



JUDICIARY

**IN THE HIGH COURT OF MALAWI
FAMILY AND PROBATE DIVISION**

MATRIMONIAL APPEAL NO. 25 OF 2022

BETWEEN

MARY NYALUGWE 1ST CLAIMANT
JAPHETI ZINDIKILANI 2ND CLAIMANT

-AND-

RABSON KALINDANG'OMA 1ST RESPONDENT
TIGWADIRE LEZALA 2ND RESPONDENT
TIONENJI LEZALA 3RD RESPONDENT

CORAM : MWALE, J.
: Katundu, counsel for the Claimants
: Chibwana, counsel for Respondents
: Kalumbi, Court Reporter
: Mpandaguta, Court Interpreter

Mwale, J.

RULING ON APPLICATION FOR ORDER OF INJUNCTION

Introduction

1. The applicants (brother and sister) seek an order of injunction against the defendants that was owned by their deceased father situate at Mfiti village in the area of Group Village Headman Mlombwa. The applicants have exhibited a copy of a lease document to their application indicating that the land was registered in the name of their father, Mr. Z.L. Kalindang'oma.
2. The father of the applicants died in 1996 and it is the claimants case that the brothers of the deceased, Mr. Mikaele Kalindang'oma and Mr. Rabson Kalindang'oma grabbed the land from them as de facto heirs. The grabbing is tainted with elements of violence which I find no merit in recounting for the purposes of these proceedings.
3. It is therefore the applicant's prayer that the defendants be restrained from proceeding to cultivate on the land that is their inheritance as the facts prove that there is a serious issue to be tried and that damages would not be adequate if injunctive relief is not provided.
4. The respondents oppose the application on the ground that the applicant's claim on the ground that the applicants have no right to reserve. They further claim that this land was distributed more than 20 years ago and therefore the matter is statute barred. They also allege that the deed was obtained through misrepresentation.

Court's reasoned determination

5. All the issues raised in opposition to the application proves that there is a triable issue in this matter. The applicants have provided a basis for asserting their claim of right by virtue of the document of lease in their father's name. The argument that this deed was obtained by misrepresentation must be tested at trial as the *prima facie* effect of the deed document is to entitle the applicants

to enforce their rights in inheritance. There is certainly a legal argument with respect to the period of limitation in matters of inheritance which must also be tested.

6. Considering that the property is real estate, damages would not be an adequate remedy. I therefore grant the injunction restraining the respondents from cultivating or otherwise and in any way dealing with the land until the determination of this matter.

I so order.

MADE in chambers, in Lilongwe this 27th day of **January 2023**



Fiona Atupele Mwale

JUDGE