

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

Civil Cause No. 474 of 2010



BETWEEN

WILLIAM R. DANGWE.....1ST PLAINTIFF

ROBERT W. DANGWE.....2ND PLAINTIFF

AND

STECO LIMITED.....DEFENDANT

Coram: **Manda, J**

Gulumba for the Plaintiff

Mbeta for the Defendant

Mrs Matekenya Court Clerk/Interpreter

JUDGEMENT

Let me begin this judgement by making the observation that I do not see why this matter came to trial. Indeed I do not see why it was exempted from Mediation. At the same time I must also state that as officers of the court lawyers have the duty to advise their clients diligently and to also conduct the case with due diligence. By this I mean that sometimes it is not always best to take what a client says at face value and believing the same to be true. Indeed I would want to believe that apart from receiving instructions from clients, lawyers should also conduct independent research into cases before bringing actions to court.

Having said that let me now go to the facts of the matter before me. The action is about a dispute over a piece of land situate within an area known as Lipumulo Block, located in the area of T/A Nachimwela in Thyolo

District. This land originally used to belong to Conforzi Tea Estates but was some time ago acquired by the Malawi Government under the Smallholder Tea Authority Project. Having acquired the land, the Government proceeded to divide the land into and distribute it to smallholder farmers, among who was the first plaintiff. The first plaintiff's lot was named Lot No.1. During the trial there was tendered in evidence a map for the Lipumula Block and the same was marked ExD4. According to ExD4, adjacent to the first plaintiff's lot was a lot which was designated as Dambo land. This Dambo land was not allocated to anyone, however around 1974, employees of Smallholder Tea Authority, under the supervision of a Mr Dinala Chitime planted some Blue Gum Trees. Having planted the Blue Gum Trees, employees of Smallholder Tea Authority took care of the trees until around 1980, when the smallholder farmers, including the first plaintiff, asked the Tea Authority to remove them because they were not being conducive to the growing of tea.

Having removed the Blue Gum Trees, the Tea Authority replaced them with 'Mbawa' trees which are still on the land to this day. However around the 1990's, the Smallholder Tea Authority was experiencing financial problems and hence was failing to task employees to take care of the Mbawa trees with the result that some of them were destroyed by fire. It is at this point that the smallholder farmers made a suggestion to the Tea Authority to be cultivating crops among the Mbawa trees in exchange of taking care of the trees. Following this arrangement in 1998, a few of the farmers with lots surrounding this trees divided up this land and started to use it to cultivate other crops like maize, cassava and bananas. Among these farmers was the first plaintiff, who in the year 2000 stopped his fellow farmers from using this land claiming that it was his and that he was thus entitled to use it exclusively.

Around November 2009, the first plaintiff started cutting down the Mbawa, trees at which point the defendant company, which bought the Tea Authority under the Privatisation programme moved to stop him. Following this some disagreements followed between the defendant and the plaintiffs, which at some point lead the defendant to ask its employees to stop the plaintiffs from cultivating among the Mbawa trees. It was also stated that the defendant proceeded to remove the plaintiff's cassava plants. At this point the plaintiff sought and obtained an injunction against the defendant and also filed a Writ seeking the following reliefs:-

- a) A declaration that the plaintiffs are the lawful owners of this piece of Dambo land where the Mbawa trees are growing
- b) Damages for the loss of 317 cassava plants which were uprooted by the defendant from this Dambo land

- c) Damages for the loss of an anticipated harvest of maize as a result of the plaintiff being prevented from planting the maize by the defendant during that season
- d) General damages for trespass
- e) Costs of this action

Despite having listed all these claims in pleadings, during the trial the plaintiff's only gave evidence as regards the assertion that they were the rightful owners of the disputed land, having used the same uninterrupted for over 35 years. In this regard then they were asking the court to declare that the plaintiffs had acquired the disputed land by prescription in terms of Section 134 (1) of the Registered Land Act (Cap. 58:01) of the Laws of Malawi. Since the plaintiffs did not adduce any evidence regarding the damaged cassava crops and the damages for the anticipated maize harvest, I must treat these claims as not having been proved and as such I do dismiss them accordingly. Indeed the only evidence that the court was given was a statement from the second plaintiff that the defendant uprooted 317 stalks of cassava worth about K42, 000.00. However I must observe it was established during cross-examination that these cassava stalks were planted on the land by the first plaintiff after officers from the Defendant had told him to stop cultivating on their land. Further to that, the mere fact that this was a claim for specific damage, I would want to believe that the plaintiffs' should have offered more by way of evidence other than just coming to court and making an assertion. This is more so considering that both plaintiffs were evasive during cross-examination and were quite clearly unreliable witnesses.

While there was also no specific evidence on the claim of trespass, I must note that the same falls subject to the claim of ownership of this land. It should be stated though that I do not see how trespass can arise without a determination that the plaintiff are indeed owners of the disputed land. Indeed the mere fact that there is need to adjudicate on the title to this land, in my view precludes the claim for trespass. This is more so if we consider the fact that the plaintiff's never adduced any evidence to the effect that they filed an application with the Registrar of Lands for registration as proprietors of the disputed land in question as per Section 134(2) of the Registered Land Act. Indeed there was no evidence that the application was approved or that the plaintiffs were registered as proprietors. In this regard, I must find that the claim for trespass was unfounded and I must also dismiss the same.

Having dismissed all the other claims I must now deal with the remaining, relief being sought by the plaintiffs, which is that they should be declared to be the rightful owners of the disputed land. It was the plaintiffs' argument

that they have used the disputed piece of land for more than twelve years and that as such they did acquire ownership of the same in terms of Section 134(1) of the Registered Land Act. However when the first plaintiff was cross-examined with regard to how he got to acquire this land, he seemed at best confused. His answers ranged from stating that he was allocated this land in 1974, by the Malawi Government or that he got the same from Conforzi. As for the second plaintiff, his evidence regarding the acquisition of the disputed land was apparently based on what the first plaintiff told him. I must not however the second plaintiff did describe his father as being confused when he was being cross-examined.

Suffice to say that the evidence is that the disputed piece of land was not allocated to the first plaintiff as he was claiming. This land originally had Blue Gum trees which were planted by Conforzi. When the Government of Malawi bought over Lipumulo block this land was not allocated to anyone but rather remained under the control of the Smallholder Tea Authority and this is clear from ExD4. Indeed the fact that the Smallholder Tea Authority remained in control of this land is demonstrated by the fact that when the tea farmers wanted to have the Blue Gum Tress removed, they went and asked the Tea Authority to do so. Having removed the Blue Gum Trees, the Tea Authority proceeded to plant Mbawa trees on this lot of land. In my view the planting of the Mbawa, trees, though not expressly stated, did signify an intention by the Tea Authority to maintain control over this land. This is also considering the fact that Mbawa trees are not just any ordinary trees but rather that they are classified as protected under the Forestry Act. Further to that, the Mbawa trees were constantly on the land in question while the plaintiffs' use of the same was only seasonal which means that there were times that they were not using the land. Further still, the use of the land by the plaintiffs was just around the trees meaning that the Mbawa trees were undisturbed. I do not then see how the plaintiffs can claim that they had taken possession of the land.

The requirements of proprietary estoppel in a "common expectation" class of cases were clearly in a well-known and often cited passage in **Taylor's Fashions Ltd v Liverpool Victoria Trustees Co. Ltd** [1982] QB 133 at 144, by Oliver J (as he then was) as follows:

"if A under an expectation created or encouraged by B that A shall have a certain interest in land, thereafter, on the faith of such expectation and with the knowledge of B and without objection by him, acts to his detriment in connection with such land, a Court of Equity will compel B to give effect to such expectation."

Indeed while it is accepted that the plaintiffs in this instance were allowed to cultivate on the disputed land, I do not think that it can be said that they acted to the detriment of the defendant since the Mbawa trees were undisturbed. Indeed when the first plaintiff acted to the detriment of the

defendant by trimming some of the Mbawa trees the defendant did not encourage him to do that but rather immediately went into the land and stopped the plaintiff from using the land.

A further reference to the expectation of "a certain interest in land" appeared in the speech of Lord Kingsdown in **Ramsden v Dyson** (1866) LR 1 HL 129 at 170, in which case it was stated that

"If a man, under a verbal agreement with a landlord for a certain interest in land, or, what amounts to the same thing, under an expectation, created or encouraged by the landlord, that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord, and without objection by him, lays out money upon the land, a Court of equity will compel the landlord to give effect to such promise or expectation."

Indeed while this may be the case, it must be noted in this instance that the only thing the defendant encouraged the plaintiff and other farmers to do was to grow crops around the Mbawa trees so that the trees should be protected from wild fires. This in my view does not amount to encouraging the plaintiffs to take possession of the land. As for laying out money, the plaintiffs, as noted, stated that they did prepare the land for maize planting and that they had planted some cassava plants. In this regard they could be deemed to have laid out money upon the land. However as noted that the laying out money on the land by the plaintiffs was only seasonal and in this particular instance, the same was done after the defendant had stopped them from using the land. I do not honestly think then that as a court I can give effect to such an expectation since the plaintiffs attempted to force the same on the defendant.

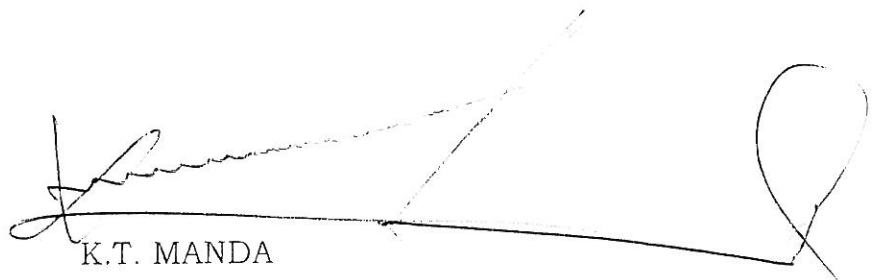
It must also be noted, and the evidence in defence will show, that it was not only the first plaintiff who was allowed to use the disputed land, other farmers from the surrounding lots were also using the same, albeit that some of them were, under threat, stopped by the first plaintiff from using it. This of course was also unconscionable behaviour by the plaintiff especially in view of the fact that he did not have title to this land but that just like the others, he was merely allowed to use the land seasonally. Indeed I do not think that the court of equity should be aiding someone who acts unconscionably (see **Yeoman's Row Management Limited and Another v Cobbe** [2008] UKHL 55)

From the foregoing, I am inclined to find that the seasonal use of this land while the Mbawa trees were growing on the same did not amount to prescription. Indeed I would want to believe that this was a misguided claim and should have been filed in the first place. If the land was fallow, then perhaps the plaintiffs would have had a claim. However there are Mbawa trees on this land which the plaintiffs clearly acknowledged remained the

property of the defendant. The plaintiffs also admitted that their use of the land did not disturb the Mbawa trees, which trees must be treated for all intents and purposes as an investment in view of the fact that they are protected and hence do have great value. I must thus also dismiss the plaintiffs claim that there was prescription of this land.

In sum, I must dismiss the plaintiffs' claim in its entirety and since this was clearly a waste of the court's time and resources, the plaintiffs are also condemned in costs of this action.

Made in Open Court his...30th...day of...March.....2011

A handwritten signature in black ink, appearing to read 'K.T. MANDA', with a long horizontal stroke extending to the right and a large loop at the end.

K.T. MANDA

JUDGE