



**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY**

**CIVIL APPEAL NO. 38 OF 2006**

**BETWEEN:**

ESNAT MTHINI ..... PLAINTIFF

**-AND-**

KATALINA NZUNGULA ..... DEFENDANT

**CORAM: HONOURABLE JUSTICE H.S.B. POTANI**  
Mr Mchacha, Official Interpreter  
Attended in Person, Appellant  
Attended in Person, Respondent

**JUDGMENT**

The borne of contention in this matter is over boundaries of two adjoining pieces of land situated in Chimbalanga Village, Traditional Authority Dambe in Neno District. One piece of land belongs to the appellant, Esnat Sidreck Mthini while the other belongs to Katalina Nzungula, the respondent. The matter was first commenced by the respondent before the Second Grade Magistrate's Court at Neno. After hearing all the evidence in the matter, the Second Grade Magistrate found that the appellant had trespassed or encroached the respondent's piece of land. In other words, the lower court found that the appellant exceeded the

boundaries of her land into the respondent's land. Being dissatisfied with such a finding, the appellant lodged an appeal before this court and filed 8 grounds of appeal which can be appropriately and conveniently condensed into two as follows:

1. The appellant has been cultivating on the land for 32 years without any disputes with the respondent.
2. The late Village Headman Chimbalanga, Village Headman Mposadala and Traditional Authority Dambe refused to tamper with the boundaries since the boundaries were determined in the presence of parties by their forefathers/parents way back in 1974 but to the surprise of the appellant the current Village Headman Chimbalanga proceeded to tamper with those boundaries.

In dealing with the appeal, this court has examined the evidence that was adduced before the lower court. Further the court has considered all that the parties said during the hearing of the appeal. This court at the end of it all finds that there is no merit in the appeal for the following reasons:

While it is not in dispute that the appellant had been cultivating on her piece of land which shares common boundaries with that of the respondent for 32 years before the present matter arose, the evidence clearly shows that at some later point a dispute arose between the parties on the boundaries. The dispute was referred to the late Village Headman Chimbalanga in whose jurisdiction the pieces of land are situated. On the one hand the appellant alleges that the late Village Headman Chimbalanga refused to determine the boundaries as he did not want to tamper with what the parties' parents had agreed on. On the other hand, it is the respondent's case that the late Village Headman Chimbalanga actually decided the matter in her favour but the appellant defied the decision prompting the respondent to refer the matter to Group Village Headman Mposadala whose decision was also not accepted by the appellant. The matter eventually went before Traditional Authority (TA) Dambe who also ruled in favour of the respondent. Still the appellant never took heed of the TA's decision. The TA then advised the respondent to take the matter to court hence the trial that was before Second Grade Magistrate who as it turned out also ruled in favour of the respondent. In the determination of the appeal this court is not convinced by the appellant's claims that Village Headman Chimbalanga, whether the late or the current one, Group Village Headman Mposadala

and TA refused to determine the boundaries. These people being properly constituted traditional leaders could not have abdicated duty and refuse to handle a matter which was within their competent powers and authority. The fact of the matter is what came out from the evidence of the respondent and her witnesses who gave a coherent and vivid account of the matter more especially the decisions by the various traditional leaders which the appellant consistently defied. This court does not wish to pretend to be better versed with the disputed boundaries than the traditional leaders who earlier dealt with the matter. Among the traditional leaders who dealt with the matter Village Headman Chimbanga testified before the lower court apparently at the instance of the court. He gave very illuminating evidence on the matter. He, among others, stated that he was born in 1921 and was very conversant or familiar, as it were, with the land the subject of these proceedings. He explained that in his determination of the matter in favour of the respondent, he did not create new boundaries but simply re-affirmed the old ones. He said this in cross-examination by the appellant. In the end result the appeal is dismissed in its entirety.

On costs, it is a matter in the discretion of the court. Considering that the appeal was heard within the area or locality of the parties' residence and that no legal representation was involved no order as to costs is made.

Pronounced in Open Court this day of September, ..... 2006 at .....

**H.S.B. POTANI**  
**JUDGE**