, representatives of Central Poultry, the Police, Village Headman Guzani and his subjects as well as my agents.

6. **THAT** the said estates being surveyed were Luwelezi and Kalingwizi in Mkanda Village. Upon carrying out the survey and on the final day Central Poultry allocated land to Village Headman Guzani, to distribute to his subjects who did not have any land to farm on.

7. *THAT the land allocated to Village Headman Guzani and his subjects is opposite the Plaintiff's land and is separated by a path/road.*
8. *THAT Central Poultry never gave the Defendants' the Plaintiff's land as at the time of allocation it was clear that the Plaintiff was utilizing and farming on his land therefore there was no way in which Central Poultry would have allocated land that already had an owner.*
9. *THAT at this time I did not know that the Plaintiff had obtained his land from Chamwavi Group of Companies as this only came to my knowledge when the parties began to dispute over the said land.*
10. *THAT after Central Poultry's allocation, Village Headman Guzani and his subjects' alleged that Central Poultry had also given them the Plaintiff's land.*
11. *THAT following these allegations by the Defendants' we held several meetings as chiefs of Mkanda Village, wherein we adjudicated that the Defendants' had no authority over the Plaintiff's land and should in no way encroach on the Plaintiff's land.*
12. *THAT upon the conclusion of these meetings, the Defendants' informed us that they would consult amongst themselves and with the Plaintiff as the Plaintiff is their in-law.*
13. *THAT I however, later on learnt that the Defendants' had encroached on the Plaintiff's land and were claiming that it was their land as well as threatening the Plaintiff and his family.*
14. *THAT as Chiefs we further adjudicated this matter and asked the Defendants' to desist from trespassing and encroaching on the Plaintiff's land to which the Defendant's vehemently refused to obey my orders and continue to encroach on the Plaintiff's land up to this date.*
15. *THAT as a result of the Defendants' defiance of my orders to move off the Plaintiff's land, the Plaintiff approached me and informed me that he would seek other avenues of addressing his grievances, wherein he commenced proceedings in Mchemani Magistrate court and the Defendants' subjects were fined for encroaching on the said land.*
16. *THAT had the Defendant and his subjects obeyed my orders, this matter would not have gotten this far and would have been resolved by the Chiefs.*
17. *THAT I can verify that the said disputed land belongs to the Plaintiff and the Defendants' are on the Plaintiff's land without licence and/or consent from the Plaintiff."*

8. On 16th May 2013, the Defendant filed a supplementary affidavit in opposition sworn by Group Village Headman Kazyozyo. The said affidavit (Affidavit by GVH Kazyozyo) states as follows"

- “3. *THAT I have read the affidavit in support of the originating summons plus the reply thereto and the supplementary affidavit in support of the originating summons and I wish to respond as follow:*
- 3.1 *THAT in or around September 2010, I heard rumours that Chamwabvi Group has sold Luwelezi 1 Estate to Central Poultry and that Central Poultry has asked the people occupying parts of the estate to vacate the land.*
- 3.2 *THAT the sad sale affected about 17 villages in my area and Guzani Village, the Village of the Defendants herein, was among the complaining villages.*
- 3.3 *THAT the chiefs on the village that were affected by this decision approached me as the Group Village Headman of this area and complained that they will have nowhere to go since they used the sold land that belonged to Chamwabvi Group of Companies for cultivation and settlement purposes.*
- 3.4 *THAT as their leader, I took their grievances to Traditional Authority Mkanda, the Senior Chief of the area, and after discussions we took the matter to the District Commissioner of Mchinji.*
- 3.5 *THAT after consultations with the District Commissioner of Mchinji, meetings were organized where Central Poultry officials were invited to hear the concerns that the said villagers had on the decision made by them to remove all the villagers from their land.*
- 3.6 *THAT flowing from these discussions, members of staff from the department of survey came to our area accompanied by myself, the Traditional Authority Mkanda, representatives of Central Poultry, the Village Headman Guzani and others, to assess and survey the areas concerned which even included Kalingwizi Estate.*
- 3.7 *THAT after the said surveys were carried out and after further meetings with the representatives of Central Poultry. Central Poultry gave part of their estate to the Villagers of Guzani.*
- 3.8 *THAT the said land that was given to Village Headman Guzani was the land from the graveyard to the school: Chitsulo Primary School.*
- 3.9 *THAT following this resolution, as the Group Village Headman of Guzani Village, I wrote a letter informing Village Headman Guzani of the decision made by Central Poultry. Attached hereto and marked as “GVHK 1” is the letter I wrote addressed to Village headman Guzani.*
- 3.10 *THAT I was quite surprised to hear that the Plaintiff herein started to claim that the said land belonged to him when all along, he never approached me nor even Central Poultry as to claim that the said land belonged to him.*

3.11 *THAT the said land belongs to the people of Guzani Village as they are the ones that were given the said land by Central Poultry.*

4. *THAT if at all the Plaintiff has any claim on the said land, the same should be made against Central Poultry and not the defendants herein.”*

9. On the same day, that is, 16th May 2013, the Defendant filed an affidavit in reply to the affidavit in reply by the Claimant and the supplementary affidavit in support to the originating summons for summary possession of land (Defendant’s Affidavit in Reply). The Defendant’s Affidavit in Reply is couched in the following terms:

“3. *THAT I have read the affidavit in reply to the affidavit in opposition to the originating summons for summary possession of land and wish to respond as follows:*

3.1 *That reference is made to paragraph 4 of the said affidavit and state that it is true that the said school was first built in 1993 in Saliele village but the said school later moved to the land belonging to Luwelezi Estate, the same land that was given to me and my subjects, after the consent of Chamwavi Group of companies.*

3.2 *That reference is made to paragraph 5 of the said affidavit and state that I have never been given any land by the Plaintiff and I never signed any document relating to the same. Am quite surprised to be included in the said meeting when even the Group Village Headman Kawere does not have any authority of the said area. The said area is under the authority of the Group Village Headman Kazyozyo.*

3.3 *That reference is made to paragraph 6 of the said affidavit and I put the plaintiff to strict proof thereof.*

3.4 *That reference is made to paragraph 7 of the said affidavit and state that I was present when the said events were taking place as such I have direct knowledge of the said facts.*

3.5 *That I refer to paragraph 8 of the said affidavit and state that the whole Luwelezi estate which belonged to Chamwabi Group of Companies was sold to Central Poultry and the said land including this land that the Plaintiff is claiming to be his which was given to us by Central Poultry was part of the said sale.*

3.6 *That I refer to paragraph 9 of the said affidavit and I repeat what I said under paragraph 20 of the affidavit in opposition to the originating summon.*

- 3.7 *That I refer to paragraph 10 of the said affidavit and state that neither the District Commissioner nor the Traditional Authority Mkanda have powers over that land and they said persons did not allocate the said but the said allocation was made by Central Poultry. Furthermore, I put the Plaintiff to strict proof thereof on the statements that the District Commissioner disowned the said letter.*
4. *THAT reference is made to the supplementary affidavit in support of the origination summons for summary possession of land made by Senior Chief Mkanda and I respond as follows:*
- 4.1 *That I refer to paragraph 3.1 of the said affidavit and state that it is true that the said school was first built in 1993 in Saliele Village but the said school later moved to the land belonging to Luwelezi Estate, the same land that was given to me and my subjects, after the consent of Chamwavi Group of Companies.*
- 4.2 *That I refer to paragraph 3.2 of the said affidavit and I repeat what I said under paragraph 20 of the affidavit in opposition to the originating summon for possession of land.*
- 4.3 *That reference is made to paragraph 3.3 and state that Village Headman Kazyozyo had the authority to write the said letter since he is the Group Village Headman of the said are and was present at the meeting where Central Poultry was allocating the said land to me and my subjects.*
- 4.4 *That I refer to paragraphs 3.4 and 3.5 of the said affidavit and I put the Plaintiff to strict proof thereof.*
- 4.5 *That I refer to paragraphs 4, 5 and 6 of the said affidavit and state the same are true and Village Headman Kazyozyo was also present at the said survey.*
- 4.6 *That reference is made to paragraph 7 and 8 of the said affidavit and state that there is no such separation and that plaintiff never had any land within Luwelezi estate nor was he given any land in Luwelezi Estate.*
- 4.7 *That reference is made to paragraphs 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 and puts the plaintiff to strict proof of the contents of these paragraphs.”*

10. On 7th November 2013, the Defendant filed with the Court a supplementary affidavit in opposition to the originating summons and this affidavit was jointly sworn by Mr. Zengani John Shaba and Mr. Patson Kamtimaleka (Joint Affidavit by Mr. Shaba and Mr. Kamtimaleka). The body of Joint Affidavit by Mr. Shaba and Mr. Kamtimalekais worded thus:

- “1. *THAT we are employees of Mchinji District Assembly working as Lands officer in the department of lands and as Land Survey Assistant in the Department of Surveys respectively and as such we make this supplementary affidavit in that capacity.*
2. *THAT the facts and information deponed in this affidavit emanate from our personal knowledge and experience of the matter the truth of which we verily believe in.*
3. *THAT we have read the affidavit in support of the originating summons plus the reply thereto and the supplementary affidavit in support of the originating summons we wish to respond as follows:*
 - 3.1 *That in or around 2010, Central Poultry Limited bought a piece of land known as Luwelezi Estate from Chamwabvi Group of Companies in the area of Traditional Authority Mkanda, Mchinji District.*
 - 3.2 *That at the time the said land was being purchased, a portion of the estate was being used by villagers and villagers from Guzani Village were among some of them.*
 - 3.3 *That after the said land was purchased, Central Poultry hired surveyors from the Regional Surveys Office in order to survey and inspect the boundaries of the estate.*
 - 3.4 *That together with the surveyors from the Regional Office and Mr. Ali Phiri, who was then the District Commissioner for Mchinji District Assembly, we went to the said estate to verify the boundaries of the recently bought land.*
 - 3.5 *That while we were in the process of verifying the boundaries, we found that there were encroachers on the land Central Poultry had bought and those encroachers were hailing from Village Headman Guzani’s village and other villages. Attached hereto and marked as “EXP 1” is the Map of the surveyed Luwelezi Estate.*
 - 3.6 *That after concluding the said inspection, Village Headman Guzani, Group Village Headman Kazyozyo and Senior Chief Mkanda asked us to persuade the owners of the land, Central Poultry, to allow the encroachers to continue inhabiting on the land.*
 - 3.7 *That together with Mr. Ali Phiri, the District Commissioner at the time, we went to talk to the directors of Central Poultry and after some discussions the directors of Central Poultry agreed to give the encroached land to the villagers of Guzani.*
 - 3.8 *That to that effect, the directors of Central Poultry allowed the surveyors to go and demarcate the encroached land to Village Headman Guzani and they should divide the land amongst themselves.*

- 3.9 *That the said land in questions was the part of the land marked in stripes on “EXP 1” which was starting from Chitsulo Primary School all the way to the graveyard that was being used by the people of Guzani.*
- 3.10 *That Mr. Ali Phiri, the then District Commissioner of Mchinji, wrote a letter to inform the Senior Chief Mkanda and his subjects what transpired at the meeting with the directors of Central Poultry Limited. Attached hereto and marked as “EXP 2” is the letter from the District Commissioner of Mchinji.*
- 3.11 *That we make reference to exhibit “FK/SP 2” in the affidavit in support of the originating summons for possession of land and we observe that the said application is not a valid application because:*
- 3.11.1 *As a District, whenever surveyors come to survey the land, we get a courtesy call to know that they are in the District to survey the land. No such call was made.*
- 3.11.2 *There is no grid reference on the document therefore any technician or surveyor cannot trace where the measurements of the land started.*
- 3.11.3 *Every lease application must have a date of when the survey was made but there is no date on the said document.*
- 3.11.4 *In the ministry of lands when drawing a map of a particular land, we do not use “True North” but us “Magnetic North” instead so it calls into question the authenticity of the survey and surveyors himself.*
- 3.11.5 *Furthermore we do not use the scaling ratio of 1:50 000 as is too large to make an accurate representation of the land.*
- 3.11.6 *That we have worked at the Ministry of Lands for a period of 7 years and 25 years respectively and in that period we have never known any person by the name of C. Phiri and C.N. Chikuse as surveyors or lands officers.*
- 3.11.7 *It is very strange for one to apply for a lease in a land that has already been leased and belongs to another person.*
- 3.12 *That we were surprised when we heard that the Plaintiff herein started to chase the villagers from Guzani and claiming that the said land is his because in the first place he never came in the meetings that we had. Secondly, the said land belongs to Central Poultry and every one including him was an encroacher in that land.*
- 3.13 *THAT the said land belongs to the people of Guzani Village as they are the ones that were given the said land by Central Poultry.*

4. *THAT if the Plaintiff has any claim on the said land, the same should be made against Central Poultry and not the defendants herein.*”

11. On 10th February 2014, the Court ordered that the case should proceed as though it had been begun by way of writ of summons and not by the mode it had been commenced, that is, originating summons for summary possession of land.

12. Trial of the main case begun on 10th April 2014. On 10th April 2014, CW 1 (Mr. Felix Kawere) and CW2 (Mr. Elias Mkandawire) testified before the Court (Justice Ivy Kamanga, as she then was). Continued hearing of the case took place on 28th October 2020 and the Court (Justice Ivy Kamanga, as she then was) heard the testimonies of CW3 (Senior Chief Mkanda) and DW1 (Mr. Smartwell Mkwezalamba).

13. Before the trial could be concluded, Justice Ivy Kamanga was appointed as a Justice of Appeal and I got seised of this case on 29th November 2021. Regarding the way forward, both the Claimant and the Defendant stated that the prudent approach would be for me to hear the evidence of the remaining witnesses and be guided by the evidence that was recorded by Justice Ivy Kamanga, as she then was.

Burden and Standard of Proof

14. The burden of proof lies upon the party who substantially asserts the affirmative of the issue. The rule means that where a given allegation, whether affirmative or negative, forms an essential part of a party’s case, the proof of such allegation rests on the party: see Phipson on Evidence (16th Edition), 127, **Commercial Bank of Malawi v. Mhango [2002-2003] MLR 43 (SCA) and Milner v. Minister of Pensions [1974] 2 All E.R. 372.**

15. It is also well settled that the standard of proof in civil cases is on balance of probabilities. In **Msachi v. Attorney General [1991] 14 MLR 287**, at 290, Tambala J (Rtd) put the point thus:

*“[t]his is a civil action and the duty of the plaintiff, in a civil case, is to prove his case on a balance of probabilities.” – See also Phipson, *infra*, 154. A balance of probabilities simply means that a Court is entitled to say that, based on the evidence led before it, it is of the view that ‘it is more probable than not’ that the fact asserted is made out”*

16. The party on whom lies a burden must adduce evidence of the disputed facts to the required standard or fail in his or her contention. It, therefore, follows that in the present case the burden of proof is on the Plaintiff as the party who has asserted the affirmative to prove on a balance of probabilities his case against the Defendants.

The Evidence

17. In seeking to prove his case, the Claimant called three witnesses, namely, himself (“CW 1”), Elias Mkandawire (“CW 2”) and Senior Chief Mkanda (“CW 3”).

18. CW1 adopted the Claimant’s Affidavit and the Claimant’s Affidavit in Reply to form his evidence in chief. The documents attached to the two Affidavits were also admitted into evidence and marked as exhibits.

19. The record of the Court on cross examination of CW1 is as follows:

“Yes I got this land freely by way of a gift. Yes I have produced before this court a letter that shows that I was given this land as a gift, (Exhibit P1). I was given 128 hectares of land.

Yes the letter does not show the acreage of the land that I was given. Mwanjana Estate is the name of my Estate, I am the one who gave the land this name.

PW 1: Defence counsel reads the letter Exhibit P1 and asks how can the plaintiff give the land this name before it is given to him.

When I was asking for the land, I was told to write a letter and I used the name Mwanjana. No, I had not encroached in the land before asking for it. When they were responding they wrote the land Mwanjana Estate

(letter reads) we have decided to give away the isolated part of Mwanjana estate and asked where 178 hectares is coming from). This 128 hectares is coming from the land that I was given.

Yes Chamwabvi Group is a company. Yes this letter of gift was signed by one person David E.G. Neild. Yes he did come to inspect the land before giving it to me. He was accompanied by Mr. Nkosi and his driver Mr. Nkhoma and Chief Mkanda of that time. Whose name was Jamesi and Group Village Kawere.

Tehe Village Headman of this area is Group Village Headman Kawere. The Village Headman is Mdeke – Village Headman Guzani is just near Mdeke. No, this land is not in Village Headman Guzani’s area. It is just near Village Headman Guzani’s area.

PW 1 in Cross Examination (referred to Exhibit P2) The map shows that the land is in Guzani Village. The land is on one side, Guzani village is on the other side. (Referred to Exhibit P1)

This is the original letter I got in 1994. (told that the signature that is on that document is a photocopied signature). This is the letter I got, if there is another letter then you should ask Chamwabvi.

(Shown Exhibit P1) Yes I gave this letter to my lawyer. I got it in 1994. It still looks new. (ask how 20 years later it still looks new if it is not a photocopy). You should ask Chamwabvi Group that question. I can not answer the question. How many Managers were managing Chamwabvi Group? You should ask Chamwavi.

The Estate Manager for this area at that time was Mr. Mkandawire. We were not related. He was not my friend. I don't know if a company should have a seal or company letter head from which it originates its letters since I am from the village.

I don't know if someone can just sit down and write a letter like this one.

Yes there is a school on this land. I objected to the school construction but I had no powers so 4 hectares were allocated to the school. I had no problem with school being constructed as I also have children who should go to school. I am the one who gave them the 4 hectares.

Yes there is a graveyard on the other part of this land. Yes the surrounding villages of Guzani and Mdaza use this graveyard.

No the people of Guzani have not been cultivating on this land since 1987. Chamwabvi Estate did not sell my part of land to Central Poultry. They sold another part. I do not remember what is in my affidavit in reply. Yes I know of the affidavits from Village Headman Kazoyoyo and Guzani and the ones from DC officers. Yes there is a letter from the DC dated December 2010. I started seeing this letter in Mchemba Court. (Document is in affidavits of bundle 3.1 attached to Group Village Headman Guzani's affidavit). Yes the letter has the DC's stamp. I know about this letter. Yes the land in this letter forms part of my land. I was told by the Chamwavi Group that this land now belongs to Central Poultry, but I was given this land in 1994. Central Poultry did not buy the land that I was given. The land that Central Poultry bought is on the other side. It at all Chamwavi sold my land they would come and tell me about it.

The D.C. does not own land. Land belongs to the T/A. This letter was produced at Mkanda Court but I won that case.

Yes I know that Chamwavi Group had registered this land that they gave me. I don't know whether issues pertaining to this land are handled at the D.C's office at Mchinji, it is the Chiefs who do that. I don't think D.C.'s office at Mchinji keeps records of this land.

Yes lease application is the DC's concern if applicant proceeds with the process.

The files of DC will show that the land is no longer under Chamwavi. Yes I know the part on paper that Chamwavi sold to Central Poultry. From 1994 to 2008 Chamwavi came and demarcated the land and said that the land that was not demarcated was mine. I am still on my land. It has not been sold. When the sale transaction between Central Poultry and Chamwavi was happening I was not there and I was affected since I had my piece of land.

I do not know the acreage of the land that was sold to Central Poultry. If I were told today that Chamwavi sold all this area including the disputed land to Central Poultry I would go to Chamwavi and summon Central Poultry.

In processing my lease, I chose to use the survey people of Lilongwe and Mchinji, this is a choice that one makes and it started a long time ago. There was no need for me to go to Mchinji. I have said Chamwavi, also did the same so you should ask Chamwavi first.

In distributing land, or buying land you start by visiting the Group Village Headman and Traditional Authority. Not the Village Headman. I don't come from Guzani Village so Village Headman Guzani does not know my problems. I don't know that Village Headman has primary duty to distribute land. There matter here is about Estate of Village land and it was for Chamwavi to approach and inform Guzani.

Yes I remember the letter from T/A Mkanda. This letter was not written by T/A Mkanda, it was written by Chief. (Letter attached to Village Headman Guzani affidavit as Village Headman 3).

Court: Document be marked ID 2.

PW 1 in Cross-Examination

Before the land was bought by Chamwavi it was not used by Guzani Village people. They had their own land. They were not using this land.

PW 1 in Cross-Examination by Court

For me to be given the land, I had no place to farm in my village, so in 1994 I went to the Estate of Chamwavi to the Area Manager where I was told to write a letter to ask for the land. I wrote the letter which was photocopied into 3 letters. This was Kasungu office, another letter went to Head office in Lilongwe, the 3rd letter went to Chamwavi Group lawyers at Graham Carr in Blantyre.

In January 1994 I got a reply with Mr. Nkosi and his driver Mr. Nkhomba, they got T/A Mkanda of that time James and Group Village Headman Kawere the Village Headman of that land. They showed me land from Kazyozyo to Guzani graveyard. I was told that from that time I should farm on this land as it was mine. They said they would come with survey people to demarcate the land.

PW 1 in cross-examination

Before survey people came, in May 2000, I saw that the Chief was building a school in my land. I asked him, he said that Chamwavi had given them the land. I went to Chamwavi Office⁴ In June 2000 and Chamwavi said that they did not give anybody this land. As my house is on the farm, I felt that they should continue with the construction. But I and Group Village Headman Kawere showed the people the boundary for the school. There were no problems until 10/07/2008 when Chamwavi brought a surveyor and demarcated boundaries. They did not include my land, they brought a representative of Mkanda, Mr. Mndolo and Group Village Headman Kawere.

David Neild is the one that gave me the land. He is the one whom I was meeting in Kasungu. He is the one who gave me the letter. I don't know if David Neild was the owner

of Chamwavi Estate. Mr. Kandodo and his office are in a better position to answer that question. I can ask him to answer.

When he was giving me the land, David Neild did not show me the acreage, he just said from Kazyozyo Road to the graveyard. We were in Mchinji when he was saying this. I don't have a copy of the letter of request I left it at the office.

Yes David Neild told me that there was a meeting, but he did not attached the Minutes for the allocation.

Apart from me, there isn't any other person who has been allocated land. David said he was grateful with my application as other people just trespass on the land."

20. It is recorded that there was no-reexamination of CW1

21. CW2 adopted his affidavit dated 7th November 2013 (CW2's Affidavit) wherein he deposes thus:

- “3. *THAT I was employed by Chamwavi Group of Companies as Estate Manager for Luwelezi Estates from 1976 to 2002*
4. *THAT I have known Mr. Kawere, the Applicant herein from the time that he came to ask for land when I was at Chamwavi Group of Companies Head Office in Kasungu*
5. *THAT the Applicant was allocated land on 30th January, 1994, this land was part of Luwelezi Estate.*
6. *THAT the Defendant had no jurisdiction on land belonging to Luwelezi Estate.*
7. *THAT the company subdivided part of its land from Chitsulo Primary School to Guzani Grave Yard. In fact it was the Applicant who convinced the company to allow the school to be built on Luwelezi Estate so that children should not go far for school.*
8. *THAT the sale of Luwelezi Estate, Central Poultry was not inclusive of the Applicant's land as it had already been allocated to him.*
9. *THAT the Applicant has at all material times farmed on this land and Central Poultry was only sold the Estate by Chamwavi Group of Companies in 2008.*
10. *THAT as far as I am concerned for all intents and purposes the land in question belongs to the Applicant as given to him by Chamwavi Group of Companies."*

22. The record of the cross-examination of CW2 is reproduced here:

“At that time D.G. Neild was the Manager for Chamwavi Estates. I came to know plaintiff as I worked as Estate Manager. Plaintiff found me at Chimwankango asking for land for farming. I took him to Chamwavi Group and he asked for land. He was told to write a letter seeking land to farm. He did. We went back and gave the land. He was told to wait then he got a reply that he was given part of Luwelezi Estate which had been idle for some time. This is what I know.

(Shown Exhibit P1) Yes I know the letter. It came from Chamwavi showing that plaintiff had been given part of the land.

Mwanjana Estate is the name of the Estate that was given to Mr. Kawere. Mr. Kawere (Plaintiff) is the one who gave the name to this Estate.

I worked within Luwelezi Estate from 1976 to 1991. Thereafter I was promoted and transferred to Chimwankhango Estate.

The area given to plaintiff is near Guzani Village. There is a road which creates a boundary between the two. The acreage of the land is not known, but it is a big portion, over 100 acres.

PW 2 Cross-examination

Yes I was Estate Manager. It was for 28 years because the other 4 years I was with another. It was from 1976 to 2004.

In the set up of the company, decisions were made by General Manager. We reported everything to the General Manager who would report to the owner Dr. Banda. No, it was not verbal, it was written communication.

The letter that give the land is Exhibit P1. Everything is in this letter. Yes this is the original that was written.

(Shown document) Yes this is the signature of D. Neild. (told that the signature is a photocopy from another document). This is what I got from Neild.

Yes it is possible for someone to produce this copy. This was the way that our Was writing documents.

(referred that letter says part of freeland) Yes this is what the letter says. It does not mention acreage. And the owner just pointed out that from his part to that end. It is the plaintiff who went to get demarcations.

I don't know that the statement "freeland" can be abused.

Yes it is true during this period people had started encroaching on this land.

The land was from graveyard to the road going to Kazyozyo. Dr. Banda was given free land. I don't know if people were removed from the land. What I learnt was that he was given by T/A Mkanda. I was not there when land was being given.

When Central Poultry was buying the land, they got the other side of the land and not plaintiff's side, at that time I had loaned Central Poultry in 2008. Surveyors for Central Poultry made measurements and found that Guzani Village was inside the farm and T/A Mkanda said he had nowhere to put the people and myself, T/A Mkanda and surveyors demarcated another area and allocated it to the people. I believe that as Village Headman Guzani was not satisfied, he went to trespass on plaintiff's land. As they were quarrelling, I moved from Central Poultry in 2010. I don't know of any other developments from these. If Central Poultry gave them the land, from the road to graveyard they should produce the evidence in this court.

No the statement that the land to plaintiff is from the road to the graveyard is not in Exhibit P1. Village Headman Guzani should produce the letter that Central Poultry gave him the land.

(Shown letter from D.C. Mchinji) Yes it has the signature of DC. "that land in dispute has been given to Village Headman Guzani for Village Headman to demarcate." Yes I have seen that. It does not say that it is Central Poultry which has given the land. (reads again) Yes it is Central Poultry which has given the land.

Yes I know about this land. In DC's letter. Yes this is the same land which is the land in dispute. From this document. It seems Central Poultry gave people of Guzani the land. Yes at this period of this letter I had left Central Poultry.

Yes the transaction between Central Poultry and Chamwavi was written down and I was a witness.

When I was coming I came to testify on the Chamwavi issue. I did not know of these other developments.

Yes land could be given to one person because that one person lodged a request.

23. The re-examination of CW2 is recorded thus:

'XXN : The Group Village Headman of the area is Kawere and not Kazyozyo.

Plaintiff went to ask for part of land of Luwelezi Estate. Yes if he was to be given any land it would be land that would be part of Luwelezi Estate.

Yes there is land known as Mwanjana Estate. He knew that the application was going to be granted and that he would call the land Mwanjana.

Mr. Neild was giving land which was part of Luwelezi Estate. If it is said that the part of the Estate that is given is Mwanjana then it is Neild who made the mistake, he should have written the part of the Estate given was Luwelezi Estate.

Yes the naming of the Estate in this letter was wrong. The matter in issue in this court is about Luwelezi Estate.

I got this letter from Chamwavi Group

Court XXN: Do we have the original of that letter Exhibit P1?

Counsel Mwale: We do not have the original of that letter. I was just given a copy and told that the original would come later.

PW 2 XXN by Court: The whole of Luweleze Estate was 3,500 hectares this is Luwelezi Estate 1 only.

PW 2: There was Luwelezi 1,2, 2B at this place under Chamwavi Group and Kalugwizi. The land that was given to plaintiff comes from Luwelezi 1.

Yes I worked for Central Poultry. Central Poultry bought the land from Chamwavi in October 2008. Plaintiff was farming in the Estate at the x since 1994. At that time I was working for Central Poultry the land that plaintiff was using did not form part of Central Poultry land.”

24. CW3 adopted Affidavit by Chief Mkanda. The record of proceedings regarding the evidence of CW3 is as follows:

“With regard to this matter Village Headman Guzani originates from Kawere. A Petulo whom I mentioned here is not here.

I have never heard anything to the effect that Guzani is having disagreements with Village Headman Kawere over land.

Yes I know about Central Poultry. They are in my territory. So whenever there are issues they call me.

Central Poultry is in 68 and there is a boundary, Central Poultry is to the right.. Kawere is to the north of 68 at the road side.

Between Central Poultry and 68 there is a road boundary, Kawere is behind 68 and Central Poultry.

There is a boundary between Kawere and Central Poultry. However, Central Poultry encroached into Guzani Village in putting up their boundaries. Central Poultry gave part of their land to Guzani.

Yes Mr. Kawere’s land was part of Central Poultry. Guzani is in Kawere.

PW3: When Central Poultry was giving land to Guzani, Kawere was not present. I was with other Ndunas.

This land has always belonged to Kawere since time immemorial from generation to generation..

(referred to a document marked VHG 4. This document is about dispute over land. I do not know the person that signed this document.

I was not present when the demarcations, my Nduna a Chiwayula was present.

PW 3: XXN: I was installed as Senior Chief Mkanda in 2002.

Asked if he knows anything about how Mr. Kawere got the land in Mchinji.

I know that Mr. Kawere was the owner of the land because this land in issue ndi malo a Chifumu and a Kawere ndi a Kawere ndithu. It has been in his family since time immemorial.

Asked if he was present when Chamwavi gave the land to Central Poultry. The land in issue is land outside Chamwavi 68. Yet when Central Poultry was demarcating boundaries, they encroached on land which was outside Chamwavi 68.

(shown document) MAP showing generalized usage of land for Luwelezi I Estate marked VHG 1 in Village Headman Guzani's witness statement.

(referred to Chitsupo Primary School. Yes, I know this school. In reference to this land Mr. Kawere's land is to the North. Are told that Kawere;s land is inside Luwelezi. This farm is inside Kawere land. Guzani shares boundary with Kawere. Guzani is from Kawere.

No, I do not know this letter. Asked to confirm that the letter has a stamp from his office. I have seen the stamp. There is a clerk at the office. Yes in 2018 the clerk was Nkhoma.

I was approached to resolve dispute between Central Poultry and Villages. It is the survey people that knew the boundaries and I was following them.

I do not know that the survey people wrote a letter to Chief Kazyozyo with regard to their encroachment.

In 2010, Nkhoma never came to my place with people that land had been encroached upon. The complainant was Guzani. The complaint was that his land had been taken from him. He complained that Central Poultry had taken over their land.

When Guzani complained I called for Chiefs. There was a discussion and the complainants were given pieces of land and they are now cultivating on this land.

It is Central Poultry who gave them the land. They demarcated piece of land and gave it to the people.

It is true that Central Poultry, when they were drawing their boundaries they encroached on Guzani's land. This land used to belong to Kamuzu and the demarcations were done from the plane. During Kamuzu's time the land was given to Mayi Kadzamira.

The land complained about is outside Mayi Kadzamira's land. 68 is on one side. 2B is on the other side. During the time of the Demarcations I was in Zimbabwe, so I do not know who was using the land. I came back from Zimbabwe in 1964. The land is in Kawere. It has Guzani. 68 is in Kadodo area. 2B is in Kawere area. Guzani Village is in Kawere Village. The farm is on its own. The land in issue had always been outside the farm. Central Poultry bought Estate 2B.

No, Central Poultry did not encroach but they encroached into Guzani Village. So I stopped them and asked them if the map was going to get into the Village. So, Central Poultry redemarcated the boundaries, they left out the area of land that the villages were claiming formed part of their land in the three villages. I know Guzani Village, Delezi Village and Tongozala.”

25. That marked the end of case of the Claimant.

26. As already stated, DW 1 gave his testimony before Justice Ivy Kamanga, as she then. The record of the proceedings in relation to DW1 is reproduced below:

“Sworn and States: My name is Smart Mkwenzalamba. I am also Village Headman Guzani. (Shown document) It is my witness statement and I wish to adopt.

Court: It is adopted.

Mwale: I have problems with paragraphs 15 – 18 as it is hearsay and not admissible.

Ms Nkosi: This is not hearsay as it is the evidence on what the witness actually witnessed. I understand that counsel's concern originates from the fact that he mentions his uncle, Village Headman who asked the District Commissioner to help with the land.

Mwale: My lady it is hearsay since he is just narrating what he probably heard.

Court: As we read it, it does not connote hearsay. So perhaps lets see how you cross examine him to demonstrate hearsay.

DW 1: (Shown document) (marked VHG 1). This is a map for Luwelezi 1 Estate. It shows the map of the estate. I got it because the Estate of Chamwavi Group sold this Estate to Central Poultry. This was in 2010. And Central Poultry said they wanted to get the whole estate. So they engaged the Lands they came to demarcate. They found that my village was inside the estate. We were commanded to vacate the land.

In my capacity as Village Headman Guzani 2 I lodged a complaint to Gogo Mkanda that the Co. Central Poultry was chasing me from the land.

Gogo Mkanda went to complain to the District Commissioner on where he was going to give us the land if we were dispossessed.

The DC and Gogo Mkanda came to our village Guzani accompanied by People from Chamwavi who were selling the land to Central Poultry. We lodged the complaint. The D.C. talked to the people from the company. He asked them to leave us on the land. And he also asked that they should demarcate the land so that we should continue to enjoy the land. (atidulireko)

At that time Chamwavi people and Central Poultry could not appreciate the dilemma that they were putting us in. So, Gogo Mkanda and the D.C. engaged the Chamwavi Estate people and Central Poultry for eight times until the land was re-demarcated adjudicated up;on and we were allocated land.

DW 1: So, the Central Poultry people and myself went to the estate. We got inside the estate where we had our graveyard. The Central Poultry people stated that they wanted the graveyard to be inside as part of our village.

They advised the Lands people to re-demarcate the land. Lands people started to re-take the boundaries from the graveyard to the place where we have our school. The total land that was allocated to us by Central Poultry is 134 hectares. We asked for the document so that it could be our evidence that Central Poultry had given us part of the land. We got it from Central Poultry. I wish to tender.

Court: Mark the document as Exhibit D1.

DW 1: (Shown document). This is my evidence that the land belongs to me. It is authored by Gogo Mkanda's clerk. His name is F.B.M. Nkhoma. When I went to Gogo Mkanda's house to ask for letters of evidence that the land had been located to us, the clerk took me to Gogo Mkanda's house. Gogo told the clerk to go and write a letter to that effect and give it to me.

The words that appear on the document are a true reflection of the instructions that Gogo Mkanda's instructions on the wording of the document. He wrote the document, signed it and gave it to me. I wish to tender as part of my evidence.

Court: Mark the document as Exhibit D3.

DW 1: (Shown document) This letter is evidence that we have been given the land by Central Poultry. I wish to tender.

Court: Mark the document as Exhibit D4

DW 1 XXN by Mwale: Yes I am Village Headman Guzani. Yes, my name is Smartwell Mkwezalamba. I was installed as Chief in 1998. Presently as in this court, I do not have the papers that are proof of my Chieftaincy in this court but I have them at home.

DW 1 XXN: Asked how many Village Headmen Guzani's do you have in your village. There is one Village Headman Guzani. Petro Amosi was the former Village Headman Guzani but he retired as he was always sick. He is from the same village. He is at the village. Gogo Mkanda installed him as chief. Yes, it is the same Gogo Mkanda who testified as PW 3.

I have not yet been officially installed as Village Hadman. I am just working as Village Headman on behalf of Petro Amosi. Yes, T/A Mkanda installed me as Village Headman Guzani. Yes we can call upon T/A Mkanda to establish that he installed me as a Chief.

Yes I heard the Gogo Mkanda telling the Court room that he could not see Village Headman Guzani in this court room when actually I was sitting down. The Court should not believe my statement where I said that Gogo Mkanda installed me as Village Headman.

[referred to Exhibit D1 – the map]. Yes I am able to read. Yes the land which is shaded was given to us. Shaded as B1. The land shaded as B2 was given to other village headmen.

[told that the map states that this land is encroached land]. Yes the map shows the land for Luwelezi Estate. The land B1 is inside the estate. B2 is also inside the estate. Yes this is land that was encroached. Yes when we asked for it, we were given the same land.

Felix Kawere is my brother in-law. He married my sister. He was part of the people who had encroached on the land. He is in my land. I gave him 20 acres for him and his children. Yes there is a school in the shaded area. It is Chitsuto school. Yes it was inside the Estate.

DW 1 XXN: I started living in this area in 1987. The owner were Dr. Banda. Yes it was called Chamwavi Group. No, it was not called Mwanjana Estate. No there was no Mwanjana Estate. Yes there is a graveyard within the map. No there is no sign on the map that shows that there is no sign on the map that shows that there is a graveyard. Yes the houses and schools are marked. I was told by lands that, that was their mark for the graveyard.

When Mr. Kawere came to my area and became my brother in-law, he was equally encroaching in Luwelezi Estate just like us. He was farming in Luwelezi Estate.

No, I do not know if at all, Kawere was allocated land inside the estate by Chamwavi inside the estate.

He once told us that he was allocated the land by Chamwavi in 1994. He told us that in 2010 after we had already been given the land (referred to Exhibit D3) Yes when I went to the T/A the Clerk went to see him. The clerk took me to Gogo Mkanda. Yes I met him personally. I was with my Councillor. (Nduna yanga) I told him that I wanted him to give us a letter of evidence that would indicate that he was present when land was being allocated to us. He instructed the clerk in my presence to go and write the letter for us. I know him as Gogo Mkanda's clerk. We were also moving with him whenever we were pushing for land to be allocated to us.

Yes I heard Gogo saying that he is not aware of the document Exhibit DW 3. The signature on the document is his clerks signature Nkhoma. I am sure he did not own it because he has forgotten.

[referred to Exhibit D4] Yes I understand the content of this letter. The D.C. is confirming that I was given the land by Central Poultry.

(told that the letter is allocating land which is under dispute)

At the time that the land was allocated to us there was no dispute. Told that, that is in the letter. The dispute in this letter is the dispute between us and Central Poultry and the dispute was resolved. Yes the letter is dated 18/12/2010. Yes I said that when I was getting the letter, we had resolved the dispute with Central Poultry.

The land that Kawere is claiming forms part of the land that we got from Central Poultry.

(Told that the land that Kawere is claiming is not on the map). It is true that the land that Kawere is complaining about is not on this map.

Mwale: I am told by my client that the witness is lying under oath. So I seek that he be charged with perjury.

Court: Which part of his statement is a lie.

Mwale: The part where he says he was installed as Village Headman while the T/A says he never did.

DW 1 Re-exam: [Referred to Exhibit D1] The Land Surveyors from Lands told us that this area (shows) is the graveyard, as it could not be clearly seen.

Petro Amosi who is Group Village Headman is frequently sick, that is why I am the person that was handling the matter. I am the one that was handling the issue in resolving the dispute between the people of Guzani Village and Central Poultry.

[referred to Exhibit D4] My understanding of this letter is that as the District Commissioner explained to me that this is my evidence that when we were being allocated the land I was present.

XXN by Court: Petro Amosi is my brother. My mother is a younger sister to Petro Amosi's mother. I am a mchewa.

Mwale: I seek that the witness be charged with perjury as I have a witness that he was not installed as a Group Village Headman Guzani.

DW 1 charged with offence of perjury that he told the court a lie under oath.

CW 1: Sworn and States. Gogo Mkanda. In my culture, a village headman or Group Village Headman is installed by the T/A. I am Chief Mkanda. And in my capacity as T/A I install them.

Yes I have said that I do not see Village Headman Guzani in this court. No, I do not know DW 1 as Group Village Headman.

No, I have never met him before. If at all he came to my office then he met my clerk, I was not present

CW 1 XXN by DW 1: I know you as a person who lives in Guzani Village.

I installed Petro Guzani

Whenever there is a time where a Village Headman or Group Village Headman is incapacitated and the mbumba wants to appoint someone to handle the chieftaincy in the time of the chief/village headman's incapacity the caretaker is brought to my chamber and introduced by the people who do that. DW 1 was never presented at my with the process as I have indicated.

Yes at the time that we were negotiating with Central Poultry, I always saw DW 1 but I always took him as one of the people who live in Guzani Village. I hear that Group Village Headman Guzani is in South Africa. It is the plaintiff who has told me.

It is Skeva who told us that he was allocated land by Chamwavi Estate in 1968.

The land which Skeva (plaintiff) is complaining about is at 68 this land is not at Central Poultry. This land is not in Luwelezi Estate.

Court: I find you with a case to answer, that you were lying under oath.

DW 1: (Sworn and States) My name is Smart Mkwecalamba. I come from Guzani village T/A Mkanda, Mchinji. It is because Ndalala chikopa chawo that is why I stated that I am Group Village Headman Guzani. Group Village Headman is present in this court. Asked to present the body of Group Village Headman Guzani. The person stands up on the gallery. The person that is standing up now is Jonasi Gelesom. No, he does not have other names.

I am representing Village Headman Guzani and not Group Village Headman Guzani. Group Village Headman Guzani is the one that stood up.

When I said that I was installed as Village Headman Guzani in 1996, I was lying. I was talking – but the installation of Petro Amosi.

I apologize, for introducing myself as the Chief when actually I was merely a Caretaker. It was wrong of me to do that.

Court: You can go back to your seat. I will give a verdict the next time we meet.

27. The verdict on the question whether or not DW1 was guilty of perjury was not rendered by the Court. I took the view that that it would be unsafe for me to render a verdict on such a matter when I had not personally tried the offence of perjury. The demenour of witnesses is a critical aspect in perjury trial. It was eventually agreed that the case should proceed by the Court hearing the evidence of the remaining witnesses with the Claimant having the liberty to pursue the issue of perjury in a separate action, if he so wishes.

28. DW2 stated that he is Tsogolani Polite Mwale and he comes from Kazyozyo Village, Traditional Authority Kazyozyo, Mchinji District. He adopted his his affidavit, that is, Affidavit by GVH Kazyozyo,

29. During cross-examination by Counsel Mwale, DW1 started by stating that he is now a Traditional Authority (T/A). Thereafter, the cross-examination focused on identifying the respective lands that belong to the Defendant and the Claimant respectively:

Q: The land being claimed by the defendants belongs to Mr. Kawere?

A: I do not know which land you are talking about.

Q: Which land do you know?

A: The land is at Daka's graveyard. That is where we stood. The graveyard is on the east side near the road. Coming from the south where there is Chalala road going to Kacheche, then there is a T-junction going to the north side. When we walk and reach Guzani Village we walk a little then we pass another village and then in front there is a graveyard inside some fields on the eastern side of the farms. That is where we stood. That is where our colleagues from CP Foods said to Group Village Headman Kazyozyo, we are giving you this land for you to give to Village Headman Guzani for him to share it among his subordinates due to lack of land to cultivate to alleviate them of their problems. When they were giving the land we were pointing to the northern side.

Q: The land that belonged to Mr. Kawere, was it part of CP Foods or it is a separate piece of land?

A: Felix Kawere's land was different

Q: How long have you been in your village?

A: I was born there and I grew up there

Q: Were you there when Chamwavi came to the area?

A: Yes

Q: Luwelezi estate was divided?

A: Yes it was divided but not to Kawere

30. In re-examination, DW2 was asked to explain about the land for Central Poultry and he stated that the land that he witnessed being granted by Central Poultry to the Defendant is at the graveyard pointing to the north, whereas Mwanjana Estate is on the southern part. He further explained that it is not true that the Defendant grabbed the fields that belonged to The Claimant. What he knows is that the Claimant's land is separately located from that which was granted by Central Poultry to the Defendant.

31. DW3 was Mr. Zengani John Shaba. He introduced himself as a Land Surveyor by profession in the Ministry of Lands and that he holds a Bachelors degree in Land Management, majoring in Land Surveying, obtained from Mzuzu University. He adopted the Joint Affidavit by Mr. Shaba and Mr. Kamtimaleka.

32. During cross-examination, Counsel Mwale asked CW3 the following questions regarding his qualifications and work experience”

Q: When did you graduate from Mzuzu University? -

A: 2018

Q: When you were in Mchinji, what position did you hold?

A: I was acting Lands Officer, but my initial position was Land Clerk

Q: When you were in Mchinji, you were not a Land Surveyor really?

A: No!

Q: You were not qualified to be a Land Surveyor at that time?

A: I was not qualified as a Lands Surveyor

Q: I will take it that everything that is in that sworn statement was what yourself and Mr. Kamtimaleka jointly presented to this court.

A: Yes

33. DW3 reiterated that Central Poultry bought a piece of land known as Luwelezi Estate which was owned by Chamwavi Group of Companies in Area Traditional Authority Nkanda, Mchinji. He stressed that issues that came up had to do with

Luwelezi Estate and the boundaries that they were verifying were to do with Luwelezi Estate.

34. DW3 also stated that Central Poultry engaged the Surveyor General to survey the land and the survey was done through the Regional Lands office in the Survey office. He stated that CW2 and his team they are the ones who surveyed the land. He agreed that there is a map attached to the Joint Affidavit by Mr. Shaba and Mr. Kamtimaleka, namely, Exhibit ESP 1 which is the map of Luwelezi Estate.

35. The next questions in cross-examination related to Mwanjana Estate:

Q: Did you by any chance survey Mwanjana Estate?

A: No!

Q: Are you aware that Mwanjana Estate belongs to Mr. Kawere?

A: No! I don't know Mwanjana Estate.

Q: Do you know Mr. Kawere?

A: I don't know him

Q: How do you know that he is a beneficiary when you said you don't know him?

A: My affidavit was done in 2010 but I know Mr. Kawere through these court proceedings

Q: Mr. Kawere's land is outside Luwelezi estate?

A" No, it is inside Luwelezi estate and I am saying the truth

36. Thereafter, DW3 was referred to paragraph 3.5 of the Joint Affidavit by Mr. Shaba and Mr. Kamtimaleka which states, among other matters that the whole Luwelezi estate, including the land being claimed by the Claimant was given to the Defendant by CP Foods and asked the following questions:

Q: How were encroachers dealt with?

A: The District Commissioner stated that the land should be subdivided because the village could not be removed from the land?

Q: This estate had title deed?

A: Yes, Luwelezi estate had title deed?

Q: Was the title deed amended to reflect the subdivision?

A: I have to check if that was done

Q: Was it not important to bring those documents

A: The documents I have submitted are enough

Q: Have you attached title deed

A: No

Q: There is no evidence to show subdivision?

A: There is a letter written by the District Commissioner showing subdivision

Q: Is that a title deed? Is it enough?

A: Yes, administratively it is enough

37. The re-examination of CW2 by Counsel Nyirenda will also be quoted in full:

Q: Clarify your position, duties, etc

A: I was acting Lands Officer. My role at the Council was administrative. We handled matters with the Chiefs, District Commissioner, Mr. Phiri, and officer-in-charge Police and the Chiefs' clerk

Q: Anything else?

A: I was overseeing land matters in Mchinji. The surveyors had to go the land with me

Q: What do you say regarding the title deed of the land bought by CP Foods?

A: The title deed is there. Given an opportunity I bring the title deed. It is at Tikwere House at Deeds Registry

Q: Do you know Mr. Kawere?

A: I don't know Mr. Kawere but the land in dispute

38. The Defendant closed his case.

ISSUES FOR DETERMINATION

39. On the basis of the statements of case and the evidence adduced by the parties, there are ultimately four issues for the determination of the Court, namely whether or not:

- (a) the Claimant was granted the land in dispute by Chamwavi Group of Companies (Issue No.1)?
- (b) the Defendants have any property interest obtained prior to 30th January 1994 flowing from their cultivation of the land (Issue No.2)?
- (c) the Defendants have any property interest in the disputed lands flowing from the grant from Central Poultry Ltd (Issue No.3)?
- (d) the Defendants have unjustifiably interfered with the Claimant's possession of land (Issue No.4)?

Issue No. 1 (Whether or not the the Claimant was granted the land in dispute by Chamwavi Group of Companies?)

40. The Claimant espouses the view that he is the owner of the disputed lands. Paragraphs 80 to 86 of the Claimant's Final Submissions are relevant:

"80. The authorities support that ownership of land does not depend on title deeds but the Claimant can prove the same by proving a grant of the land by a prior owner and occupation of the land.

81. It is beyond dispute in this case that before 30th January 1994, the disputed lands were owned by Chamwavi Group of Companies. This has been evidenced by the testimony of CW 1 and is supported by the testimony of CW 2, CW 3, DW 2 and for what it is worth it is not contested but somewhat supported by the inadmissible evidence of DW 1 and DW 3.

82. *CW 1 has further adduced a letter dated 30th January 1994 evidencing that the said owner Chamwavi Group of Companies made a grant of the land to the Claimant. This is supported by the oral testimony of CW 1 and the letter adduced as Exp 1. The fact is further corroborated by the survey report adduced as Exp 2 and the evidence of CW 2 who worked at Chamwavi Group of Companies at the material time.*
83. *CW 1 additionally testified that he entered into occupation of the said land upon the grant whereupon he built his house and cultivates the said land. This is supported by the survey report Exp 2, and the testimony of CW 2 and CW 3.*
84. *There is no evidence contradicting this testimony except the inadmissible evidence of DW 1 who testified that there was inactivity on the part of the disputed lands when they started cultivating in 1987 until 2010. However, not only is this evidence inadmissible but is not corroborated by any other witness called for the Defence.*
85. *In fact, CW 3 has debunked the claim that VH Guzani and his subjects were cultivating the land since 1987 since then the land was owned by Dr. Hastings Kamuzu Banda and the headman or his subjects could not have cultivated it.*
86. *Taking into account all the evidence herein adduced, there is evidence on the balance of probabilities that the disputed lands were originally owned by Dr. Hastings Kamuzu Banda who later transferred it to Chamwavi Group of Companies. On 30th January 1994, Chamwavi Group of Companies granted the disputed lands to the Claimant who has been in occupation since 1994 to date. It thus follows that the Claimant has the customary law property interest over the land and is the owner thereof.”*

41. The Claimant bases his claim of ownership of the disputed land on a grant of the same to him by Chamwavi Group of Companies through Exhibit P1. This claim stands on tenuous ground for a number of reasons.

42. Firstly, Exhibit P1 does not state anything to the effect that Chamwavi Group of companies granted the Claimant the disputed land. The body of Exhibit P1 is worded thus:

“TO WHOM IT MAY CONCERN

FREELAND IN MWANJANA ESTATE

It has pleased Chamwabvi Group of Companies to give out part of free land at Mwanjana Estate which is located outside Luwelezi Estate to MR FELIX A. KAWERE OF CHIMOMBO VILLAGE T/A MKANDA on humanitarian consideration.

We have decided to give away the isolated part of Mwanjana Estate to Mr. F. A. Kawere for free on condition that any household using this part of land should vacate immediately and unconditionally.

Should you need further clarification, please do not hesitate to contact the undersigned.

Your co-operation is appreciated.

Yours faithfully,

For and on behalf of Chamwavi Group.

DAVID E.G. NEILD
GENERAL MANAGER

CC: T/A Mkanda
All Group Village Headmen surrounding Luwelezi Estate
District Commissioner, Mchinji

43. Secondly, the heading of Exhibit P1 is telling: the freeland is in Mwanjana Estate. The fact that the Claimant was not given Mwanjana Estate, but “part of free land at Mwanjana Estate” is confirmed by both the first and second paragraphs of Exhibit P1. The second paragraph of Exhibit P1 states that the Claimant was given “the isolated part of Mwanjana Estate” Further, the land said to have been given to the Claimant was not part of Luwelezi Estate but land “which is located outside Luwelezi Estate”. This documentary evidence contradicts the claims orally made by the Claimant and CW2 that the Claimant was allocated land that was part of Luwelezi Estate. CW2 went as far as saying that the author of Exhibit P1 made a mistake in stating that the land being given to the Claimant was part of Mwanjana Estate (He said that “*the naming of the Estate in this letter was wrong*”). Between Exhibit P1 and the oral evidence given by the Claimant and CW2, the Court is inclined to believe Exhibit P1: see **Joseph Malunga v. Fintecs Consultants and another** [2009] MLR 263 and **Kamwendo v. Bata Shoe Company Limited** Civil Cause No. 2380 of 2003 which are for the proposition that a person cannot introduce parol evidence to contradict a document.

44. Thirdly, whilst Exhibit P1 purports to have been written on behalf of Chamwavi Group of Companies, the Claimant insisted in his testimony that it is Mr. David Neild that gave him the land in dispute:

“David Neild is the one that gave me the land. He is the one whom I was meeting in Kasungu. He is the one who gave me the letter. I don’t know if David Neild was the owner of Chamwavi Estate. Mr. Kandodo and his office are in a better position to answer that question. I can ask him to answer.

When he was giving me the land, David Neild did not show me the acreage, he just said from Kazyozyo Road to the graveyard. We were in Mchinji when he was saying this. I don’t have a copy of the letter of request I left it at the office.

Yes David Neild told me that there was a meeting, but he did not attached the Minutes for the allocation.

Apart from me, there isn't any other person who has been allocated land"

45. Fourthly, there is no evidence before the Court to explain how the Claimant sourced Exhibit P1. Much as the Claimant stated that he got Exhibit P1 from Chamwavi Group of Companies, he does not state the person from whom he got it. He does not also state the time (the year) when he got Exhibit P1. Further, it is clear that he did not personally get Exhibit P1 and that what was obtained was not the original copy of Exhibit P1. It will be recalled that, when during the trial, the Court asked for the original of Exhibit P1, it is Counsel Mwale who responded by stating that he was just given a copy of Exhibit P1 and told that the original thereof would be given to them later on. Even Counsel Mwale did not state the person who gave him the document nor explain the circumstances which led to him being given Exhibit P1. Additionally, there is no evidence of follow-up by the Claimant to obtain the original of Exhibit P1. In any case, the statements by Counsel Mwale do not constitute evidence: see **Urban Mkandawire v. Council for the University of Malawi**, HC/PR Civil Appeal No. 24 of 2007.

46. Fifthly, the authenticity of the Exhibit P1 is still in question. The Claimant initially claimed that he got the letter in 1994: see paragraph 19 of this Judgement where he states that he got Exhibit P1 in 1994. When asked by Counsel for the Defendant how come the document looked new, the Claimant responded that he could not answer the question. I reckon that he could not answer because the copy of Exhibit P1 tendered in court is not the copy of Exhibit P1 that was given to him in 1994, if at all. It will be recalled that Counsel Mwale explained that he is the one who was given the document tendered in Court: see paragraphs 23 and 45 of this Judgment.

47. Sixthly, there is the question regarding the acreage of land that was granted to the Claimant, if at all he was granted any land. Exhibit P1 does not state any acreage. I find this to be most unusual particularly when the land is being given away by a registered company. The issue of acreage has to be considered together with the survey map (Exhibit P2) on which the Claimant relies on. With due respect to the Claimant, Exhibit P2 is most suspect for the reasons given by DW3 and these reasons include the fact that Exhibit P2 is not dated, it does not contain grid reference, it uses the term "True North" instead of the term "Magnetic North" and it shows that the alleged survey used the scaling ratio of 1:50 000 which is too large a ratio to make an accurate representation of the land: see paragraph 3.11 of the Joint Affidavit by Mr. Shaba and Mr. Kamtimaleka.

48. Seventhly, there are a number of things that are mind boggling about the claims by the Claimant. In one breath, the Claimant alleges that he is the owner of the whole land known as Mwanjana Estate and he is the one who named it as such. In another breath, he states that he only owns a part of Mwanjana Estate: see paragraph 8 of the Claimant's Affidavit in Reply which reads in part "... my land consists of part of Mwanjana Estate". It is not uninteresting to note that paragraph 8 of the Claimant's Affidavit in Reply is consistent with what is stated in Exhibit P1 that the Claimant was given land which was not part of Luwelezi Estate but part of Mwanjana Estate. On a related note, the Claimant paints the picture that there was no land known as Mwanjana Estate before issuance of Exhibit P1 on 30th January, 1994.

49. Eighthly, there is the issue regarding Chitsulo Primary School. The Claimant states that the school was built on his land (Mwanjana Estate) without his permission: see paragraphs 8 and 9 of the Claimant's Affidavit. This is contradicted by the testimony of CW3 who stated that it was the Claimant who convinced Chamwavi Group of Companies to "allow the school to be built on Luwelezi Estate": see paragraph 7 of CW2's Affidavit. In this regard, the testimony of CW2 supports the testimony of the Defendant who stated that "Chitsulo Primary School is located in Luwelezi Estate and the school was built in 1993 by the Malawi Government with the consent from Chamwavi Group of Companies": see paragraph 4 of the Defendant's Affidavit. The Defendant further denies that the land in dispute was called Mwanjana Estate ("No, it was not called Mwanjana Estate. No there was no Mwanjana Estate.")

50. Ninthly, and perhaps more importantly, there is no legal document before the Court transferring the land in dispute from Chamwavi Group of Companies to the Claimant let alone minutes of the meeting at which the decision to grant the Claimant the land in dispute was made. No plausible explanation is given why he failed over a period of more than 23 years (1994 to 2017) to get the necessary title documents.

51. Tenthly, the Claimant testified that he was instructed to write a letter regarding his request to be granted land. The Claimant failed to produce a copy of the letter that he claims to have written to Chamwavi Group of Companies. Further, it is most surprising that instead of Chamwavi Group of Companies (read Mr. David Neild) responding to the alleged Claimant's letter, Chamwavi Group of Companies (read Mr. David Neild) issued a "TO WHOM IT MAY CONCERN" note. In the ordinary course of things, it is reasonable to expect that Chamwavi Group of Companies (read Mr. David Neild) responded to the letter by the Claimant before the issuance of the

said note. For reasons best known to the Claimant, the said letter was neither adduced nor was any explanation given for its non-production.

52. Eleventhly, having regard to all the questions that Exhibit P1 raises, I do not understand why the author of Exhibit P1 or indeed a director or such other senior officer of Chamwavi Group of Companies who took part in making the decision said to be contained Exhibit P1 was not called to give evidence on behalf of the Claimant.

53. Twelfthly, it is clear from Exhibit P1 that the land the Claimant claims to have been granted to him was being used by other people: see paragraph 2 of Exhibit P1 where it states that “*any household using this part of land should vacate immediately and unconditionally*”. It is difficult to understand, in the absence of a clear explanation, why Chamwavi Group of Companies would want the occupants of this land to vacate the land so that it be granted to the Claimant on humanitarian grounds. In any case, how can a land that was occupied by “household” be said to be free land.

54. In view of the foregoing and by reason thereof, I have no hesitation in holding that the Claimant has failed to establish on a balance of probabilities that the land in dispute was granted to him by Chamwavi Group of Companies.

Issues No. 2, 3 and 4

55. In view of the conclusion that I have reached on Issue No. 1, I do not see the consideration of the other issues as being in anyway necessary.

Conclusion

All in all, the action by the Claimant is dismissed with costs.

Pronounced in Court this 3rd day of October 2022 at Lilongwe in the Republic of Malawi.



Kenyatta Nyirenda
JUDGE