



**JUDICIARY
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY (CIVIL DIVISION)
CIVIL CAUSE NO 83 OF 2021**

BETWEEN

UCIZI CLAIRE NKHOMA CLAIMANT

AND

PERSONS UNKNOWN DEFENDANT

CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA

Mr. Salima, Counsel for the Claimant

Mr. Hassani, Counsel for the Defendant

Mr. Henry Kachingwe, Court Clerk

RULING

Kenyatta Nyirenda, J.

This is my Ruling on the Defendant's application for an order for summary disposal of this action. The application is said to be brought under Order 1, rule 5, of the Courts (High Court) (Civil Procedure) Rules.

The application is supported by a statement sworn by Counsel Gilbert Khonyongwa and the relevant part thereof states as follows:

- "3. The Claimant commenced this action by summons issued on the 29th day of July 2021 in the General Division of the High Court of Malawi claiming against the Defendant damages for trespass and an injunction in respect of land that the Claimant claims she leased from the Malawi Government.
4. The said claim is commercial in nature, in that it is a civil matter of commercial significance arising out of or connected with a contractual relationship of commercial or business nature arising from a lease between the Claimant and the Malawi Government, and I verily believe that it ought to have been commenced in the Commercial Division of the High Court of Malawi.

5. *There is now produced and shown to me a copy of the said lease, which is exhibited hereto marked thereon "GK".*
6. *I verily believe that the General Division of the High Court does not therefore have jurisdiction to handle this matter, and that it therefore ought to be dismissed in limine without further ado."*

The relevant part of the skeleton arguments filed by the Defendant states thus:

"1.0 BACKGROUND

- 1.1 *The Claimant claimed damages for trespass and an injunction against the Defendant in respect of land the Claimant claims belongs to her, having been leased by her from the Malawi Government. This is clearly a civil matter of commercial significance arising out of or connected with a contractual relationship of commercial or business nature arising from a lease between the Claimant and the Malawi Government. It ought therefore to have been commenced in the Commercial Division of the High Court, which alone has jurisdiction to handle commercial matters.*
- 1.2 *On that score, the Defendant now applies to strike out the action for want of jurisdiction on the part of the General Division of the High Court.*

2.0 EVIDENCE

- 2.1 *The evidence for the Defendant is contained in the sworn statement of **GILBERT KHONYONGWA** of Counsel for the Defendant."*

In terms of section 2 of the Courts Act, a "commercial matter" means a civil matter of commercial significance arising out of or connected with any relationship of commercial or business nature, whether contractual or not, including:

- (a) the formation or governance of a business or commercial organization;
- (b) the contractual relationship of a business or commercial organization;
- (c) liabilities arising from commercial or business transactions;
- (d) the restructuring or payment of commercial debts;
- (e) the winding up of companies or bankruptcy of persons;
- (f) the enforcement or review of commercial arbitration award;
- (g) the enforcement of foreign judgments of commercial matters subject to the provisions of the law;
- (h) the supply or exchange of goods and services;
- (i) banking, negotiable instruments, international credit and similar financial services;

- (j) insurance services; or
- (k) the operation of stock and foreign exchange markets,

In the present case, the Defendant alleges that the claim by the Claimant for damages for trespass is a civil matter of commercial significance. Unfortunately, the allegation is not supported by any evidence. It cannot be legally correct to argue that a claim for damages for trespass to land held under a lease per se amounts to a civil matter of commercial significance. There is no way it can be said that each case related to a land lease has to be classified as a commercial matter. A party alleging that a case is a civil matter of commercial significance bears the onus of establishing, among other matters, how the commercial significance arises in the case? In the case under consideration, the Defendant has not put forward any evidence in support of this aspect.

Further, as was aptly observed by Counsel Salima, the present case is between the Claimant and the Defendant and has no connection with the Government. After all, leases in Malawi are granted by the Government, without any commercial attachment with respect to the dispute at hand as between parties. Furthermore, there is no claim by the Claimant in his statement of case that is associated with business losses or economic loss.

In view of the foregoing and by reason thereof, the application by the Defendant has to be dismissed with costs. It is so ordered.

Pronounced in Court this 5th day of November 2021 at Lilongwe in the Republic of Malawi.

A handwritten signature in black ink, appearing to read 'KENYATTA', enclosed within a large, loopy oval shape. To the right of the oval is a small, stylized mark resembling a 'G' or a flourish.

Kenyatta Nyirenda
JUDGE