



Republic of Malawi
IN THE HIGH COURT OF MALAWI
COMMERCIAL DIVISION
BLANTYRE REGISTRY
MISCELLANEOUS APPLICATION NUMBER 99 OF 2022
(Before Msungama, J)

BETWEEN:
QUICK INVEST LIMITED.....CLAIMANT
AND
TIONGE PHIRI.....DEFENDANT

CORAM:

Msungama, J.

Minjale, of Counsel, for the Claimant

Chipembere, of Counsel, for the Defendant

Makonyo, Court Clerk

RULING

1. In this matter, the parties entered into a consent judgment by which the Defendant was ordered to pay the Claimant a total sum of MK3,591,333.33 plus costs by way of three consecutive monthly instalments of MK1,197,111.11 with effect from the month of May 2022. The Defendant has defaulted on this judgment. The Claimant, therefore, wants to enforce the judgment by way of possession of land. This is, therefore, the Claimant's application for an order of possession of land. It is made under O.28 r.2 and 37 of the CPR 2017. The application initially came without notice but the court ordered that it should come with notice to the other party.
2. There are sworn statements which were filed by or on behalf of the parties either in support or in opposition to the application. The first sworn statement is one sworn by Counsel Minjale on 23rd February 2023. In it, in paragraph 6 thereof, Counsel Minjale states that according to the Claimant's knowledge, the Defendant does not have any valuable property against which the judgment can be enforced except a piece of land at Keni, near Bethesda Church, behind Scenic Events Centre, in Mulenga Village, T/A Machinjiri, Blantyre off M1 Road. This is the piece of land that the Claimant would like to have an order of possession over.
3. The next sworn statement is one sworn by the Defendant and it is in response to the one sworn by counsel Minjale. In it, she states that she is not the owner of the piece

of land in question and that the said piece of land belongs to her husband, one James Undi.

4. The next sworn statement is by James Undi who states that the Defendant is his wife having married her in a traditional marriage in 2005. He attached to his sworn statement a copy of a sale agreement which he asserts is in respect of this land as **JJU1**. He further states that the land in question belongs to him having bought the same in 2013 and has been building a house on the same. According to **JJU1** the seller was H.S. Mlenga and the purchaser of the land was James Jickson Undi. The purchase price was MK1,100,000. The agreement was witnessed by W.S. Magando and the Defendant. The agreement is dated 5th May 2013 and shows that it was signed and stamped by F. William in his capacity as Village Headman Mlenga.

5. The next are two sworn statements by Village Headman Mlenga. These are said to be in response to the sworn statements of the Defendant and her husband. The deponent states that it is not true that the land belongs to the Defendant's husband but to the Defendant. In paragraph 2 of the statement, he states as follows:

“That I have found an original document which was signed by Tionge Phiri when buying and possessing the land. I attach the same as exhibit marked **VH1**”

6. An observation of **VH1** shows that the seller is SH Khombe and the purchaser is Tiwonge Jickson Phiri. The witnesses to the transaction are W.S. Magando and Jickson Undi.

7. The deponent further states that sometime this year the Defendant approached him to help her change the ownership of the piece of land in question into the name of her husband because he wanted to get a loan. To this effect he was asked to backdate the document i.e. **JJU1**.

8. The next sworn statement is a supplementary one by James Jickson Undi and it is in response to the sworn statement of the Village Headman. In it the deponent states that he does not know **VH1** and the signature which is purported to be and endorsed thereon is not his. He attached a copy of his national identity card to show what his signature looks like. He asserts that **VH1** is a fake document.

9. The next sworn statement is also a supplementary one by the Defendant, again in response to the one by the Village Headman. She denies that the signature that is on **VH1** and purported to be hers is in fact not. She has attached copies of both her national identity card and passport as **TP1** to demonstrate how her signature looks like. She is also asserting that **VH1** is a fake document.

10. The issue for the determination of this court is whether, on the materials before it, it should proceed to make an order of possession in respect of the piece of land in question by way of enforcement of the default judgment.

11. In civil matters the burden of proof is on the one who asserts. The standard of proof is on the balance of probabilities.
12. In the present matter, the court is faced with two contradicting pieces of evidence as regards the ownership of the piece of land that the Claimant wants the court to place a charging order on. The burden of proof was, at all material times, on the Claimant to prove that the said piece of land belongs to the Defendant. After hearing both sides in argument, this court ordered each side to furnish the court with the originals of the sale agreements which they were relying on. Only the Defendant has been able to furnish the court with such an original. The Claimant has not. No explanation has been furnished to the court by the Claimant as regards why such a document has not been furnished although one of the deponents, the Village Headman, stated in his sworn statement that he had found the original copy of the sale agreement a copy of which he attached to his sworn statement. In the circumstances, I find that the Claimant has not been able to discharge its burden of proof to prove that the Defendant is the owner of the piece of land over which it wants this court to place a charging order. This, however, is not the same as saying that I believe the Defendant's story. All I am saying is that the Claimant has failed to discharge its burden of proof. Although costs normally follow the event, because of the nature of the issues that came out in the course of hearing the matter and also because of the fact that the application has come about due to the Defendant's own default in satisfying the agreed judgment, I exercise my discretion and order that each party bears its own costs.
13. Clearly one of the documents is a fake. Both of them cannot be authentic. One of the parties in this matter has clearly embarked on a journey to pervert the course of justice by filing a false document into court with the clear intention of misleading the court. This cannot be allowed to go unpunished. In the circumstances, I order that the assistant Registrar of this Registry should furnish a copy of this ruling to the Regional Commissioner of Police (South) to ensure that an investigation into the matter is launched with a view to determine if a criminal offence has been committed and to take appropriate criminal action against whoever is found to have violated the law in this respect. The Regional Commissioner of Police (South) is also ordered to revert to this court with a report within three calendar months with a progress report on the matter.

Delivered in Chambers this 15th September, 2023 at the High Court, Commercial Division, Blantyre Registry.


M.T. Msungama
Judge