



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL DIVISION
CIVIL APPEAL CAUSE NO. 46 OF 2016
BETWEEN

CHIYAMBI NAKOMA.....APPELLANT

-AND-

MR BAISON.....RESPONDENT

CORAM: THE HON. MR. JUSTICE D. MADISE

Mr. M'bwana Counsel for the Appellant,

Respondent absent

Mr. M. Manda, Official Interpreter

Madise, J

JUDGEMENT

1.0 Introduction

- 1.1 The Appellant first appeared before the Third Grade Magistrate court sitting at Mulanje under civil Cause number 198 of 2015. The Appellant then a plaintiff was seeking possession of a piece of customary land. The respondent then defendant disputed the claim and the matter went to trial. In its judgment the court below dismissed the Appellant/Plaintiffs claim and ordered him to vacate the land within 90 days. Being unsatisfied with that ruling he now appeals to this court against the whole judgment.
- 1.2 I am mindful that appeals in this court are by way of rehearing of all the evidence that was placed before the court below, the law applied and the reasons behind the decision. On appeal the appellate court looks at all that which took place in the court below and must come to the conclusion that the court below was within the ambit of the law and procedure when it arrived at its decision.
- 1.3 When the case was called on 24th October 2018 the Respondent was not present and no reasons were given for his non-attendance. The Appellant filed an affidavit of service and I allowed him to present his appeal. I now proceed to give my views on the merit.
- 1.4 The Appellant has filed four grounds of appeal which eventually attack the whole judgment of the court below on the premises that the evidence presented in court did not warrant the findings the court made.

2.0 The Evidence

- 2.1 The Appellant /Plaintiff told the court below that the Respondent/defendant had snatched his gardens and chased him from the land. That his grandmother had married to the respondent's grandfather and that his mother was living peacefully on the land. When his grandparent die, he continued living on the land. He stated that he had his own piece of land while the defendant also had his own piece of land. Later on the

Respondent/defendant started claiming the land. The matter was referred to the Village headman who ruled that the land belonged to the Appellant/plaintiff. Despite this ruling the Respondent/defendant continued claiming the land. The Appellant then went to the police and T/A Mabuka. The matter ended up in court. This version of events was supported by Malita Sungamire the Appellant's sister. She stated that when the matter was referred to village headman Ntidza he ruled in favor of the Appellant.

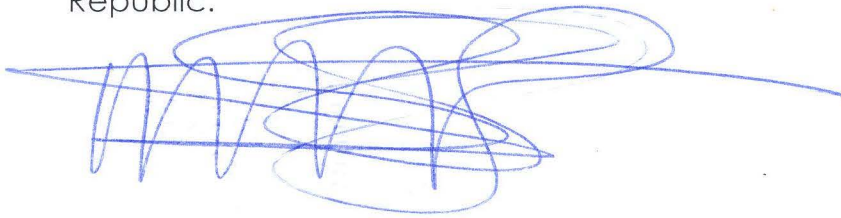
- 2.2 In defence of the Respondent/defendant told the court that what happened was that one person was killed apparently by the Appellant and he was ordered to leave the village to avoid a revenge attack.
- 2.3 The Defendant/Respondent said nothing about the disputed land in question. Similar the defence witness Laston Master also talked about the killing of this person by the Appellant and his relatives who apparently was of unsound mind. He told the court that the Appellant was his son and he was supposed to vacate the land. He gave no reasons as to why the Appellant should leave the land.
- 2.4 Dorothy Mukota and Misanjo Fred also testified on behalf of the defence and their evidence had nothing to do with the land in dispute. She only narrated how a person was killed by the Appellant's relatives.

3.0 The Finding

- 3.1 The court below ruled in favor of the Respondent/Defendant. I have searched the evidence and I find nothing on which a reasonable tribunal could have based its judgment on. The court below did misdirect itself .The issue for determination was not about the killings of this person. This was a land dispute and the court below entangled itself in matters that were not relevant before it. The court below failed to consider the question that was placed before it.

- 3.2 There is nothing in the evidence which supports the decision of the court below. The Appellant had made a good claim for land which the Respondent/Defendant did not understand and later on defend. There is no justification for the judgment that was made. I therefore set aside the judgment of the court below and I order a retrial on the issue of customary land and not murder before the Chief Resident Magistrate within 60 days.

Pronounced in open court on 28th November, 2018 at Blantyre in the Republic.

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Dingiswayo Madise
Judge