

Annie Mazinga vs John Mazinga and others

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Allan Hans Muhome
Cause Number:	Land Cause Number 93 of 2023
Date of Judgment:	April 03, 2025
Bar:	Mr Asma Kapoto and Mr Abdullrahman Bengo, Counsel for the Claimant Mr Prisca Masumba, Counsel for the Defendant

Head Notes

Land Law - Family land – Inheritance – Matrilineal custom established land belonged to Claimant's mother and was duly inherited by Claimant

Succession Law - Wills – Validity – A will not witnessed in accordance with the law is invalid

Constitutional Law - Right to property – Section 28 – Right to acquire property is constitutionally guaranteed

Civil Procedure – Burden of proof – On a balance of probabilities lies on the party who asserts the affirmative

Summary

The Claimant sought a declaration in the High Court, Principal Registry, that she was the rightful owner of a piece of land in Samuti Village, Traditional Authority Boid, Thyolo District, and that the Defendants were not entitled to inherit it. The Defendants denied the claim and counterclaimed for ownership of the same land.

The background of the dispute originates around 1964, when the disputed land was gifted by the first President of Malawi, Dr Kamuzu Banda, to the Claimant's parents. The Claimant's father later remarried and moved away from the land, leaving the Claimant to use it continuously. Upon his retirement, the father returned and was permitted to stay on the land with his children from the second marriage, who are the Defendants in this action. After the father's death intestate—an alleged will presented by the Defendants having been found invalid for lack of proper witnessing—a dispute over ownership arose between the Claimant and the Defendants. The matter had previously been determined in the Claimant's favour by both the Traditional Authority and the District Commissioner. The principal legal question before the Court was to determine the rightful ownership of the land based on its acquisition and the applicable customary law.

The Court found that the Claimant had proved her case on the balance of probabilities. It was established that the land was gifted to her parents and, under the prevailing matrilineal customary law of the area, the property belonged to the Claimant's mother. The Court reasoned that the Claimant, as the daughter, duly inherited the land from her mother. The Defendants, being children of the second wife, could not lay a valid claim to the land. The Court therefore granted the declaration that the Claimant was the rightful owner of the land. The claim for damages was dismissed as not having been sufficiently proven, and the Court ordered that each party bear its

own costs.

Legislation Construed

Constitution of the Republic of Malawi (1994) (s 28)

Judgment

The Claimant seeks a declaration that the Defendants are not entitled to inherit a piece of land situate at Samuti Village, Traditional Authority Boid in Thyolo District and that she is the rightful owner of the land. She seeks damages for loss of property and loss of use and costs of this action. The Defendants deny all the claims and counterclaim the same land.

The Claimant testified that around 1964, her parents, particularly her mother, were gifted a piece of land by Dr Kamuzu Banda, the first President of the Republic of Malawi. The father to the witness had 3 children and later remarried moving out of the said piece of land to stay with the new wife. The Claimant has continuously used the disputed land since. However, when his father retired, he sought permission to stay on the land with his children from the second marriage, being the Defendants herein. The Traditional Authority and the District Commissioner had previously determined that the land belongs to the Claimant. In cross-examination, it was established that the Claimant's father had not left a valid will upon death. No new evidence was received in re-examination.

James Gwenyengwe, the Claimant's brother and Adamson Kampute who is Group Village Headman Samuti in Thyolo District, corroborated the Claimant's evidence. The former insisted that he was aged enough to follow the gifting of the land whilst the latter admitted in cross-examination that he was only told about the donation.

The second Defendant, Mcheche Mazinga, testified that the land in dispute is owned by his late father and that the Defendants are entitled to the same. He referred to a will which was allegedly left by his father. The Court observed that the will was invalid as it was not witnessed in accordance with the law. In cross-examination, the witness stated that he was born in 1990 by which time the Claimant was already using the disputed land. He further stated that his mother comes from Mponda Village. That in a matrilineal system of marriage his father had to live at his mother's village.

Clement Kajogola, the third Defendant, testified that he is a grandson to the Claimant's father and was born in 1997 on the disputed land. That upon the death of the Claimant's father, the Claimant dispossessed the land in dispute from the Defendants. In cross-examination, the witness maintained that the Claimant destroyed crops on the disputed land and that she was arrested but there was no evidence of the same.

The fourth Defendant, Andrew Jumbe, testified that he is the nephew to the Claimant's father who owned the land in question. That the Defendants are entitled to the land which was snatched from them by the Claimant. In cross-examination, he stated that he is 40 years old and he was not born when the land was acquired. He did not know the person to whom the land was gifted. He was untruthful that the Claimant's father

was working in the tea estates whilst occupying the land in dispute.

The standard of proof in civil matters is on a balance of probabilities and the burden of proof lies on he who asserts the affirmative, in this case the Claimant: see *Commercial Bank of Malawi v Mhango* [2002-2003] MLR 43 (SCA). The right to property is well entrenched under section 28 of the Republican Constitution of Malawi (1994) as discussed by the Supreme Court of Appeal in *Attorney General v MCP and Others (The Press Trust Case)* SCA [1997] 2 MLR 181.

This Court has examined the evidence on record and is of the view that the Claimant has proved her case on a balance of probabilities. This Court has established that in 1964, the property was gifted to the Claimant's parents. That the Claimant's father remarried and left the land only returning after divorce. The customary law of the area being matrilineal, the land herein belonged to the Claimant's mother and she duly inherited the same. The Defendants, who were born to the second wife much later cannot lay claim on the disputed land, coupled with the fact that the alleged will is invalid.

This Court, therefore, declares that the Defendants are not entitled to inherit the disputed piece of land and that the Claimant is the rightful owner of the same. The claim for damages has not been made out and each party shall bear their own costs.

Made in Open Court this 3rd April 2025.