

Ellen Ngalande v Lewis Kamundi and Persons Unknown Civil Cause Number 270 of 2022

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Allan Hans Muhome
Cause Number:	Civil Cause Number 270 of 2022
Date of Judgment:	June 20, 2025
Bar:	Mr. Mauya Msuku, Counsel for the Claimants Mr. Kirby Kasinja, Counsel for the 1st Defendant

Head Notes

Land Law - Real Property - Competing claims to land - Where two parties bought the same land at different times, the first purchase in time takes precedence.

The Law Of Equity And Trust - Equitable remedies - Unjust enrichment - Where a claimant has made improvements to land, it would be inequitable to completely disentitle them.

Civil Procedure - Remedies - Damages - No award for trespass damages where no proof was tendered.

Civil Procedure - Costs - Cost orders - Where each party has a measure of success, the court may order each party to bear their own costs.

Summary

The Claimant sought a permanent injunction and damages for trespass against the Defendants, asserting ownership of a piece of land in Blantyre District. The 1st Defendant denied the claims, also asserting ownership of the same property. The dispute arose after the Claimant purchased the land in 2021 and began construction, only to discover the 1st Defendant had previously bought the same parcel in 2019. Following this discovery, the parties entered into discussions, with the 1st Defendant proposing a settlement sum of K5,500,000 to relinquish his claim, but a final agreement was not reached. The 1st Defendant, who resides in the United Kingdom, allegedly instructed a second, unnamed party to threaten demolition of the Claimant's structures.

The principal questions for the Court were to determine rightful ownership of the land and to decide what, if any, remedy was appropriate. The Court held that the 1st Defendant was the first to purchase the property in 2019 and that the subsequent sale to the Claimant in 2021 was fraudulent. However, the Court considered it inequitable to completely dispossess the Claimant, given she had already invested in constructing structures on the property. The Court found that the Claimant had failed to prove damages for trespass. The application for a permanent injunction was thus not granted. The Court ordered the Claimant to pay the 1st Defendant the proposed sum of K5,500,000, along with simple interest from 1 April 2022, within 60 days of the judgment, to settle the matter. The Court further directed that each party should bear their own costs.

Legislation Construed

Judgment

1. This is a dispute on land ownership. Both the Claimant and the 1st Defendant are claiming ownership of a piece of land (the property) situate at Mizenge Village Traditional Authority Kapeni in Blantyre District. The Claimant bought the land in the year 2021 and started construction. She later realized that the 1st Defendant had bought the same land earlier on in the year 2019. Discussions were held whereat the 1st Defendant proposed that he be paid a sum of K5,500,000 in place of the land. This sum was never paid and according to the Claimant, the 1st Defendant instructed persons unknown to trespass on the property and threaten to demolish it.

2. The Claimant seeks a permanent injunction restraining the Defendants from continued trespass. Damages for trespass and costs of this action. The 1st Defendant denies all the claims and asserts ownership of the same land.

3. The Court received evidence from the Claimant and the 1st Defendant mostly confirming the facts in paragraph one (above). The 1st Defendant also called Gift Mtambalika who sold him the land at a price of K1,600,000 in the year 2019. Robert Koloveni, who is Village Headman Mizenge also testified that he was duped by an agent, called Matiki, to endorse the sale of the land from the 1st Defendant to the Claimant in the year 2021, without the 1st Defendant's authorisation. The 1st Defendant stays in the United Kingdom.

4. 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.

5. The evidence establishes that the 1st Defendant was the first one to buy the property in 2019 for a sum of K1,600,000. Through fraud, the same property was sold to the Claimant in 2021. Upon discovery of the fraud, parties engaged each other and the 1st Defendant proposed that he be paid a sum of K5,500,000 and that would settle the matter. However, a concrete agreement was not reached as the Claimant had to consult her husband who is resident in the United States of America and she considered the demanded sum to be on the higher side. Then followed these proceedings.

6. This Court considers that since the Claimant has already spent monies on the construction of some structures on the property, it would be inequitable to disentitle her. She has not proved damages for trespass. The Claimant shall pay the 1st Defendant the proposed sum of K5,500,000 with simple interest from 1st April 2022, within 60 days from the date of this Judgment. Each party shall bear their own costs.

Made in Open Court this 20th June 2025.