

# Munthali v Mwakasungula ( Civil Cause Number 125 of 1987) [1991] 14 MLR 298 (HC)

## Summary

<b>Court:</b>	High Court of Malawi
<b>Registry:</b>	Civil Division
<b>Bench:</b>	Honourable Justice Mkandawire
<b>Cause Number:</b>	Civil Cause Number 125 of 1987
<b>Date of Judgment:</b>	December 06, 1991
<b>Bar:</b>	Counsel for the Plaintiff: Mr. Nakanga Mr. Mhango, Counsel for the Defendant

The Plaintiff instituted a civil action in the High Court, Principal Registry, claiming damages for trespass to land and conversion, and also defending a counterclaim for defamation. The dispute arose when the Defendant, allegedly without the Plaintiff's licence, obtained keys to the Plaintiff's house in Karonga from a third party, Mr Medi, who had been entrusted with its care. The Plaintiff, who resided in Blantyre, had instructed Mr Medi to look after the house and kept the key to a locked bedroom containing valuables. The Defendant, upon obtaining the keys in June 1985, failed to return them despite repeated requests from the Plaintiff. After the keys were finally returned in December 1985, the Plaintiff discovered

that several properties, valued at K1 168.78, were missing from the locked bedroom. In response to the Plaintiff's suit, the Defendant denied the claims, asserting that he had entered the house with the Plaintiff's licence and had not converted any property. The Defendant also filed a counterclaim alleging the Plaintiff had defamed him by calling him a thief. The Plaintiff denied the defamatory words and pleaded qualified privilege if any such words were published.

The principal issues for the Court to decide were whether the Defendant had the Plaintiff's licence to enter the property, whether the Defendant was liable for conversion, and whether the Plaintiff was liable for defamation. The Court found that there was no licence for the Defendant to enter the Plaintiff's land and thus found for the Plaintiff on the claim of trespass. The Court, however, dismissed the claim for conversion, as the Plaintiff failed to prove that the Defendant had removed the missing properties. Regarding the counterclaim, the Court found that the Plaintiff had indeed defamed the Defendant by calling him a thief and causing the police to search his houses. The Plaintiff's defence of qualified privilege was rejected on the grounds that his persistence in the false allegation and the resulting police searches exceeded what was necessary to protect his interests and instead constituted malice. The Court, therefore, entered judgment for the Defendant on the counterclaim. The Court did not award costs to either party.