

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 1994 OF 1996

BETWEEN :

LOVEMORE CHIMENYA PLAINTIFF

AND

PETER DINESS MACHILIKA DEFENDANT

CORAM :- CHIMASULA PHIRI, J.

P.J. Maulidi of counsel for the plaintiff

T.S. Chirwa of counsel for the defendant

L. Mtchera - Court Clerk

JUDGMENT

The plaintiff's claim against the defendant is for possession of premises known as Plot Number NW 109/N/636 in Ndirande Township. The plaintiff claims that the defendant has failed to pay the purchase price of K155,000.00. The plaintiff also claims rental payments at the rate of K2,500.00 per month from January 1996 when the defendant took possession of the premises. The plaintiff also claims costs of this action. The defendant filed his defence denying that the plaintiff was entitled to possession of the plot. The defendant argued that the purchase was K55,000.00 and was paid in full. Defendant prays costs.

The plaintiff called three witnesses. It was his evidence that the plot belonged to his late father. On the death of his father the plaintiff assumed the role of the administrator of the deceased estate. The plaintiff entered into a sale agreement of the plot in question. The purchase price was K155,000.00. The defendant prepared the sale agreement. It has two pages. Page 1 contains the particulars of the parties, terms of the sale agreement and description of the property. Page 2 contains particulars of the parties and space for their signatures and those of witnesses. He tendered the agreement as evidence. The plaintiff stated that since the payment of K55,000.00 by the defendant, the balance of K100,000.00 has not been paid to him despite several demands. The plaintiff said that there are tenants on the premises who were handed over to the defendant upon entering this sale agreement. The tenants were then paying over K2,500.00 per month from the two blocks. At the moment the rent should be in the region of K10,000.00 per month. The plaintiff explained that the parties had gone to the offices of the City of Blantyre for

confirmation of title for the plaintiff's father to the plot. A copy of the Agreement was left at the offices of City of Blantyre. The plaintiff maintained his story in cross-

examination. Counsel for the defendant produced a sale agreement document of similar print which showed the purchase price of K55,000.00. The document had the plaintiff's signature on page 2 thereof. The plaintiff vehemently stated that this document was fake.

The second witness was Loveness Kamala, former wife of the plaintiff. The plaintiff married her after the sale agreement had already been made. However, she saw copy of the Agreement. She was able to identify it. Equally she was able to dispute the other document as a fake sale agreement. She said the genuine one was the one where the purchase price was indicated as K155,000.00. She stated that one day the defendant came home to look for the plaintiff and suggested that he was to pay off the balance of K100,000.00 and change ownership of the plot. The plaintiff then was out of the country. The third witness was Salimu Dimasi, an employee of City of Blantyre. His evidence was that the plot is registered in the name of the plaintiff's father who is deceased. He stated that on their official file there is a copy of the sale agreement between the plaintiff and defendant and the purchase price is K155,000.00. The process of change of ownership has not yet been done.

Despite several adjournment the defendant did not come to give evidence. At a later stage counsel for the defendant applied to be discharged because the defendant was uncooperative. The court adjourned but ordered that judgment was going to be delivered.

As the matter stands, the evidence of the plaintiff and his witnesses has not been challenged by the defendant. The witnesses who testified were composed and I would not doubt their testimony. They appeared truthful. It is clear from the evidence that the plaintiff sold the premises to the defendant for K155,000.00. Only K55,000.00 was paid by the defendant. The issue of the purchase price being K55,000.00 only has not been proved by the defendant. In fact the defendant appears to be dodging the court because of his guilty conscious. If one looks at the sale agreement and the other purported sale agreement, it is apparent that one type writer was used. The probability is very high that the defendant prepared another copy to read purchase price of K55,000.00 and removed the original first page and fixed the fake page 1 to the already signed page 2 of the real Agreement. The defendant must be witty and crafty. This should be a warning to all people who sign agreements that they must always initial or sign all the pages of their agreements to avoid incidents of this nature. In short it has been proved that the defendant failed to pay the whole purchase price and the sale agreement thereby failed. It is in evidence that the defendant paid K55,000.00 to the plaintiff. At the same time the defendant started collecting rent from the tenants living on the premises at the rate of over K2,500.00 per month from January 1996. I will assume that by November 1997 the defendant had collected rent in the region of K55,000.00 from these premises. Therefore the defendant would not be entitled to a refund of the deposit of the purchase price. The

defendant continued to receive rent up to January 1999 when the Court ordered payment of rent into Court. The plaintiff is entitled to receive rent from December 1997 to January 1999 at the rate of K2,500.00 per month totalling K35,000.00. I enter judgment in that sum for the plaintiff against the defendant for **mesne** profits. Further I order that all the rent paid into Court be released to the plaintiff. From now onwards the rent should be paid to the plaintiff. These payments are made to the plaintiff in his capacity as administrator of the deceased estate of his father as well as a beneficiary. The defendant is condemned to pay costs of these proceedings.

PRONOUNCED in Open Court this

Day of July 1999 at Blantyre.

CHIMASULA PHIRI

JUDGE.