



**JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
MISCELLANEOUS LAND CAUSE NO. 53 OF 2016**

**IN THE MATTER OF SECTION 123(1) OF THE REGISTERED LAND ACT
AND
IN THE MATTER OF PROPERTY REGISTERED UNDER TITLE NUMBERS
MAPANGA 25 AND MAPANGA 26
AND
IN THE MATTER OF AN APPLICATION BY ESITA YASINI FOR AN ORDER OF
INHIBITION**

CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA

Mr. Sauti, of Counsel, for the Applicant

Ms. Jumbe, of Counsel, for the Respondents

Mr. O. Chitatu, Court Clerk

ORDER

Kenyatta Nyirenda, J

The Applicant filed an ex-parte summons dated 28th July 2016 seeking an order of inhibition to prevent the registration of any dealings with property under title numbers Mapanga 25 and Mapanga 26 [hereinafter referred to as the "Mapanga properties"]. The summons came before me on 29th July 2016 and I ordered the matter to come by way of inter-partes hearing and the same took place on 21st December 2016.

The Applicant filed an affidavit in support of the summons [hereinafter referred to as the "Applicant's Affidavit"]. Mr. George Yasin is opposed to the summons and he filed an affidavit in opposition [hereinafter referred to as the "Respondents' Affidavit"]. There is an affidavit sworn by Ms. Violet Jumbe, being supplementary

to the Respondents' Affidavit [hereinafter referred to as the "Respondents' Supplementary Affidavit"].

The Applicant's Affidavit is very brief and the substantive part thereof is as follows:

- "3. The property mentioned above, became jointly registered in the names of Elizabeth, Esita, Joyce, Charles and George Yasini in or about 1997 as one big piece of land. However with the construction of Zomba road, the plot was divided into two and the title numbers Mapanga 25 and Mapanga 26 were assigned to each piece respectively. The title holders of the property went unchanged. There is now produced and shown to me a copy of the details of title exhibited hereto and marked "EY1 " and "EY2".*



4. *With time, two of the title holders in the name of Charles and Joyce, are now deceased.*
5. *On or about 17th July, 2015, Mr. George Yasini, wrote the Regional Commissioner for lands requesting for Land Certificate on Title Number Mapanga 26 which he claimed now belonged to him and that Mapanga 25 had been subdivided into two which he further intended to further subdivide it. The letter was copied to all the title holders including me. There is now produced and shown to me a copy of the said letter exhibited hereto and marked "EY3".*
6. *I repeats contents of paragraph 5 above and state that this came as a shock to me not only that I was not consulted on any development to do with reallocation of changing of title holding of the plots, but also that the said letter was purportedly copied to other proprietors who are now deceased.*
7. *Upon my inquiries, it has transpired that there is communication from Lands Office that Mapanga 25 is being divided into the names of Charles, who is now deceased, and Elizabeth. All this is done without my knowledge as one of the proprietors and also the subdivision is dubious as there is no way the piece of land can be allocated to a dead person. There is now produced and shown to me copies of correspondences from Lands to this effect exhibited hereto and marked "EY4" and "EY5".*
8. *From the letter exhibited as EY3 the demarcations are not being made in a fair manner. The fair and equitable way being that the plot, if anything should be demarcated in equal pro portions representing the five proprietors and that the land assigned to the estate of the deceased be given to the respective representatives of such estates.*
9. *I therefore intend to commence proceedings before this court to make an order that Mapanga 25 and Mapanga 26 be divided in equal pro portions representing the five registered proprietors.*

10. *I verily believe that in the meantime the Court has jurisdiction to grant an order of inhibition under section 123(1) of the Registered Land Act.*" - Emphasis by underlining supplied

In the Respondents' Affidavit, it is deponed thus:

- "3. **THAT** I and my four siblings including the Applicant in this matter inherited .from our late Father's estate the piece of land previously known as Title Number Mapanga 26.
4. **THAT** when the Zomba road was being constructed it became inevitable to cut the said piece of land so as to give way for the said construction, hence the piece of land that was given to the applicant and the rest of my siblings was subdivided and given a different Title number as Mapanga 25. There is now produced and shown to me two copies of the land certificates Company exhibited hereto and marked 'GY 1'.
5. **THAT** since we were five in number, we agreed to share the piece of land equally which we did despite the said piece of land having two different title numbers.
6. **THAT** informally without formal subdivision, the Applicant was given her own piece of land which was between Joyce Yasini 'sand Elizabeth Yasin's.
7. **THAT** all was well when every member of staff (sic) developed his or her own piece of land, until when the Applicant started encroaching in everyone's piece of land.
8. **THAT** The Applicant started farming on my piece of land and grew chillies. This was stopped after I intervened and told her to stop.
9. **THAT** The Applicant started farming in my late brother's (Charles Yasin) piece of land and grew maize in there without consulting. Upon querying the Applicant, she has not given any plausible explanation as to why she has taken that position. The Applicant continues to farm in that piece of land till now.
10. **THAT** then the Applicant encroached in Joyce Yasin's piece of land and started growing sugarcane and she continues to grow the said sugarcane till now despite being questioned by the children of my late sister.
11. **THAT** in addition to growing sugarcane, the Applicant drilled a borehole in Joyce Yasin's piece of land which she draws water from till today.
12. **THAT** then the Applicant encroached in Elizabeth Yasin's piece of land which is about an acre in size, and she currently grows maize in there.
13. **THAT** currently she is residing in an eight bedroomed house which was left by our late father and she refuses to leave as she states she owns the property.
14. **THAT** despite all this, the Applicant does not feel ashamed of what she is doing but yet she is causing trouble to the rest of the members of the family.

15. **THAT** whilst all this has been happening, the Applicant and the rest of my siblings have been having problems with the City Council in payment of city rates such that at some point, we were sued by City of Blantyre for outstanding City rates. There is now produced and shown to me a copy of the demand letter from then Messers Lawson and Company exhibited hereto and marked '**GY 2**'.
16. **THAT** considering the circumstances stated above and in a bid to find a lasting solution to this encroachment, but also to give the other family members their rightful inheritance from the deceased siblings, I wrote to the Regional Commissioner for Lands to inspect the property and subdivide the pieces of land and issue land certificates in the names of each individual rightful owner, The letter goes on to state that Mapanga 25 should be subdivided into the names of the three sisters namely Elizabeth Yasin, Joyce Yasin and the Applicant herself . There is now produced and shown to me a copy of the said letter exhibited hereto and marked '**GY 3**'.
17. **THAT** the inspection was done to ensure that every rightful owner was issued with a land certificate and also to place responsibility on each individual owner to settle his or her city rates as opposed to what is happening now.
18. **THAT** the Applicant through her letter dated 13th July 2016, did not oppose to me obtaining Mapanga Title number 26 although there was a mention of number 127, which unfortunately is not part of the properties under dispute. There is now produced and shown to me a copy of the said letter written by the Applicant exhibited hereto and marked '**GY 4**'.
19. **THAT** even though there was Mapanga 127, the Applicant does not dispute that the property be subdivided which has been my aim as well. There is now produced and shown to me a copy of the letter dated 28th February 1997 written by myself and my late brother requesting for the demarcation hereto and marked '**GY 5**'.
20. **THAT** should there be need to demarcate my portion of land so as to ensure equal distribution, I am ready to give up such portion, however, the Plaintiff currently has gotten the bigger share of the piece of land due to her encroachment behavior at the expense of others and she is greatly benefitting from the said pieces of land than any other of the Yasin children.
21. **THAT** in June 2015, we met as a family with our representatives including the Applicant herein, where we discussed the demarcation of the said land and agreed that demarcation be done after settlement of the outstanding city rates.
22. **THAT** I was instructed to get the city rates to which I did, but unfortunately the Applicant has not been cooperative and did not settle the city rates outstanding at that time.
23. **THAT** further, in a bid to settle the differences arising from the Applicant's behaviour, my sister, Elizabeth Yasin who stays in Phalula and is senior to the

Applicant invited her to Phalula to discuss further to which they had favourable discussions.

24. *THAT as a follow up meeting, my sister asked us to go to Phalula to find a lasting solution but the Applicant refused to attend the meeting for reasons best known to herself.*
25. *THAT it is therefore surprising, that the Applicant is against the subdivision now even after the initial agreement as she knows that the subdivision will go a long way to settle the unnecessary encroachment squabbles thereby leave her with no power over the properties which she has currently encroached.*
26. *THAT further, the subdivision will also put responsibility on each proprietor to settle city rates individually as opposed to what is happening now as settlement is erratic with a possibility that the City Council may sell the said property . There is now produced and shown to me a copy of the outstanding city rates invoices exhibited hereto and marked 'GY 6'.*
27. *THAT should there be no subdivision and no individual certificates issued, there is a possibility that the squabbles will not end, and there is a possibility that others may lose property through this encroachment.*
28. *THAT all parties in the family are in agreement with the subdivision process apart from the applicant.*
29. *THAT in view of the above facts, the Applicant does not come to this Honourable court with her application with her clean hands, however, it is in the interest of justice that this subdivision do proceed and registration in different names be issued.*
30. *THAT damages would not be an adequate remedy in the circumstances should the unpaid house be sold due to unpaid city rates as each proprietor has invested a lot on the property.*

WHEREFORE the Respondent prays for an order dismissing the Applicant's application for an order of inhibition in its entirety with costs"

This application was brought under the provisions of s. 123 of the Registered Land Act (Act), which empowers the High Court or a Resident Magistrate Court to make an order inhibiting for a particular time, or until the occurrence of a particular event, or generally until further order, the registration of any dealing with any land, lease or charge.

Section 123 of the Act falls within Part VIII of the Act, under Division 1 (Inhibitions). The Division has two other sections, namely, ss. 124 and 125. Section 124 of the Act provides that so long as an inhibition remains registered, no instrument which is inconsistent with the inhibition shall be registered. Section 125 of the Act deals with cancellation of inhibitions and it is in the following terms:

"The registration of an inhibition shall be cancelled in the following cases and in no others-

- (a) on the expiration of the time limited by the inhibition;*
- (b) on proof to the satisfaction of the Registrar of the occurrence of the event specified in the inhibition;*
- (c) on the land, lease or charge being sold by a chargee, unless such sale is itself inhibited; or*
- (d) by order of the court. "*

I have carefully read and considered the affidavit evidence and submissions herein. It is clear from the affidavit evidence that all concerned parties believe that demarcations already made to, and/or proposed demarcations of, the Mapanga properties were not, and/or are not being, fairly and equitably done. On one hand, the Applicant alleges that the Mapanga properties were unilaterally and disproportionately subdivided by the Respondent. On the other hand, the Respondent contends that the Applicant holds a bigger share of the Mapanga properties due to "her encroachment behavior". There are also disagreements regarding settlement of outstanding city rates. In short, there is a controversy regarding demarcations of the Mapanga properties.

In light of the foregoing, I am satisfied that this is an appropriate case to grant an order of inhibition, so as to preserve the Mapanga properties pending the determination of the suit to be commenced by the Applicant. I, therefore hereby grant an order of inhibition inhibiting the registration of any dealings with the Mapanga properties, pending the hearing and determination of the proceedings to be commenced by the Applicant for an order that the Mapanga properties *"be divided in equal proportions representing the five registered proprietors"* or until further orders. Further, unless the said proceedings are instituted by the Applicant within 10 days hereof, the inhibition order granted herein will lapse automatically.

Pronounced in Chambers this 29th day of December 2016 at Blantyre in the Republic of Malawi.

Kenyatta Nyirenda
JUDGE