

# Dilipkumar Popatlal v Jayendra Jivan Kanabar and Another Land Cause Number 354 of 2012

## Summary

<b>Court:</b>	High Court of Malawi
<b>Registry:</b>	Civil Division
<b>Bench:</b>	Honourable Justice Allan Hans Muhome
<b>Cause Number:</b>	Land Cause Number 354 of 2012
<b>Date of Judgment:</b>	December 23, 2024
<b>Bar:</b>	For the Claimant: Mr Alinane Kauka For the Defendants: Mr Bernard Ndau and Mr Chifuniro Chaponda

The Claimant commenced an action in the High Court, Principal Registry, against the Defendants, seeking to enforce an oral agreement for the sale of a property and to prevent his eviction from it. The dispute arose from a verbal agreement in 1997, where the Claimant agreed to purchase a property from the Defendants for USD325,000. The Claimant made several staggered payments, totalling USD160,000 and K820,000. He also took possession of the property and made extensive renovations, costing over K31 million, with the Defendants' knowledge and acquiescence. The Defendants, however, contended that the Claimant

repudiated the sale agreement by failing to pay the balance of the purchase price, and that the parties had subsequently entered into a valid lease agreement. The Defendants had also paid off a loan the Claimant secured using the property as collateral and sought to recover that amount.

The Court had to determine whether a valid sale agreement existed, if the Claimant had repudiated it, if a valid tenancy agreement was subsequently formed, and if the Defendants were entitled to repayment of the loan sum. The Court found that a valid sale agreement had been formed and that time was not of the essence. The Court held that the Defendants were caught by the doctrine of proprietary estoppel, having permitted the Claimant to make substantial improvements to the property over a long period. Consequently, the purported tenancy agreement was found to be unfairly imposed, and the Court ruled it was unenforceable due to a lack of stamping and non-compliance with statutory formalities. The Court further determined that it could not make an order for the repayment of the loan amount as it had not been specifically pleaded.

The action succeeded. The Court granted a permanent injunction restraining the Defendants from evicting the Claimant. It ordered the Claimant to pay the outstanding balance of the purchase price within 30 days. In the alternative, should the Claimant fail to pay, the Defendants were ordered to refund all payments made by the Claimant, including the value of the improvements, which would be determined by a registered valuer at the Defendants' cost. The Court also ordered that each party should bear their own costs.