

Blantyre City Council and another vs Luka Milanda and another Land Cause Number 5 of 2024

Summary

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Allan Hans Muhome
Cause Number:	Land Cause Number 5 of 2024
Date of Judgment:	January 08, 2025
Bar:	For the 1st Claimant: Ms Aisha Lourenco and For the 2nd Claimant: Mr Louis Ulaya For the Defendants: Mr Mukeya Chirwa and Mr Henry Jiva

The Claimants brought an action against the Defendants in the High Court, Principal Registry, seeking an order for a permanent injunction and damages. The dispute arose from a deceased person's fraudulent sale of a property, Title Number Lunzu 1/186 (Plot Number SL 2/72/25), to both the Defendants and the second Claimant simultaneously. The first Claimant, Blantyre City Council (BCC), a local authority and the property's lessor, also sought to evict the Defendants,

whom they considered illegal occupiers. The Defendants, in turn, counter-claimed against BCC, alleging that the council was negligent or fraudulently failed to process their change of ownership application despite being aware of it. The Defendants argued that they had purchased and taken possession of the property before the second Claimant and had since renovated it and were in occupation.

The Court was asked to determine the lawful owner of the property and decide the counter-claim against BCC. The Court had to weigh the claims of the Defendants, who paid earlier and took possession, against the second Claimant, who was the registered owner on paper but had paid later and not taken possession.

The Court in dismissing the Claimants' case and allowing the Defendants' counter-claim held that despite the second Claimant being the registered owner on paper, the interests of justice demanded that the property be held to belong to the second Defendant. This was due to the Defendants' earlier payment, their subsequent occupation and renovation of the property, and the principle that possession is a root of title. The Court also found that BCC was complicit in the fraudulent sale, and fraud "unravels everything". The Court further rejected the argument that the Defendants' contract was incomplete, citing the equitable principle that a vendor becomes a trustee for the purchaser once a valid contract for sale exists. As a result, the Court declared the second Defendant the lawful owner. The Court ordered the Land Registrar to rectify the Register by canceling the second Claimant's title and registering the second Defendant as the owner within 30 days. It also granted an order of specific performance compelling BCC

to issue a lease to the second Defendant within the same timeframe. All claims for damages and mesne profits were dismissed. Given the unique facts and the deceased's role, the Court ordered each party to bear their own costs