



JUDICIARY
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY (CIVIL DIVISION)
LAND CAUSE NO. 200 OF 2022
(Before Honourable Justice Kenyatta Nyirenda)

BETWEEN

G.V.H. CHINTHUTA (On his own behalf and on
behalf of the inhabitants of CHINTHUTA VILLAGE) CLAIMANT

AND

SENIOR G.V.H MTSINDO DISTA (On his own behalf and
on behalf of the inhabitants of MTSINDO VILLAGE) DEFENDANT

CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA

Mr. Mwawa, Counsel for the Claimant

Mr. Harawa, Counsel for the Defendant

Mrs. A. Mtenje, Court Clerk

RULING

Kenyatta Nyirenda, J.

This is my Ruling on an inter-partes application by the Claimants for an order of interlocutory injunction restraining

"the Defendants either by themselves, agents, servants or any person acting on their behalf from trespassing or continue to trespass or otherwise encroach on or interfering with the Claimants possession and ownership or conducting any dealings in respect of the piece of land measuring approximately 10 Acres situated at Chinthuta Village, Traditional Authority Khongoni in the district of Lilongwe or harassing or issuing threats of violence against the Claimants until determination of the matter herein or until a further order of the Court."

The application is supported by the following statement, sworn by the Claimant:

- "2. I am Group Village Headman Chinthuta. Now produced and exhibited hereto is a copy of Local Government Identity Card marked **Exhibit AC 2**.

3. *I am among the Claimants in this matter and as such I am duly competent to swear this statement whose contents are personally known to me by virtue of my personal knowledge, information and belief.*
4. *I am suing on my own behalf and on behalf of the inhabitants of the ten (10) villages of the following Village Headmen:*
 - a. *Village Headman Chinthuta (born Laines Baisi)*
 - b. *Village Headman Kanyoni (born Bester Kagwa)*
 - c. *Village Headman Chimchira (born Chirifol Kafotse)*
 - d. *Village Headman Ndelea (born Nyamayakanga Lalton)*
 - e. *Village Headman Kakopa (born Pute Zakeyo)*
 - f. *Village Headman Stefano (born Yosefe Foster)*
 - g. *Village Headman Jolofani (born Mphatso Mbewe)*
 - h. *Village Headman Chimbanga (Kalkeni Kamtsitsi)*
 - i. *Village Headman Mchiriko (born Jedede Jllmoni)*
 - j. *Village Headman Kajiwa (born Hardson Chlluzi)*
5. *The Defendant is being sued on his own behalf and on behalf of inhabitants of Senior Group Village Headman Mtsindo Ditsa and some of the Village Headmen and inhabitants are as follows:*
 - a. *Village Headman Mtsindo Ditsa (born Lackson Kamzimbi)*
 - b. *Village Headman Tinjate (born Kingsley Mtumpha)*
 - c. *Village Headman Mtikomola (born Maligelita Chinyama)*
 - d. *Village Headman Mbulu (born James Malliseni)*
 - e. *Dryson Ponde (Encroacher)*
 - f. *Jovati Yamilani (Encroacher)*
 - g. *Mphatso Chazama (Encroacher)*
 - h. *Nasimelo Golati (Encroacher)*
 - i. *Nasoweka Limbikani (Encroacher)*
 - j. *Emily Tilimoni (Encroacher)*
 - k. *James Vula (Encroacher)*
6. *Our ancestors or forefathers started to stay at Chinthuta Village, T/A Khongoni in the district of Lilongwe since around 1836.*
7. *Many generations have inherited and peacefully cultivated on their respective piece of gardens/lands/dimba and or enjoyed possession and ownership of the same which in total approximately measures 10 Acres situated at Chinthuta Village T/A Khongoni in the district of Lilongwe without any interferences.*
8. *Our villages and the villages of the defendants are demarcated by a stream/dambo known as Nyang'amire.*
9. *Over the years we have been cultivating and enjoying peaceful possession and ownership of our respective pieces of lands/dimba without any sort of interference until 2004 when inhabitants of the Defendants crossed Nyang'amire stream and*

encroached or trespassed or continue to encroach and trespass on our respective pieces of land/dimba without our consent or licence.

10. *We repeat paragraph 9 of this statement and aver that we immediately lodged a complaint at the traditional court of Senior Group Village Headman Mtsindo Ditsa. Further the Court challenged us that even if we take the matter to any traditional court, anything will not change because he is always part of such courts.*
11. *We have always tried to seek help from the traditional courts under the jurisdiction of T/A Khongoni but to no avail.*
12. *We were surprised further that instead of finalizing the matter, in or around 2021 one Ndelea Siveliyano, under the jurisdiction of the Defendants, approached Village Headman Kanyoni and Villageman Chimchira claiming adverse possession and or ownership of the lands/dimba in question. He was sent back on the basis that the matter is yet to be disposed of and further that he should inform his chiefs.*
13. *After realizing that there is no any communication from the Defendants, Village Headman Kanyoni, Village Headman Chimchira and Village Headman Ndelea made a follow up with the Village Headman Mtsindo Ditsa who recommended that we should all visit the land Ndelea Siveliyano was claiming adverse possession and or ownership.*
14. *On the day of the scene visit all the parties agreed that pieces of lands/dimba in issue belonged to one of our forefather in the name of Chilowa Chinthuta. Further the parties agreed that indeed Nyang'amire stream is the boundary of the villages under Group Village Headman Chinthuta and Senior Group Village Headman Mtsindo Ditsa. Accordingly we planted Senjere to mark the boundary.*
15. *As we thought that the matter has been finalized, we were very surprised to be summoned at Traditional Authority Khongoni traditional court on allegations that we have grabbed the pieces of land/dimba of the inhabitants of Village Headman Mtikomola and others under the jurisdiction of Senior Group Village Headman Mtsindo Ditsa.*
16. *On the 11th day of May 2022 both parties presented their story however we were denied to ask the Defendants herein any question. According to T/A Khongoni's traditional court, the matter was adjudicated what remained was visiting the disputed land.*
17. *On the 29th day of July 2022 the traditional court of Traditional Authority Khongoni ruled that the Defendants should still be cultivating on our pieces of land/dimba despite the fact that the same does not belong to them.*
18. *We repeat paragraph 17 of this Sworn Statement and aver that we have consistently requested for a written ruling but the same has not been given to us.*

19. *Further, several times we have duly notified the traditional court of Traditional Authority Khongoni that we are not satisfied with the ruling as such we will appeal.*
20. *In the twist of events, we are surprised that we have yet again been summoned by the traditional court of Traditional Authority Khongoni for review of its own decision or ruling.*
21. *We suspect that the whole process is fishy and justice is not being done hence the present application.*
22. *The conduct of the Defendants tantamount to unlawful possession of our respective customary pieces of land/dimba and is bringing embarrassment to us and is an infringement to our constitutional rights to property, economic activity and development therefore ought to be stopped by this court.*
23. *The conduct of the Defendants will subject us to hardships and need to be stopped by the Court. We have cultivated on the said pieces of land and the same is our only source of income.*
24. *As law abiding citizens we have thought it wise that we should seek the indulgence of the court as this is the only forum we trust justice can be done. Further by issuing these summons we do not want to be involved in any violence with the Defendants.*
25. *There is now fear that if not stopped the Defendants may grab the land using unlawful means thereby violating our constitutional right to own property.*
26. *We undertake to pay any attendant damages, if any, in the unlikely event that the court grants an injunction herein having suppressed material facts or on wrong principles of law."*

The Defendants are opposed to application and they rely on a sworn statement by the 1st Defendant which states as follows:

- "2. **THAT** I refer to paragraphs 1, 1, 3, and 4 of the Claimants sworn statement and admit its contents.
3. **THAT** I refer to paragraph 5 of the Claimants Sworn statement and admit part of its contents but deny the allegation that my relatives who have been listed from paragraph 5(f) to 5(m) are encroachers.
4. **THAT** I refer to paragraph 6 of the Claimants Sworn statement and admit the contents thereof.
5. **THAT** I refer to paragraph 7 of the Claimants sworn statement and state that I do not know if the Claimant's land/dimba is 10 acres, because I have not taken any efforts to measure their dimba land.

6. *THAT I refer to paragraph 8 of the Claimants sworn statement and admit its contents.*
7. *THAT I refer to paragraph 9 of the Claimants Sworn statement and deny its contents. All inhabitants of Mtsindo are using the land/dimba which they inherited from their ancestors who started using this land/dimba in 1809, and have not encroached on any land.*
8. *THAT I refer to paragraph 10 and 11 of the Claimants Sworn statement and deny its contents. The Claimants have never lodged a complaint before me Senior Group Village Headman Mtsindo Didza.*
9. *THAT I refer to paragraph 12 of the Claimants Sworn Statement and deny its contents. Ndeleya Siveleyano is a grandchild to the Claimants because Ndeleya's father comes from Chinthuta Village, but his mother comes from my Village. Ndeleya's father Sivele was given land by Chilowa when he transported Chilowa's belongings using an oxcart, and Ndeleya Siveleya went to claim for this land from Village Headman Kanyoni.*
10. *THAT I refer to paragraph 13 and 14 of the Claimants Sworn Statement and admit part of the contents but denies that the Senjere was planted in the boundaries. The parties did not all agree on the boundaries and the actual place where the Senjere was to be planted.*
11. *THAT I refer to paragraph 15 of the Claimants Sworn Statement and admits its contents.*
12. *THAT I refer to paragraph 16 and 17, of the Claimants Sworn Statement and admits part of the contents but denies that T/A Khongoni ruled we should be cultivating on the Claimants land. We were ordered that everyone should be cultivating where they were cultivating together with their parents. Find attached an exhibit marked "ALK 1"*
13. *THAT I refer to paragraphs 18, 19, 20 and 21 of the Claimants Sworn Statement and make no comment.*
14. *THAT I refer to paragraphs 22, 23 and 24 of the Claimants Sworn Statement and deny its contents and state that everyone is cultivating on their land and no one has encroached on the Claimants land/dimba."*

An interlocutory injunction is a temporary and exceptional remedy which is available before the rights of the parties have been finally determined. Order 10, r. 27, of the CPR provides that a court may grant an injunction by an interlocutory order when it appears to the court that (a) there is a serious question to be tried, (b) damages may not be an adequate remedy and (c) it shall be just to do so.

Having carefully read and considered the respective sworn statements and the submissions by Counsel, it is very clear to me that the facts in the present case are very much in dispute. This being the case, I hold that the matter raises triable issues.

The Court must also consider whether damages are an adequate remedy. Damages emerging from claims of land are not considered as an adequate remedy in view of the unique value that every piece of land has to its owner. In the case of **Mulipa v. Mr. & Mrs. Bibiyani and others unknown**, HC/PR Land Cause No. 105 of 2016, Justice Tembo put the point in the following words:

"What the Court wishes to observe is that land is inherently unique and therefore damages are not an adequate remedy where the same is dealt with adversely. Therefore, the issue on adequacy of damages is ordinarily out of the question in relation to application for injunction in relation to land. See Nanguwo v Tembenu and another civil cause number 451 of 2013 (High Court) (unreported)"

The law also requires that where all other factors in considering the balance of convenience are evenly balanced, it is counsel of prudence to take such measures as are calculated to preserve status quo: see **Henry Malista & Others v. Village Headman Sakhamu (Enock Mututu)**, Civil Cause No. 66 of 2018. The status quo has been held to be state of affairs existing before the Defendant started the conduct complained of unless there has been unreasonable delay where it is state of affairs immediately before the application (**Candlex Limited v Katsonga (supra)**).

In many cases, prompt action may mean that the preservation of the status quo favours the claimant as the defendant's activities are still in the preliminary stage. Conversely, if the defendant has proceeded a long way, he or she may be able to claim that preservation of the status quo involves allowing him or her to continue his or her act. However, in the case of **Shephard Homes Limited v. Sandham** (1971) Ch. 340, it was stated that a defendant who has rushed on his or her work in order to defeat the claimant's attempts to stop him or her will not have his or her status quo preserved with the blessings of the court.

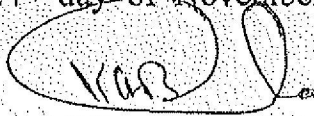
The first point to consider in the present case has to do with the status quo ante to maintain. By the Claimant's own admission, the complained acts begun in 2004: see paragraph 9 of the sworn statement by the Claimant. The status quo to maintain, therefore, is to leave the Defendants in possession until the matter is determined. The related question is whether this status quo is a just one. To my mind, it is, particularly because maintaining the status quo does not determine the title or finally dispose of the matter of title as between the parties.

G.V. H. Chinthuta v. Senior G.V.H. Mtsindo Dista

Kenyatta Nyirenda, J.

In view of the foregoing, the balance of justices lies in maintaining the status quo until the main case herein is determined. Costs in the cause.

Pronounced in Chambers this 24th day of November 2022 at Lilongwe in the Republic of Malawi.

A handwritten signature in black ink, appearing to read 'Kenya Nyirenda', is written over a circular stamp or seal.

Kenyatta Nyirenda
JUDGE